UNITED STATES DISTRICT COURT

DISTRICT OF COLORADO

CIVIL JUSTICE REFORM ACT

ADVISORY GROUP REPORT

DECEMBER 1994

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO
CIVIL JUSTICE REFORM ACT ADVISORY GROUP

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INTRODUCTION

Title I of the "Civil Justice Reform Act of 1990" (the "Act") required all United States District Courts to develop and implement a civil justice expense and delay reduction plan by December 1, 1993. After implementing its plan, each United States district court is required to assess annually the condition of the court's civil and criminal dockets with a view to determining appropriate additional actions that may be taken by the court to reduce cost and delay in civil litigation and to improve the litigation management practices of the court. Under the statute, the Court must consult with its Civil Justice Reform Act Advisory Group (28 U.S.C. § 475) in performing the assessment. This report is the CJRA Advisory Group for the District of Colorado's effort to provide consultation to the Court in an organized fashion.

In June 1994, Chief Judge Richard P. Matsch appointed the second CJRA Advisory Group of sixteen attorneys and other participants in the civil litigation process to serve for terms no longer than four years, with the exception of one permanent member, the United States Attorney for the district.

The Advisory Group was co-chaired by Sherman G. Finesilver, United States District Judge and Chief Judge until June 1994, and Thomas C. Seawell, Esquire. Judge Finesilver chaired the Advisory Group until the work began to focus on specific recommendations. However, to assure complete discussion without initial judicial review, Judge Finesilver did not participate in final discussions as to recommendations. Mr. Seawell chaired the Advisory Group during the development of the recommendations and preparation of the report.

Three subgroups were appointed by the co-chairs of the Advisory Group. The

Business of the Court, Survey Evaluation, and the *Pro Se Pro Bono* Panel Sub-Groups gathered, analyzed, and evaluated information; conducted a survey of attorneys practicing in federal court to determine their opinions on the impact of new federal and local rules of procedure on the reduction of costs and delays and improvement of the litigation process; and provided a discussion regarding the increasing number of *pro se* litigants. Sections of the report also revisit issues and recommendations included in the first report issued by the Advisory Group in April 1993, such as the role of magistrate judges; using a differentiated case manager to assist the judges in focusing and streamlining cases; and adopting and placing rules pertaining to bankruptcy matters in a separate Article or Appendix of the Local Rules.

This 1994 Report is designed to assist the Court in evaluating the condition of its civil and criminal dockets to determine appropriate additional actions that may be taken by the court to reduce cost and delay in civil litigation and to improve the litigation management techniques of the court (28 U.S.C. § 475). The requirements of the Act regarding the report, plan, advisory group, and review process continue until December 1, 1997 (28 U.S.C. 482 (b)(2)).

Organization of the Report

The introduction to the report provides the legislative background and the task presented to the Advisory Group. The recommendations are grouped together as a convenience to the reader but are interrelated in many ways. The numbering of the recommendations is in the sequence in which they appear in the text of the report and should not be construed as representing any ranking or order of priority.

CJRA ADVISORY GROUP RECOMMENDATIONS

RECOMMENDATION NUMBER 1:

The Court should request that the Advisory Group conduct an annual survey monitoring the effectiveness of the Rules and other case management techniques to improve the litigation process, the pace of litigation, and efforts to reduce the cost of litigation. The survey participants should be expanded to include judges, magistrate judges, the Clerk's office and litigants.

RECOMMENDATION NUMBER 2:

The Court should request that the Advisory Group seek funding to conduct a study, in addition to the annual survey, in cooperation with an academic institution to provide a statistically valid determination of the effect of the Rule changes.

RECOMMENDATION NUMBER 3:

The Court should develop a pool of volunteer counsel for Title VII and § 1983 litigation, the Court should continue its present screening and dispositive motion procedure for *pro se* filings, and the Court should cooperate with any program with any mentor/mentee program for *pro bono* representation.

RECOMMENDATION NUMBER 4:

The Court should develop more specific guidelines on the matters which will be referred to magistrate judges. These guidelines will permit the Court to assess the necessary experience and qualifications of magistrate judges as well as their performance. In addition, the Court should re-examine its position on allowing magistrate judges to try civil cases with the consent of all parties.

RECOMMENDATION NUMBER 5:

The Court should develop and implement a pilot program using an experienced Case Manager. This pilot program should also include measures by which to determine its effectiveness and a sunset provision.

RECOMMENDATION NUMBER 6:

Annual educational seminars on topics of federal court practice should be based on needs within the legal community, the Advisory Group's recommendations, new Rules, and new practice methods.

RECOMMENDATION NUMBER 7

The Court should either give specific direction to the Advisory Group to develop a detailed proposal for establishing a federal court practice group or appoint a separate task force to accomplish this goal.

RECOMMENDATION NUMBER 8

The court should adopt and place rules pertaining to bankruptcy matters in a separate Article or Appendix of its Local Rules. At a minimum, these rules should address withdrawal of reference, findings of fact and conclusions of law in non-core proceedings, bankruptcy appeals, and general administrative procedures. The Local Rules should reflect a systematic method of handling matters between the district court and bankruptcy court.

SECTION I. CIVIL AND CRIMINAL CASE FILING TRENDS

A. Review of Civil and Criminal Case Filing Trends

The Business of the Court Sub-group has obtained the latest statistics on Judicial Workload Profile (Appendix A), Civil Filings by Nature of Suits (Appendix B), and Criminal Felony Filings by Nature of Offense (Appendix C) for the District of Colorado. These statistics show that the District of Colorado continues to have one of the heaviest workloads of the 94 district courts, ranking 18th in the United States in overall workload and 11th in weighted -- *i.e.*, complex case -- filings. Total filings rose in 1994[1] by 9%.

B. Trends in Civil Cases

Civil filings increased in 1994 by more than 12%, one of the highest rates of increase among all federal district courts. Civil filings exceed criminal filings by more than 10:1.

The Advisory Group also examined the ten-year trend in civil case filings, which reflects a relatively small increase in total civil filings (from 2,812 in 1985 to 3,043 in 1994) (see Appendix B). These numbers are not indicative of significant changes in the nature and complexity of the workload, however. A far more accurate depiction of the increase in the civil case workload can be obtained by examining more closely the impact of filing trends in Category (B), Recovery of Overpayments/Enforcement of Judgments. This category consists of a class of cases which typically consume little, if any, judicial time. Total civil filings for 1985 included 547 such cases. Filings fell off steadily from that point, however, reaching a low of 17 in 1994. Category (B) case filings are

[1]The "statistical year" is July 1 to June 30. Therefore, references to 1994 are to the statistical year ending June 30, 1994.

subtracted from total civil filings to get a more accurate picture of the number of cases demanding judicial time, the increase is from 2,265 in 1985 to 3,026 in 1994 -- a ten-year increase in civil filings of nearly 35%.

The statistical breakdown of civil filings by nature of the case shows four areas in which filings are consistently -- and in some cases dramatically -- increasing: prisoner petitions, torts, copyright/patent/trademark, and civil rights.[2] Our investigation suggests that these upward trends will continue, for several reasons.

- First, experience in other jurisdictions demonstrates that filings of prisoner petitions will rise greatly with the opening of the new federal prison in Florence.
- Second, the rapid rate of population growth currently occurring in Colorado will contribute to the upward trend noted in most case categories.
- Third, to the extent that some increases in filings (*e.g.*, intellectual property) are traceable to the general improvement of the economy and the influx of industry into the state, continued increases in filings can be expected.
- Fourth, the combination of recent legislation and well-publicized results in precedent-setting cases can be expected to precipitate high ongoing levels of filings in a wide range of civil rights matters, including disability cases under the Americans with Disabilities Act, discrimination on the basis of race or sex under the 1991 Civil Rights Act, age discrimination, and sexual harassment.

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[2]Appendix D breaks down civil rights filings by type of case and shows that employment discrimination and ADA cases dominate the civil rights filings.

- Fifth, federal budget cuts are causing federal administrative agencies to miss statutory deadlines, to forego or delay completion of other mandatory duties, and to eliminate some levels of administrative review, all of which tend to expose those agencies to suits by affected parties in the federal courts.
- Sixth, changes in appellate procedures in social security claims.
- Finally, the 1994 anti-crime legislation adds a potentially large category of new civil lawsuits, because it permits women who are victims of gender-based violent crimes to file federal court actions.[3]

C. Trends in Criminal Filings

While criminal filings declined in 1994 (to 282, from 345 in 1993), the Advisory Group believes this to be an artificial reduction occurring as the result of the transition from the administration of one U.S. Attorney to another.[4] Criminal filings are therefore expected to rebound at least to their former levels, and possibly higher, in the short term. Further, the enactment by Congress in September of the anti-crime legislation will likely cause tremendous additional increases in criminal filings. That legislation federalized many crimes formerly the province of state courts (*e.g.*, some instances of domestic violence), expanded federal jurisdiction over offenses involving fraud, and created

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[3]The Administrative Office of the United States Courts will shortly release a study of new legislation and its likely effect on the courts.

[4]Former U.S. Attorney Michael Norton resigned effective March 31, 1993. The present U.S. Attorney, Henry Solano, took office on January 3, 1994.

categories of federal offenses to address such crimes as drive-by shootings and use of semi-automatic weapons. Therefore, we expect that criminal case filings could increase significantly and will consume an ever-growing portion of the Court's time.

SECTION II. ATTORNEY SURVEY [5]

The Advisory Group conducted a survey to evaluate the response of federal court practitioners to the recent rule changes. The new Local Rules were effective on April 15, 1994, and the amendments to the Federal Rules of Civil Procedure became effective on December 1, 1993. The survey was mailed in late August 1994; thus, the Advisory Group was aware that the survey results would be preliminary. An understood goal of the amendments to the Federal Rules and the new Local Rules was to improve the pace and reduce the cost of litigation. The survey sought to determine whether practitioners felt the goal was being achieved.

A. Mechanics of the Survey

The survey was created by the Advisory Group during the summer of 1994. The survey was intended to determine the extent of respondents' experience with the rule at issue, and then, regardless of experience, opinions on the rule were solicited. Reaction was elicited regarding the rules' impact on the overall litigation process, effectiveness in reducing the cost of litigation and increasing the pace of litigation. Space was also provided for any additional comments. The survey was mailed to active practitioners in the district from a list compiled by the Clerk's office.

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[5]Survey results are included as Appendix E.

B. The Response to the Survey

The response to the survey was high. Of 268 surveys distributed, responses were received from 119, creating a response rate of 44 percent. Of those responding, 99 were in private practice, 11 were government lawyers, and 9 did not identify an area of practice. The Advisory Group believes that the high response rate reflects high interest of the bar of this district in improving the administration of justice and participating in meaningful evaluation efforts.

C. Attorney Attitudes About Specific Rule Changes

Pleading with Particularity (Fed. R. Civ. P. 26(a)(1))

- Particularity means different things at different points in the litigation process which may explain why most attorneys do not plan to change their approach to pleadings.
- The art of automatic disclosures has not yet been established. It is a rule change that will take a while to decide how to use it.

Discussing ADR at the Scheduling Conference (Fed. R. Civ. P. 16(c)(9))

- ADR-related questions received some of the lowest response rates in the survey.
- A change in the state court rules (effective January 1993) regarding ethics which requires a discussion of ADR may have had an effect on the response to the question.

Suspending Proceedings to Pursue Settlement (D.C.COLO.LR 53.2)

- The fact that it could occur is positive.
- It may reduce it cost. It will not help reduce delay.

Requiring Initial Disclosures (Fed. R. Civ. P. 26(a)(1))

- Received a very strong response that it will increase the pace of litigation.
- Attorneys do not seem to tie this requirement to pleading with particularity.
- Loose enforcement could be good because it would create more battles if strictly enforced.
- Attempting to get a different culture going -- build consensus and encourage professionalism.
- It will not reduce cost except in certain types of cases or is it too early to tell? Most attorneys believe that it will help.

Disclosure of Expert Testimony (Fed. R. Civ. P. 26(a)(2))

- The response of attorneys to this question indicates that the disclosure of expert testimony has not been a problem in most cases.

Limitations on Interrogatories (Fed. R. Civ. P. 33(a))

- Most positive response to the question of reducing the cost of litigation.

Limitations on Depositions (Fed. R. Civ. P. 30(a)(2))

- The second most positive response to the question of reducing the cost of litigation.
- Many attorneys never reach the limit of ten.

Sanctions for Abusive Deposition Conduct (D.C.COLO.LR 30.1C)

- Consistent response that availability of sanctions will help the litigation process, increase the pace of litigation and reduce the cost of litigation.
- The responses indicate that the judges are not being asked to impose sanctions.

D. Advisory Group Observations After Reviewing the Survey Results

- Changes in rules, by themselves, do not affect the practice of law very much for conscientious lawyers.
- The new rules may require more professionalism from less conscientious lawyers.
- Attitude of lawyers and clients is still a major determinant.
- Involvement of the Court and sanction power are key.
- There is a question of whether increasing front-end work (and cost) will result in earlier case resolutions.
- Although reluctant to predict that a particular rule change will reduce cost, most attorneys believe that the Rule 16 conference, the meeting of the parties, and initial disclosures will help the litigation process.
- Court mandated communication between counsel is helpful in assisting parties and counsel to establish lines of communication.

E. Impact of the Rule Changes

The Advisory Group is concerned that the new rules have heightened a problematic trend in this district of creating a long period of "dead" time between completion of discovery and commencement of the trial. Often, this "dead time" can last a year or more. Indeed, often no modification to the pre-trial order, or additional discovery, will be allowed during this "dead time" unless the high burden of "good cause" can be shown. The Court's management practices must be flexible enough to accommodate the changing dynamics of the situations which give rise to litigation.

Respondents appear to believe that while many aspects of the new rules speed the pace of litigation, they have yet to see a corresponding cost reduction. This may be due to the fact that the new rules require more attorney activity (and thus more cost) earlier in the litigation process, coupled with the fact that insufficient time has passed since the new rules were enacted to determine whether cases are being settled or concluded earlier in the process (thus, presumably, decreasing the cost).

RECOMMENDATION NUMBER 1:

> **The Court should request that the Advisory Group conduct an annual survey monitoring the effectiveness of the Rules and other case management techniques to improve the litigation process, the pace of litigation, and efforts to reduce the cost of litigation. The survey participants should be expanded to include judges, magistrate judges, the Clerk's office and litigants.**

RECOMMENDATION NUMBER 2:

The Court should request that the Advisory Group seek funding to conduct a study, in addition to the annual survey, in cooperation with an academic institution to provide a statistically valid determination of the effect of the Rule changes.

SECTION III. *PRO SE PRO BONO* PANEL

In *Castner v. Colorado Springs Cablevision*, 979 F.2d 1417 (10th Cir. 1992), the Tenth Circuit held that *pro se* litigants in Title VII cases, after meeting certain criteria, are entitled to have counsel appointed to assist them in pursuing the claim. The district judges in the District of Colorado have streamlined screening procedures to identify meritorious cases and have tried to obtain counsel where viable claims may exist. At the present time, the Clerk's office seeks help by contacting individual lawyers on an ad hoc basis as the need arises. The judges have sought the advice of the Advisory Group concerning the creation of a pool of volunteer lawyers who would be willing to be available to fulfill this *pro bono* role in all types of *pro se* cases, including prisoner suits filed under 42 U.S.C. § 1983.

As to the general problem of the large number of *pro se* filings, the Court has given specific attention to preliminary screening, the mechanics of service of process and disposition of non-meritorious filings through discovery and dispositive recommendations by the magistrate judges. Procedures are now in place addressing all these issues and have been accomplished through coordination with such impacted entities as the Federal Bureau of Prisons and the Colorado Department of Corrections. The Advisory Group

believes that the recently adopted internal procedures are generally sufficient and as extensive as is appropriate.

With respect to a pool of volunteer attorneys, the Clerk's office advises that finding lawyers for filings which meet the *Castner* test in Title VII cases is not difficult but that the same is not true for civil rights filings outside of the employment law area. The difficulties to be overcome are discussed below.

The bearing of necessary out-of-pocket costs by *pro bono* counsel is a significant issue. Many cases require the taking of depositions where traditional court reporter fees can be too great to ask an individual volunteer lawyer to bear. One possible solution might be to use tape-recorded depositions, with transcripts being prepared, if necessary, by the lawyer's secretary. Another possibility is to ask for volunteer help from court reporter and paralegal organizations. In any event, some answer to the cost problem must be found.

Training of lawyers not already experienced in the substantive areas is also essential. Lawyers who are not experienced in those areas may be willing to volunteer their services if they can easily learn the basic rules. The training could be given by attorneys who are experienced in the relevant fields but judicial participation would greatly enhance the attractiveness of such a program.

Possible liability for mishandling of claims must also be addressed. It is possible that volunteer attorneys will be willing to rely on their own insurance for protection, but the impact on rates and related matters must be evaluated. It must be assumed that many malpractice claims, only a very few of which would be meritorious, will be generated by

malpractice claims, only a very few of which would be meritorious, will be generated by representation of these *pro se* parties.

The University of Denver College of Law, in conjunction with the Colorado Bar Association, is in the early stages of developing a mentor/practice experience program which appears to have great promise. New attorneys would be paired with experienced attorneys and would select a project to undertake together. One of the possible projects might be representing a *pro se* filing case. If successful, this program might develop at least a small pool of attorney teams which would be willing to take the *pro se* cases. Earning Continuing Legal Education credit for this work is part of the concept.

The *Pro Se Pro Bono* Panel Subgroup investigated the possibilities of other groups being sources for *pro bono* counsel. The Federal Bar Association indicated a willingness to solicit its membership for volunteer representation.

RECOMMENDATION NUMBER 3:

The Court should develop a pool of volunteer counsel for Title VII and § 1983 litigation, the Court should continue its present screening and dispositive motion procedure for *pro se* filings, and the Court should cooperate with any program with any mentor/mentee program for *pro bono* representation.

SECTION IV. ROLES OF MAGISTRATE JUDGES

The 1993 Advisory Group Report discussed the utilization of magistrate judges. At that time, magistrate judges were paired with district judges so that all matters referred

by one district judge went to one magistrate judge. Since that time, the "pairing" system has been eliminated which seems to facilitate the reference of particular matters to particular magistrate judges.

The Advisory Group continues to be concerned that there is no clear articulation of the functions of the magistrate judges in the District of Colorado. A laundry list of the kinds of civil matters which are often referred to magistrate judges can certainly be assembled, which would include conducting Rule 16 conferences, resolution of discovery disputes, resolution of non-dispositive motions, recommendations concerning dispositive motions, and settlement conferences. However, there does not appear to be any existing "mission statement" for the magistrate judges generally. Accordingly, it is impossible to assess the effectiveness of individual magistrate judges or the group as a whole.

The 1993 Report recommends that the magistrate judges should be authorized to try cases with consent of all parties. A majority of the Advisory Group members still supports that recommendation believing that, in appropriate instances, this availability would improve the speed with which cases could be brought to trial. The minority view is that the Court's civil workload is predominantly pre-trial processing rather than trying cases and that involving magistrate judges in trials would be an unwise shifting of resources.

RECOMMENDATION NUMBER 4:

The Court should develop more specific guidelines on the matters which will be referred to magistrate judges. These guidelines will permit the Court to assess the necessary experience and qualifications of magistrate

judges as well as their performance. In addition, the Court should re-examine its position on allowing magistrate judges to try civil cases with the consent of all parties.

SECTION V. DIFFERENTIATED CASE MANAGEMENT

The Advisory Group's 1993 Report (Recommendation Number 8) recommended that:

> The Court should use a Differentiated Case Manager from within existing staff to develop and implement a pilot program with one or more judges and magistrate judges to recommend to the judges methods by which cases might be focused or streamlined and whether a case is suitable for disposition through ADR techniques. The pilot program should include procedures to measure its effectiveness and a sunset provision.

Civil Justice Reform Act Advisory Group Report (April 1993) at 38. The Court accepted this suggestion[6] but has not yet taken action on it.

The Advisory Group's original approach envisioned utilizing a staff person to screen complaints and civil cover sheets as the first step in a Differentiated Case Management process. As the Group discussed the idea further, however, a competing approach surfaced.

Instead of (or perhaps in addition to) the superficial initial screening process, the Court would hire an experienced person, with broad experience in civil litigation, to review initial filings and subsequent pleadings as they are filed. This Case Manager would flag cases which appear to be capable of prompt resolution or cases with

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[6]"The court directs the Clerk's office to develop and implement a Differentiated Case Management program." Civil Justice Reform Act Expense and Delay Reduction Plan (November 1993) at Appendix D-7.

statute of limitations or other jurisdictional defense before allowing extensive discovery on the merits, suggesting an early (pre-discovery) settlement conference, and so on. The Case Manager would need to be a person of high standing in the legal community who would have the respect of the judges. The role would have to be flexibly defined and must not result in another layer of bureaucracy. A retired attorney with modest income needs might be a likely prospect.

A minority of the Group was troubled by the notion of adding a Case Manager because of the potential for the person to effectively serve as a quasi-judicial officer who is not accountable to the litigants in a case. Under this view, the Court should employ a Case Manager only after defining the role and responsibilities of the position and making clear that the Case Manager has no authority to make decisions which affect the substantive rights of the litigants.

The Advisory Group believes that the civil cover sheet could be amended to facilitate the work of the Case Manager. The intent would be to elicit additional information about the case -- for example, whether review would occur solely on an administrative record, in which case no discovery would be needed -- so that the Case Manager could assess possible case-handling efficiencies.

RECOMMENDATION NUMBER 5:

The Court should develop and implement a pilot program using an experienced Case Manager. This pilot program should also include measures by which to determine its effectiveness and a sunset provision.

SECTION VI. EDUCATIONAL PROGRAMS

The importance of the Court's role in the providing a unique educational opportunity for attorneys practicing in federal court has been expressed by the Advisory Group since its inception in 1991. The Advisory Group and the Court have shared sponsorship of two seminars during the past four years.

The seminars held by the Court meet a growing need for information and guidance from the legal community. Programs featuring the judges are met with enthusiasm and requests for a review of new rules, judges' presentations and participation. Attorneys are seeking judicial comments, philosophy, overview, and attitudes toward federal court practice as well as practical litigation techniques.

Future educational programs associated with the Court should focus on topics relating to federal court practice in this district. Attention should be given to the increasing amount of litigation in the District of Colorado conducted by attorneys from out of state.

Day-long seminars could be conducted with material of general interest (ethics, procedure) to those practicing in federal court presented in the morning and break-out groups in the afternoon, such as civil practice with an emphasis on disclosure and discovery, criminal practice with a focus on evidentiary matters, and bankruptcy practice.

RECOMMENDATION NUMBER 6:

Annual educational seminars on topics of federal court practice should be based on needs within the legal community, the Advisory Group's recommendations, new Rules, and new practice methods.

SECTION VII. FEDERAL COURT PRACTICE GROUP

In its 1993 Report, the Advisory Group discussed its belief that a federal court practice group should be established to meet several ongoing needs of attorneys actively interested in practice before the Court. Since that time, the Advisory Group has reviewed and responded to an informal "White Paper" by one member of the Court. The Advisory Group has discussed the concept in considerable detail and continues to believe in the long-term desirability of such an organization.

The basic ideas underlying the Advisory Group's belief are the following:

1. There are substantive and procedural matters which are unique to federal court practice and which can best be studied by a group devoted solely to federal court practice;
2. Federal judicial officers at all levels will likely feel more comfortable participating in educational programs sponsored by attorneys interested in federal court practice and covering topics uniquely involved in federal court practice;
3. No present attorney organization is devoted solely to developing and enhancing the skills, culture, competence and professionalism unique to federal court practice.

The Advisory Group envisions an organization which would be open to all who are interested, without meeting experience or testing requirements. The primary purpose of the organization would be education and training of the federal court bar. Every effort should be made to include attorneys from throughout the country who

practice or may wish to practice before the Court. Membership in the organization should not be a requirement of practicing before the Court.

A federal court practice group could be a rich resource for addressing several of the matters discussed in prior pages of this report. In consultation with the Court, it could perform the entire function of organizing and presenting educational programs relating to federal court practice, similar to the program presented in April, 1994 covering the new federal and local rule changes. It could develop sections or subgroups designed to reflect particular federal substantive topics such as civil rights, copyrights/patents, bankruptcy, antitrust, etc., and the uniquely federal aspects of procedural topics such as evidence, motion practice, discovery, settlement conferences, etc. Articulating and proclaiming a distinctive federal court professionalism could permeate every program.

The Court's need for a pool of volunteer lawyers to act as counsel in *pro se* cases might well be met from among the ranks of a federal court practice group. The funding for costs necessary to such representation might come from fees generated by the educational and other programs of such an organization.

Another important function which could be served by such a group would be to act as a sounding board for the Court. The group would be representative of the lawyers who practice in the Court and could be an excellent source of general feedback, analysis and evaluation of proposed local rules changes, general procedural issues and the like.

Establishing a federal court practice group is a long-term project which will require considerable thought, discussion and sustained effort. There are significant hurdles which must be overcome, including funding and administrative needs. A mission statement needs to be developed and the relationship with the Court must be articulated. Appropriate ongoing relationships with the Advisory Group, the current committee on professional conduct and the Criminal Justice Act Committee need to be analyzed and created.

RECOMMENDATION NUMBER 7

The Court should either give specific direction to the Advisory Group to develop a detailed proposal for establishing a federal court practice group or appoint a separate task force to accomplish this goal.

SECTION VIII. CLARIFICATION OF PROCEDURES GOVERNING CASES FROM BANKRUPTCY COURT TO DISTRICT COURT

One of the recommendations in the 1993 Report that was accepted, but not implemented, was Recommendation Number 17, relating to clarification of the procedures governing cases moving from bankruptcy court to district court.

Confusion is created by the lack of procedural guidelines for submitting motions for withdrawal of reference, requests for review of findings of facts and conclusions of law in non-core matters, review of contempt orders, and other matters which draw the district court into the bankruptcy process. Strong support continues for additional local rules of the Court which could help assure that bankruptcy litigants seeking to exercise their

rights before the district court are not subject to undue delay or unnecessary cost due to procedural uncertainties.

Recommendation Number 17 stated,

> The court should adopt and place rules pertaining to bankruptcy matters in a separate Article or Appendix of the Local Rules. At a minimum, these rules should address withdrawal of reference, findings of fact, and conclusions of law in non-core proceedings, bankruptcy appeals, and general administrative procedures. The Local Rules should reflect a systematic method of handling matters between the district court and bankruptcy court.

The Court's response was: "The Court agrees and will work with the Local Rules subgroup of the CJRA Advisory Group and the bankruptcy court toward such rules." No action has yet been taken.

RECOMMENDATION NUMBER 8

> **The court should adopt and place rules pertaining to bankruptcy matters in a separate Article or Appendix of its Local Rules. At a minimum, these rules should address withdrawal of reference, findings of fact and conclusions of law in non-core proceedings, bankruptcy appeals, and general administrative procedures. The Local Rules should reflect a systematic method of handling matters between the district court and bankruptcy court.**

SECTION IX. FUTURE ACTION

After completion of its 1993 Report, the statutory role of the Advisory Group became unclear. The Act provides that the Court is to "consult" with the Advisory Group in preparing its annual assessment of the status of the docket; no specific activities of the Advisory Group are mentioned. Accordingly, the Advisory Group recommends that the Court provide guidance as to the ongoing role of the Advisory Group.

In February 1995, seven Advisory Group members complete their four year terms and the Court has the opportunity to make new appointments. New assignments should be given to the Advisory Group before or when the new appointments are made in February.

In the course of developing this report, the Advisory Group identified a number of issues which merit further investigation or action by the Group over the coming year. In addition to the specific matters in the foregoing recommendations, with the Court's approval and input, the Advisory Group could, for example, engage in the following activities:

- Develop recommendations to the Court about the relationship of district court judges and magistrate judges and the efficient and productive use of magistrate judges. This theme resonates through the attorney surveys and the Group's discussions. Several ideas have emerged about how the Group might help the Court realize the goal of maximizing the effectiveness of the magistrates, including (a) circulating a survey to judges and magistrate judges, as the Advisory Group last did in 1991, with follow-up interviews;

(b) examining, with the help of the Clerk, how magistrate judges function in the District of Colorado and elsewhere; (c) developing a clearer statement of the functions of the magistrate judges, both to enhance their current use and to assist the Court in identifying the best candidates for future openings for magistrate judges.

- Investigate and recommend technological improvements at the Court, such as the capacity for holding on-the-record telephonic status conferences or other routine hearings, facsimile and/or electronic filing of pleadings, etc.

- Investigate and analyze proposals designed to reduce civil case filings by (a) early neutral evaluation; (b) conducting programs for attorneys on ways to avoid litigation; and (c) conducting programs for potential *pro se* claimants (possibly including prisoners) to educate the public on what is and what is not a viable claim, how non-judicial relief may be obtained, and how to proceed properly as a *pro se* litigant.

1994 FEDERAL COURT MANAGEMENT STATISTICS PROFILE
U.S. District Court-- Judicial Workload Profile
District of Colorado

	COLORADO		TWELVE MONTH PERIOD ENDED JUNE 30						NUMERICAL STANDING WITHIN U.S.	CIRCUIT
			1994	1993	1992	1991	1990	1989		
OVERALL WORKLOAD STATISTICS	Filings*		3,333	3,059	2,900	2,397	2,667	2,630		
	Terminations		3,076	2,971	2,450	2,670	2,643	2,493		
	Pending		2,635	2,457	2,461	2,030	2,318	2,292		
	Percent Change In Total Filings Current Year	Over Last Year. . .		9.0					11	2
		Over Earlier Years. . .			14.9	39.0	25.0	26.7	8	1
	Number of Judgeships		7	7	7	7	7	7		
	Vacant Judgeship Months**		1.0	.0	.0	.0	15.1	28.7		
ACTIONS PER JUDGESHIP	FILINGS	Total	476	437	414	342	381	376	18	2
		Civil	435	387	363	298	336	332	13	2
		Criminal Felony	41	50	51	44	45	44	54	5
	Pending Cases		376	351	352	290	331	327	40	4
	Weighted Filings**		527	527	448	400	404	397	11	2
	95% Confidence	Upper	570	560	565	479	430	434		
		Lower	484	483	490	417	371	374		
	Terminations		439	424	350	381	378	356	25	2
	Trials Completed		38	40	38	38	31	38	17	3
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal Felony	5.3	4.9	4.2	4.2	3.8	3.7	24	4
		Civil**	7	7	8	8	9	8	13	3
	From Issue to Trial (Civil Only)		17	18	15	18	17	20	33	6
OTHER	Number (and %) of Civil Cases Over 3 Years Old		95 3.9	110 5.1	107 4.9	108 6.0	138 6.5	152 7.2	35	5
	Average Number of Felony Defendants Filed per Case		1.4	1.8	1.5	1.7	1.4	1.3		
	Jurors	Avg. Present for Jury Selection**	28.11	28.78	33.49	30.06	26.46	23.82	33	6
		Percent Not Selected or Challenged**	31.1	33.8	47.1	39.3	29.4	21.9	56	6

FOR NATIONAL PROFILE AND NATURE OF SUIT AND OFFENSE CLASSIFICATIONS SHOWN BELOW -- OPEN FOLDOUT AT BACK COVER

1994 CIVIL AND CRIMINAL FELONY FILINGS BY NATURE OF SUIT AND OFFENSE

Type of	TOTAL	A	B	C	D	E	F	G	H	I	J	K	L
Civil	3043	46	17	733	76	45	134	380	479	104	673	7	349
Criminal*	282	18	8	34	7	13	65	30	11	48	14	19	15

CIVIL FILINGS BY NATURE OF SUITS
U.S. DISTRICT COURT
DISTRICT OF COLORADO
1985 - 1994

Statistical Year[1]	85	86	87	88	89	90	91	92	93	94
Nature of Suit										
(A) Social Security	53	33	25	45	34	26	35	34	46	46
(B) Recovery of Overpayments/Enforcement of Judgments	547	262	173	56	139	115	89	131	69	17
(C) Prisoner Petitions	215	244	278	265	299	404	431	477	497	733
(D) Forfeitures/Penalties/ Tax Suits	102	70	71	74	77	74	114	98	91	76
(E) Real Property	55	63	64	47	47	51	25	53	40	45
(F) Labor Suits	119	179	149	175	131	162	114	166	150	134
(G) Contracts	648	518	548	466	512	455	291	359	336	380
(H) Torts	349	444	246	320	316	271	256	333	395	479
(I) Copyright/Patent/ Trademark	69	85	58	89	56	106	61	67	82	104
(J) Civil Rights	292	392	299	304	321	290	295	411	484	673
(K) Antitrust	22	12	10	7	10	13	10	9	9	7
(L) All Other Civil	341	308	328	333	380	388	362	400	509	349
Total Civil Filings	**2812**	**2610**	**2249**	**2181**	**2322**	**2355**	**2083**	**2538**	**2708**	**3043**
Total of All Filings	3066	2844	2517	2471	2630	2667	2397	2900	3059	3333

[1]The "statistical year" is July 1 to June 30. The numbers for the ten year period 1985 - 1994 are from "Judicial Workload Profiles" prepared by the Administrative Office of the United States Courts.

CRIMINAL FELONY FILINGS BY NATURE OF OFFENSE
U.S. DISTRICT COURT
DISTRICT OF COLORADO
1985 - 1994

Statistical Year	85	86	87	88	89	90	91	92	93	94
Nature of Offense										
Immigration	8	11	7	2	10	10	11	19	15	18
Embezzlement	14	21	25	13	11	17	14	15	14	8
Auto Theft[2]	2	1	1	1	2	-	-	-	-	-
Weapons/ Firearms	23	20	33	26	32	55	39	27	42	34
Escape	7	2	8	8	8	7	0	9	11	7
Burglary/ Larceny	18	24	14	27	14	13	15	19	21	13
Marihuana/ Controlled Substances	17	12	5	15	21	21	37	31	24	65
Narcotics	28	34	36	53	68	47	50	76	70	30
Forgery/ Counterfeiting	12	10	16	11	10	1	6	9	7	11
Fraud	61	47	62	64	69	84	80	83	83	48
Homicide/ Robbery/ Assault[3]	18	13	25	28	21	-	-	-	-	-
Homicide/ Assault	-	-	-	-	-	1	7	5	6	14
Robbery	-	-	-	-	-	16	14	28	18	19
All Other Criminal Felony	34	22	17	30	29	29	26	22	34	15
Total Criminal Felony Filings	**242**	**217**	**249**	**278**	**295**	**301**	**299**	**343**	**345**	**282**
Total of All Filings	3066	2844	2517	2471	2630	2667	2397	2900	3059	3333

[2]Auto Theft not included after 1989.

[3]Robbery reported separately and Homicide/Assault remained together after 1989.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO
CIVIL JUSTICE REFORM ACT ADVISORY GROUP
UNITED STATES COURTHOUSE
1929 STOUT STREET, C-145
DENVER, COLORADO 80294

SHERMAN G. FINESILVER, JUDGE
Advisory Group Co-Chair

THOMAS C. SEAWELL, ESQ.
Advisory Group Co-Chair

Janet Bieringer
CJRA Reporter
303-844-3433

MEMORANDUM

TO: Civil Justice Reform Act Advisory Group
Business of the Court (BOC) Sub-Group

FROM: Janet Bieringer
CJRA Reporter

DATE: October 21, 1994

RE: Requested Information Regarding the Types of Civil Right Cases Filed in the District of Colorado

U.S. District Court
District of Colorado
Summary of Civil Rights Cases
Filed Between July 1, 1993 - June 30, 1994

Nature of Suit		Number of Cases Filed
440	Other Civil Rights	215
441	Voting	0
442	Employment	435
443	Housing/Accommodation	9
444	Welfare	1
	Total	660

The next three pages provide more detail about the types of civil rights cases filed within each nature of suit category.

U.S. District Court
District of Colorado
Civil Rights Cases
Filed Between July 1, 1993 - June 30, 1994, Continued

Number of Cases	Cause	Code	Nature of Suit
1	Omnibus Crime Control and Safe Streets Act of 1968	18:2510	440 (Other Civil Rights)
1	Federal Question: Other Civil Rights	28:1331cv	440 (Other Civil Rights)
2	Federal Question: Violation 5th & 8th Amendment	28:1331v	440 (Other Civil Rights)
3	Violation of Civil Rights	28:1343	440 (Other Civil Rights)
2	Petition for Writ of Mandamus	28:1361	440 (Other Civil Rights)
1	Civil Rights	28:1983	440 (Other Civil Rights)
1	Petition for Writ of Habeas Corpus (State)	28:2254	440 (Other Civil Rights)
1	Federal Tort Claims Act	28:2671	440 (Other Civil Rights)
1	Job Discrimination (Age)	29:0621	440 (Other Civil Rights)
1	Worker Adjustment and Retraining Notification Act	29:2101	440 (Other Civil Rights)
33	American With Disabilities Act	42:12101	440 (Other Civil Rights)
164	Civil Rights Act	42:1983cv	440 (Other Civil Rights)
2	Prisoner Civil Rights	42:1983pr	440 (Other Civil Rights)
1	Child Abuse Prevention and Treatment Act	42:5101	440 (Other Civil Rights)
1	National Manufactured Housing Construction Safety Standard Act of 1974	42:5401	440 (Other Civil Rights)
1	Discrimination - Review of Agency Act	05:7703	442 (Employment)

U.S. District Court
District of Colorado
Civil Rights Cases
Filed Between July 1, 1993 - June 30, 1994, Continued

Number of Cases	Cause	Code	Nature of Suit
1	Deposition Institution Dereg. Monetary Act of 1980 (DIDA)	12:1831	442 (Employment)
1	Fair Labor Standards Act	29:0201fl	442 (Employment)
47	Job Discrimination (Age)	29:0621	442 (Employment)
2	Job Discrimination (Age)	29:0623	442 (Employment)
20	Job Discrimination (Age)	29:0626	442 (Employment)
1	Job Discrimination (Age)	29:0633	442 (Employment)
4	Job Discrimination (Rehabilitation)	29:0791	442 (Employment)
77	American With Disabilities Act	42:12101	442 (Employment)
3	Employment - Job Discrimination	41:1981jb	442 (Employment)
2	Employment - Sex Discrimination	42:1981sx	442 (Employment)
11	Civil Rights Act	42:1983	442 (Employment)
3	Civil Rights Act	42:1983ed	442 (Employment)
1	Prisoner Civil Rights	42:1983pr	442 (Employment)
12	Job Discrimination (Employment)	42:2000e	442 (Employment)
28	Job Discrimination (National Origin)	42:2000no	442 (Employment)
89	Job Discrimination (Race)	42:2000ra	442 (Employment)
132	Job Discrimination (Race)	42:2000sx	442 (Employment)

U.S. District Court
District of Colorado
Civil Rights Cases
Filed Between July 1, 1993 - June 30, 1994, Continued

Number of Cases	Cause	Code	Nature of Suit
1	Petition for Removal - Foreclosure	28:1444	443 (Housing/ Accommodations)
2	Sex Discrimination	42:1981hs	443 (Housing/ Accommodations)
6	Fair Housing Act	42:3601	443 (Housing/ Accommodations)
1	Tort Negligence	42:1396	444 (Welfare)
666	**Total**		

U.S. DISTRICT COURT
DISTRICT OF COLORADO
CIVIL JUSTICE REFORM ACT
ADVISORY GROUP

ATTORNEY SURVEY RESPONSE N = 119
SEPTEMBER 1994

Topic Number 1: The meeting of the parties required by Fed. R. Civ. P. 26(f).

1a. The number of experiences you have had with the meeting of the parties required by Rule 26(f): ____

0	1	2	3	4	5	5+
5	23	25	21	23	9	12

1b. In general, does the meeting of the parties help the litigation process?

77 Yes

21 No

20 Has had no impact

1c. Does this change help to increase the pace of litigation?

56 Yes

39 No

22 Has had no impact

1d. Does this change help to reduce the cost of litigation?

30 Yes

49 No

30 Has had no impact

1e. Additional comments or explanations:

Topic Number 2: The recent changes to Fed. R. Clv. P. 26(a)(1) regarding pleading with particularity.

2a. Have the recent changes to Fed. R. Civ. P. 26(a)(1) regarding pleading with particularity caused you to do any of the following:
[please check one of the following]

27 ☐ Draft pleadings with more particularity.

2 ☐ Draft pleadings with less particularity.

87 ☐ No change in the methods used to draft pleadings.

2b. In general, do these changes help the litigation process?
[please check one of the following]

33 ☐ Yes.

32 ☐ No.

48 ☐ Has had no impact.

2c. Do these changes help to increase the pace of litigation?

19 ☐ Yes.

46 ☐ No.

47 ☐ Has had no impact.

2d. Do these changes help to reduce the cost of litigation?

10 ☐ Yes.

54 ☐ No.

44 ☐ Has had no impact.

2e. Additional comments or explanations:

Topic Number 3: Holding the scheduling conference within 90 days after the first defendant's appearance (Fed. R. Civ. P. 16(b)).

3a. The number of experiences you have had since December 1, 1993 with Rule 16 scheduling conferences: ____

0	1	2	3	4	5	5+
4	26	27	17	16	9	17

Number held within 90 days after the first defendant's appearance: ____

0	1	2	3	4	5	5+
5	24	23	16	9	8	12

Number held more than 90 days after the first defendant's appearance: ____

0	1	2	3	4	5	5+
36	16	7	1	1	0	2

3b. In general, does holding the scheduling conference within 90 days after the first defendant's appearance help the litigation process? *[please check one of the following]*

83 ☐ Yes.

18 ☐ No.

14 ☐ Has had no impact.

3c. Does this change help to increase the pace of litigation?

77 ☐ Yes.

21 ☐ No.

18 ☐ Has had no impact.

3d. Does this change help to reduce the cost of litigation?

24 ☐ Yes.

49 ☐ No.

41 ☐ Has had no impact.

3e. Additional comments or explanations:

Topic Number 14: The elimination of "pairing" of district judges and magistrate judges.

14a. The number of experiences you have had with the elimination of "pairing" of district judges and magistrate judges: ____

0	1	2	3	4	5	5+
53	11	6	4	13	5	9

14b. In general, does the elimination of "pairing" of judges and magistrate judges help the litigation process? *[please check one of the following]*

18 ☐ Yes.

11 ☐ No.

40 ☐ Has had no impact.

14c. Does this change help to increase the pace of litigation?

12 ☐ Yes.

17 ☐ No.

40 ☐ Has had no impact.

14d. Does this change help to reduce the cost of litigation?

10 ☐ Yes.

17 ☐ No.

41 ☐ Has had no impact.

14e. Additional comments or explanations: