

UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO
POST OFFICE BOX 566
ALBUQUERQUE, NEW MEXICO 87103

JAMES A. PARKER
JUDGE

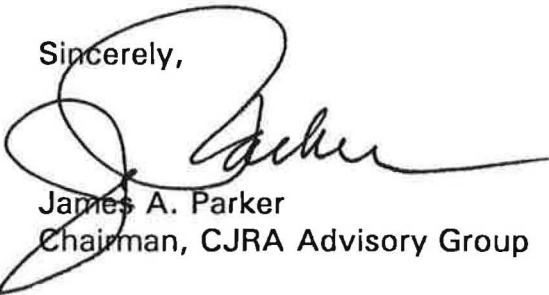
September 28, 1995

Ralph Mechem, Director
Administrative Office of the
United States Courts
Thurgood Marshall Federal Judiciary Building
One Columbus Circle, N.E.
Washington, DC 20544

Dear ^{RALPH} ~~Mr.~~ Mechem,

In accordance with the Civil Justice Reform Act of 1990 I am transmitting a copy of the 1994 Annual Assessment of the Condition of the Court's Civil and Criminal Dockets for the District of New Mexico.

Sincerely,



James A. Parker
Chairman, CJRA Advisory Group

1994
Annual Assessment of the
Condition of the Court's Civil and Criminal Dockets
United States District Court
for the
District of New Mexico



Prepared in accordance with the Civil Justice Reform Act of 1990
Chairman, Honorable James A. Parker
Reporter, Jesse Casaus

I. Introduction

The Civil Justice Reform Act Advisory Group for the District of New Mexico was established in February of 1991. Although the District of New Mexico was not designated as an early implementation district, the Advisory Group submitted its report and recommendations in November of 1992 and the Court adopted its CJRA Plan effective January 1993. Prior to adopting the Plan, the Court had already implemented many of the recommendations in the Plan.

In accordance with 28 U.S.C. § 475 the Court is providing this 1994 annual assessment of the court's civil and criminal dockets. The Committees of the Advisory Group prepared reports which reviewed the conditions of the docket and made recommendations to further reduce cost and delay in the district.

II. Status of CJRA Plan

A. Active Court Case Management

The recommendations of the Court's CJRA Plan have been implemented and are now a part of case management. The Court is using active case management procedures, including differentiated case management, and is applying the civil discovery rules as amended December 1, 1993. Most of the judges hold status conferences during the discovery phases of their cases. Several of the judges have adopted the practice of more frequently ruling from the bench on dispositive motions.

B. Pro Se Matters

The recommendations of the Pro Se committee are being completed with the implementation of the Pro Bono Panel, which will make legal counsel available to pro se litigants in selected cases. The state prison system has adopted an approved grievance procedure which should reduce pro se inmate case filings. The Court has a full time pro se law clerk and writ clerk. By following the CJRA Plan's recommended procedures the pro se law clerk and the magistrate judges have substantially shortened the disposition time and have reduced the backlog of inmate cases.

C. Information and Case Management

The Clerk's office has improved the flow of information and has made dramatic contributions to effective case management through improved automation. Of special note is the development of the New Mexico Automated Case Tracking System (NM~ACTS). This is a high powered case management tool that uses information from the ICMS docketing data base to provide easy access to case management information and to create reports.

D. Criminal Cases

The U.S. Attorney plans to discontinue prosecution of certain smaller quantity marijuana cases, which in the future will be prosecuted in state courts. The federal government will provide monetary assistance to the state to accomplish this. This reduction in drug prosecutions will probably be offset by increased prosecution of white collar crimes and crimes that occur on Indian reservations.

III. Judicial Officers

At the time the Plan was being prepared, the Court had been operating with a vacant judgeship for nearly two years. Judge Hansen was sworn in as the fifth U.S. District Judge for the District on October 5, 1992. Judge Campos took senior status in December of 1992 and thereafter continued with approximately 65% of an active judge's caseload. Judge Vazquez filled the position vacated by Judge Campos in October, 1993. Judge Burciaga took senior status during November 1994, but kept a caseload of an active judge. Sadly, Judge Burciaga died March 5, 1995 and his position is vacant.

In addition the number of magistrate judges has increased since the Plan was adopted. The fourth magistrate judge --Judge Svet-- took office in December 1993 and a fifth magistrate judge --Judge Smith-- will be sworn in on April 1, 1995. A sixth magistrate judge position has been approved and will be filled during October 1995. The Judicial Conference, has recommended that Congress create a sixth Article III judgeship for the district.

The additional judges have helped reduce the workload as shown by the following statistics:

As of December 31, 1992 , each active judge had an average pending civil case load of 270. Filings for the active judges in 1992 averaged 240 civil cases and 189 felony defendants.

As of December 31, 1994 each active judge had an average pending civil case load of 180. Filings for the active judges in 1994 averaged 216 civil cases and 130 felony defendants.

Even with this reduction in workload per judge from 1992 to 1994, as of September 1994 the District ranked seventh in the U.S. in weighted case filings per judge. Because the district has only five active judge positions, the addition or loss of an active judge has a large impact. The loss of Judge Burciaga returned the caseload for the active judges to the level experienced during 1992.

IV. Evaluation of the Plan

A. Statistical Review

It is difficult to isolate the impact of the Plan, given the substantial increases in the number of judicial officers that occurred concurrently with the implementation of the Plan. Much of the improvement and reduction in the backlog of cases may be due to the additional judges as well as to the implementation of the Plan.

Several statistics show the success of the Court in reducing the backlog of cases and the time taken to dispose of cases. At the end of September 1992 the Court had 1724 pending civil cases with 172 cases or 10% over three years old. By the end of December 1994, the pending case load had been reduced to 1479 cases and of these only 98 or 6% had been pending for over three years. The median time for termination of civil cases declined from 13 months in 1991 to 9 months by the end of 1994.

Two groups of cases were chosen to provide more detail for assessing the success of the CJRA Plan. The first group consisted of civil cases filed during the first six months of 1991, prior to the enactment of the CJRA Plan. The second group consisted of cases filed during the first six months of 1993. 81% of the 1993 cases were resolved within 18 months, compared to 72% of the cases filed in 1991. The largest improvement occurred with inmate petitions: 89% filed in 1993 were completed within 18 months and 52% within 6 months. Table I details these comparisons.

**TABLE I
COMPARISONS OF CIVIL CASES
FILED 1991 VS. 1993**

When Cases Filed	Total No. of Cases Filed	Cases Terminated Within					
		6 Months		12 Months		18 Months	
		No.	Percent	No.	Percent	No.	Percent
"Regular Civil"							
Group Filed in 1991	486	142	29%	278	57%	366	75%
Group Filed in 1993	502	194	39%	331	66%	414	82%
Prisoner Petitions							
Group Filed in 1991	107	17	16%	44	41%	63	59%
Group Filed in 1993	209	109	52%	163	78%	187	89%
Administrative Review							
Group Filed in 1991	54	7	13%	20	37%	34	63%
Group Filed in 1993	76	12	16%	27	36%	40	53%
Total							
Group Filed in 1991	647	166	26%	342	53%	463	72%
Group Filed in 1993	787	315	40%	521	66%	641	81%

B. Views of Judges, Attorneys and Court Personnel

Information was obtained by submitting written questionnaires to judges, attorneys, and court personnel and through personal interviews conducted by members of the Advisory Group. Responses to the written questionnaires and questions asked during personal interviews reflected a fairly uniform view of the Court's operations and its CJRA Plan, which can be summarized as follows:

- 1) Although there has been improvement since the original survey which led to adoption of the Plan, judges still take too long to rule on dispositive motions. Most of the judges now follow the recommendation of the Plan that they hear oral arguments on dispositive motions and rule promptly following the arguments. This has significantly shortened the time for disposition of many dispositive motions and the attorneys appreciate the opportunity to present oral arguments.
- 2) The magistrate judges have been very effective in resolving discovery issues and in expediting resolution of cases using procedures recommended in the Plan. The attorneys believe that the magistrate judges' emphasis on settlement discussion during the initial scheduling conference and the scheduling of settlement conferences in all cases is helping to dispose of cases earlier thereby reducing the cost of litigation.
- 3) Adoption of the Plan has resulted in the court taking initiative in and controlling case management. Prior to adoption of the Plan, the court often had deferred to attorneys in the area of case management. The attorneys support the shift in responsibility from the attorneys to the court.
- 4) Many attorneys believe that the magistrate judges are too inflexible in setting discovery and other deadlines in instances when all parties agree that additional time is needed.
- 5) Firm trial settings are important for effective case management but often are not available. The district's heavy criminal case load makes it difficult to set firm trial dates in civil cases.
- 6) As of this time, neither the judges nor the attorneys have had enough experience with the 1993 amendments to the discovery rules to form opinions as to whether the initial disclosure provisions of Rule 26(a)(1) or the requirement of expert reports under Rule 26(a)(2) have been effective in expediting discovery and reducing costs.
- 7) The attorneys strongly felt that within the district there are continuing problems with abuses of deposition discovery, particularly with an attorney coaching a deponent on how to respond to questions during the course of a deposition.
- 8) There is need for additional training of attorneys practicing in this district.

V. Recommendations

In summary the CJRA Advisory Group has recommended:

A. Formation of a District Bar Association

The group believed that an active association of members of the district's bar would improve communications between the bench and the bar and would provide an avenue for training attorneys. It was agreed that the Advisory Group members whose terms expire February 28, 1995, would form the nucleus of the bar association.

B. Standardized Forms and Procedures

The district's judges have required litigants and lawyers to follow different procedures and use different forms. This has resulted in confusion among the litigants and lawyers and makes it difficult for court employees to provide consistent information and proper forms in every case. The Advisory Group has recommended that all judges use the same forms, such as Initial Pretrial Report and Pretrial Order forms, and that they standardize courtroom procedures in the district.

C. Use of Magistrate Judges by All District Judges

All district judges should delegate discovery management to magistrate judges; some have not.

D. Combination of the Rule 26(f) Proposed Discovery Plan and the Rule 16 Scheduling Order

It would be preferable to combine the proposed discovery plan agreed to at the Rule 26(f) meeting with matters discussed at the following Rule 16 scheduling conference into a single report using the District's standard Initial Pretrial Report form. This would reduce paperwork, meeting time, and mailing costs for both the litigants and the court while achieving the objectives of both meetings.

E. Early Setting of Trial Date

Setting a firm trial date during the Rule 16 scheduling conference, or soon thereafter by the district judge, would promote earlier disposition of cases. If the magistrate judge who conducts the Rule 16 scheduling conference is not in a position to set a trial during the conference, the district judge, upon receipt of the Initial Pretrial Report prepared as a result of the conference, should insert into the Initial Pretrial Report settings of both a pretrial conference date and a trial date.

F. Use of Backup Judge

To assist with preserving trial dates in civil cases, given the heavy criminal caseload, a magistrate judge, by consent of the parties, should act as a backup judge. If the parties do not consent to a magistrate judge, other judges from this or other districts should be used.

G. Expedited Implementation of the Pro Bono Plan

Completion and implementation of the Pro Bono Plan should help expedite resolution of pro se cases.

H. More Flexibility in Discovery Deadlines

Judges should allow more flexibility in scheduling discovery deadlines when the parties agree that additional time is needed.

I. Exempt Treating Physicians From Requirement of Providing an Expert Report.

Because treating physicians are not used in the same manner as most other expert witnesses, it is not necessary for them to provide a Rule 26(a)(2) expert report. Requiring them to do so unnecessarily adds to litigation costs.

J. Scheduling More Motion Hearings and Ruling from the Bench

All district judges should follow the Plan's recommendation that they routinely schedule oral arguments on dispositive motions and that they rule from the bench whenever possible. Judges should consider scheduling regular motions hearings days.

K. Adoption of Standing Order Regulating Behavior at Depositions

A standing order addressing improper behavior during depositions should be adopted. The judges should impose significant sanctions on abusing parties.

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