CIVIL JUSTICE REFORM ACT OF 1990

DISTRICT OF WYOMING

CIVIL JUSTICE EXPENSE AND DELAY

REDUCTION PLAN

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INTRODUCTION

The United States District Court for the District of Wyoming adopts the following Civil Justice Expense and Delay Reduction Plan and directs that it be implemented on December 31, 1991. The Plan shall apply to all cases filed after that date, notwithstanding the fact that specific written procedures will not be effective until the local rules are amended. The Court, in it's discretion, may apply the Plan to cases filed before December 31, 1991.

The Court adopted the Advisory Group's Recommended Plan without change. This was possible due to the unique nature of the Advisory Group which included both active judges of the Court as full members. The Court was privy to all discussions, considerations, conclusions, and recommendations made by the Advisory Group concerning every aspect of the Report. The Court concurred with all conclusions and recommendations made by the Advisory Group. In this way, the Court was able to consider the Advisory Group recommendations on a continuing basis throughout the entire process. While this was an extremely efficient method for a court having only two active judges and one senior judge, it would be unworkable in courts with three or more judges.

It could be argued that the full participation of the active judges on the

Advisory Group might have unduly influenced the independent thought processes of the other members, but this potential problem was eliminated by the delegation of authority to a sub-group to consider and draft a report for presentation to the entire Advisory Group. This drafting sub-group did not include the judges of the Court. The Chairman of the drafting sub-group also had the responsibility to chair Advisory Group meetings when report drafts were considered. This process insulated the Court from participation in the candid philosophical and deliberation discussions which led to the formulation of a draft for review by the entire Advisory Group. This entire procedure fostered thoughtful and meaningful consideration of the myriad issues under study, and resulted in a consensus on those issues in an expeditious manner.

The Court is deeply grateful and indebted to the members of the Advisory Group who donated literally hundreds of hours of work and, for some, extensive travel time to assist in the preparation of this Plan. Their tireless dedication to the work at hand has made it possible for the Court to implement a plan that will serve the needs of this Court, the attorneys, and the litigants who come before it.

CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLAN

The United States District Court for the District of Wyoming unanimously adopts the following Expense and Delay Reduction Plan and shall implement the plan beginning December 31, 1991.

A. STANDING COMMITTEE ON LOCAL RULES

The Court shall create a standing committee to draft local rules which set forth the specific procedures necessary to effectuate the provisions of the District's Plan, as well as the other recommendations contained in the Advisory Group Report that have not been specifically included in the Plan. The standing committee shall be comprised of six (6) members representing a broad segment of attorneys having experience litigating many types of cases in Federal court.

The Court shall select and appoint a committee no later than January 31, 1992. The Court shall charge the committee with the responsibility to consider and recommend new rules and amendments to the existing local rules which set forth specific procedures which will effectuate the provisions of the Court's Plan. This task should be completed within ninety (90) days after appointment of the committee. The Court shall adopt new rules or

amendments within thirty (30) days after reasonable notice and comment from the Bar and the public. A standing committee will review the effectiveness of the rules and consider further amendments to them at least once each year. Finally, the Court shall limit the length of membership on the committee to four (4) years and shall stagger terms to ensure continuity.

B. RECOMMENDED PRINCIPLES AND GUIDELINES[1]

1. SYSTEMATIC, DIFFERENTIAL TREATMENT OF CIVIL CASES[2]

The current procedures for conducting initial pretrial conferences and non-dispositive motion hearings shall be continued for non-complex cases. A standing committee on local rules shall draft rules for classifying cases as to complexity and requiring the early identification of complex cases so that appropriate management principles can be applied to prevent unnecessary cases. The standing committee on local rules shall incorporate the following general concepts and procedures.

a. Classification of cases:

i) Non-complex

ii) Complex.

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[1] 28 U.S.C. 473(a).
[2] 28 U.S.C. 473(a)(1).

b. Factors to consider for initial identification of case classifications:

i) Non complex -

- well-defined legal issues
- not more than 20 witnesses
- not more than 100 exhibits
- number of parties

ii) Complex -

- difficult and unsettled legal issues
- more than 20 witnesses
- more than 100 exhibits
- number of parties
- time required for trial.

c. Requirements of counsel:

Counsel for the plaintiff shall be required to file a written statement with the filing of the complaint identifying which of the two classifications is appropriate and the reasons therefor. The defendant shall likewise be required to file the same statement with the answer, identifying which classification is appropriate and the reasons therefor.

d. Designation of classification of cases.

The Magistrate Judge shall evaluate the statements of counsel, as well as the pleadings, during the initial pretrial conference and designate at that time, as well as in the initial pretrial order, the initial classification assigned to the case. Cases classified as complex should require the Court and counsel to determine the need for additional scheduling conferences and the advantages of involving the trial judge early in the scheduling process. Use of the Complex Litigation Manual shall also be considered, as well as other procedures.

e. Non-complex cases.

Cases classified as non-complex shall automatically include Social Security cases, debtor examination cases, forfeiture cases, and any case filed on the miscellaneous docket. No initial pretrial conference shall be held for these cases, unless requested by the parties or the Court in its discretion. All other non-complex cases shall have an initial pretrial conference, and discovery shall generally be limited to ninety (90) days from the time of the conference.

f. Reclassification of cases.

The Court shall have ultimate discretion in the classification

of cases and may at any time order reclassification. The parties may at any time seek reclassification.

2. PLAN AND PROGRESS OF CASE, EARLY AND ONGOING INVOLVEMENT OF JUDICIAL OFFICERS IN THE PRETRIAL PROCESS, DISCOVERY CONTROL, AND EARLY MOTION DEADLINES[3]

The Court shall continue its current policies and procedures concerning the monitoring of service of process and responses to complaints.[4] The Court shall continue its policy to obtain support from the Bar for consistently enforcing compliance with time limits. Relief shall be granted to the parties only when a genuine and unavoidable hardship exists.[5]

As new members of the Bench and Bar join the Court, they shall be made aware of this policy and encouraged to meet litigants' high expectations that the efficient and effective resolution of disputes continue. To that end, the Court shall encourage the formation of mentor groups and other forms of continuing legal education for all members of the Bar.

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[3] 28 U.S.C. 473 (a) (2) (A), (B), (C) and (D).

[4] See Appendix A-Advisory Group Report Part III, B 1 and 2 for a description of the current policies and procedures.

[5] See Appendix B-Advisory Group Report Part III, B 3, for a description of the existing policies and procedures.

The Court shall require a standing committee on local rules to amend Local Rule 206(b)[6] by abolishing provisions for automatic extensions of time and requiring strict compliance with all time limits except when, in the discretion of the Court, circumstances demonstrate that an exception should be granted. When serious situations occur which may justify an extension, the Local Rule shall allow counsel to contact the Magistrate Judge by telephone or otherwise and seek an immediate ruling. The ruling shall be entered on the docket sheet as a minute order to eliminate the need for a written motion and order. This Rule shall encourage compliance with time limits and provide an efficient procedure for resolving those few situations which may demand relief from mandatory time limits. It shall also help eliminate the cause of delays and reduce the chance for excessive costs to be incurred by any party.

The above provisions apply only to requests for extensions of time to respond to a complaint or written discovery requests. All other requests for continuances or extensions of time shall be submitted to the Court upon written motion.

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[6] Appendix F.

The Court shall continue to follow Local Rule 216[7] which requires a magistrate judge to conduct an initial pretrial conference, during which the case is assessed for its complexity and a schedule is established for the discovery phase of the case. The case is then reviewed by a trial judge to determine the earliest available trial date and establish a date for hearing dispositive motions. With rare exception, cases are completed within a period of eight (8) months.

Local rules shall be drafted to provide that the trial court will set stacked trials in the order they are intended to proceed to trial. The caption of the cases, the names of the attorneys involved, and the estimated length of trial for the cases to be tried first shall be set out in the initial pretrial order. This information shall be maintained for all judges and trial counsel by the Clerk of Court. The Court shall require counsel to determine the status of cases preceding them in the stacked setting.

The local rules shall also provide that the Court will immediately notify counsel involved in stacked cases when a case to be tried first is stricken from the Court calendar. The current District practice

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[7] Appendix F.

of requiring counsel in the first case to effectuate settlement by Friday noon of the week preceding the trial shall be changed to Wednesday noon of the week preceding the trial. Counsel in the trailing cases shall then be excused. Counsel, upon consultation with the Court, shall have the option of proceeding to trial in the event of a post-Wednesday settlement of the case. If a case is settled after the Wednesday noon deadline, the parties may be required to pay jury costs incurred by the Court.

In non-complex cases, the current method of setting trial dates five (5) months after the initial pretrial conference and the strict adherence to those dates shall be continued.[8] The Court shall adhere to the trial location designated in the final pretrial order, absent exceptional circumstances requiring a change. In the interest of reducing cost and delay, and to make the Court more accessible to all litigants within the District, special attention shall be paid by the Court to setting trials at locations other than Casper. This shall foster public awareness of the open access and operation of the Federal Court in Wyoming.

The procedures which are currently employed by the Court to

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[8] See Appendix C-Advisory Group Report Part III ,C, for a description of the current methods.

control discovery and motion practice shall be continued.[9] Local rules shall be drafted adopting these procedures where no rule presently exists.

Non-dispositive motions shall continue to be immediately referred to the Magistrate Judge to be scheduled for hearing. After filing dispositive motions, they shall be immediately referred by the Clerk of Court to the District Judge for a setting unless already set for hearing in the initial pretrial order.

The Clerk of Court shall continue to monitor the filing of all motions for immediate referral to the appropriate judge. The Clerk shall continue to monitor the filing of briefs and responses in cases where motions are scheduled to be determined without hearing. The Clerk shall continue to monitor all motions argued and taken under advisement. The Clerk of Court shall continue to prepare a monthly report for each of the trial judges setting forth the status of all pending motions.

Internal operating procedures shall be implemented by the Court to provide for the prompt ruling on dispositive motions. The judges shall rule on dispositive motions at the conclusion of oral

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[9] See Appendix D-Advisory Group Report Part III, C, 2 a)-f) for a description of the current practices.

hearings and have an order prepared immediately thereafter by the prevailing party, when possible. A dispositive motion shall be taken under advisement only when complex issues exist. The Chief Judge shall monitor the progress of dispositive motions to ensure they are promptly resolved. When appropriate, the Court shall consider staying all pretrial discovery proceedings during the pendency of motions filed, pursuant to Fed. R. Civ. P. Rule 12(b).

A local rule shall be adopted that requests counsel, prior to the time of a hearing on dispositive motions, to provide the Court with proposed findings of fact and conclusions of law and orders supported by the record which reflect the positions taken by the parties at the hearing. The time requirements for submission of proposed findings of fact and conclusions of law shall be determined by the Magistrate Judge at the initial pretrial.

The Court shall continue to monitor the filing of motions and enforce existing rules to ensure that the Court's current policy of ready access to the Court is not used for improper purposes, such as delay or harrassment.

3. COMPLEX CASE MANAGEMENT.[10]

A local rules shall be adopted which provides that, once a case has been identified as complex, the Magistrate Judge will set scheduling conferences as needed and determine a plan which may include routine discovery, joint discovery, phased discovery, early settlement, limitation of factual and legal issues, bifurcation of various aspects of the litigation, use of the Complex Litigation Manual, and the early involvement of the trial judge assigned to the case. The rule shall also provide that the Court may require the parties to meet in advance of any scheduling conferences and develop joint plans to assist the Court in the overall management of a complex case.

4. SELF-EXECUTING ROUTINE DISCOVERY EXCHANGE.[11]

Local rules shall be drafted setting procedures which require the parties to exchange "routine" discovery. The rules shall define "routine" discovery as follows:

a) List of fact witnesses with a summary of their expected testimony;

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[10] 28 U.S.C. 473 (a)(3).

[11] 28 U.S.C. 473 (a)(4).

b) Copies of contracts in dispute;

c) Medical reports and laboratory tests;

d) A copy, or a description by category and location of all documents, data compilations, and tangible items in the possession, custody, or control of the party that are likely to bear significantly on any claim or defense;

e) A computation of any category of damages claimed by the disclosing party, making available for inspection and copying under Rule 34, Fed.R.Civ.P., the documents or other evidentiary material on which such computation is based, including materials bearing on the nature and extent of injuries suffered; and

f) For inspection and copying under Rule 34, Fed.R.Civ.P., any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgement which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgement.

The rule shall provide that all parties have a continuing obligation to immediately submit routine discovery to the opposing party when obtained. The overall policy of the Court for open, full,

and complete discovery shall be maintained and made a pertinent part of the local rules.

5. REASONABLE AND GOOD FAITH EFFORTS OF PARTIES TO RESOLVE DISCOVERY DISPUTES.[12]

The Court shall continue its strict enforcement of Local Rule 207 (o)[13] which requires parties to make every reasonable and good faith effort to resolve discovery disputes before seeking assistance from the Court. The Rule requires the parties to certify in writing the efforts undertaken to resolve the dispute. The Court shall continue its practice of not setting a hearing on a discovery motion until a certificate of compliance is filed.

A standing committee on local rules shall amend Local Rule 207(o) to make it clear that the Rule applies to all discovery disputes.

6. ALTERNATIVE DISPUTE RESOLUTION.[14]

Local Rule 220[15] makes the services of a magistrate judge

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[12] 28 U.S.C. 473 (a)(5).

[13] Appendix F.

[14] 28 U.S.C. 473 (a)(6).

[15] Appendix F.

available to parties upon request for settlement conferences held in accordance with the Rule. The conferences have been well accepted and used frequently by litigants. The Court remains committed to the use of its resources to resolve disputes short of trial.

A standing committee on local rules shall amend current local rules to provide as follows:

a. Procedures which shall require the parties to consider early settlement discussion and report the results of such discussion at the initial pretrial conference;

b. Assignment of settlement conferences to retired judges or other counsel subject to the approval of the Court, in addition to existing practices;

c. Procedures which permit the Court to mandate alternative dispute resolutions in appropriate cases;

d. Continuation of the use of Local Rule 220, which requires that na individual having binding authority to settle a dispute be present in person during settlement conferences; and

e. Consideration by the Court to utilize other alternative dispute resolution techniques on and *ad hoc* basis when they are deemed appropriate.

C. RECOMMENDED TECHNIQUES THE COURT SHOULD CONSIDER AND INCLUDE IN ITS PLAN.[16]

1. JOINT DISCOVERY PLANS.[17]

The Court has considered this technique and declines to adopt any new rule imposing this obligation on the parties. Current procedures[18] and the rules to be adopted in accordance with this Plan are sufficient to move the cases along in an efficient and timely manner. A local rule will be drafted which allows the Court to require a joint discovery plan in complex cases.

2. BINDING REPRESENTATIVES AT PRETRIAL CONFERENCES.[19]

Local Rule 208 (d)[20] requires that "counsel who will try the case will attend [final pretrial conferences] unless excused by the Court,...". The Local Rule is adequate and the Court shall continue to follow it.

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[16] 28 U.S.C. 473 (b).

[17] 28 U.S.C. 473 (b)(1).

[18] See Appendix E-Advisory Group Report, Part III, C, 1, 2, 3, and 6.

[19] 28 U.S.C. 473 (b)(2).

[20] Appendix F.

3. REQUIREMENT OF ATTORNEY AND CLIENT SIGNATURE ON ALL EXTENSIONS OF TIME AND CONTINUANCE REQUESTS.[21]

The Court shall continue to enforce consistent compliance with all time limits. Relief shall be granted only when a genuine and unavoidable hardship exists. As new members of the Bench and Bar join the Court, they will be encouraged to meet the litigants' high expectations for the efficient and effective resolution of disputes.

The Court rejects the adoption of a requirement that parties, as well as attorneys, sign requests for extensions of time and continuances, since amendments to Local Rule 206 (b)[22] will negate the filing of meritless requests. The Court also believes that such a signature requirement would lead to delay due to the geographic constraints of the parties.

4. NEUTRAL EVALUATION PROGRAMS.[23]

There is no need at this time for neutral evaluation programs and none shall be adopted by the Court.

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[21] 28 U.S.C. 473 (b)(3).

[22] See page 6, Supra.

[23] 28 U.S.C. 473 (b)(4).

5. REQUIREMENT OF PRESENCE OF PARTIES WITH BINDING AUTHORITY AT SETTLEMENT CONFERENCES.[24]

Local Rule 220[25] already requires an individual with binding authority to settle a dispute be present in person during settlement conferences. The Court shall continue to enforce this Rule.

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[24] 28 U.S.C. 473 (b)(5).

[25] Appendix F.

APPENDIX A

Advisory Group Report
Part III, B 1 and 2

active judges of the Court. The policy provides a fair system for the assignment of cases and eliminates any opportunity for unnecessary delays to occur. Most importantly, the assignment policy assures that counsel and litigants cannot engage in the practice of "judge shopping".

RECOMMENDATIONS:

The existing case assignment policy should be maintained by the Court. The Advisory Group strongly recommends that, as the number and character of the judges of the Court evolves in the future, the case assignment policy continues to provide for the fair and equal assignment of cases to all active and senior active judges, and that the services of every judge be appropriately utilized.

B. TIME LIMITS

EXISTING POLICIES AND PROCEDURES:

1. Monitoring service of process.

At the end of each month, all cases are monitored by the Clerk of Court for service of process. If no service of process has been made in a case after three (3) months, the Clerk notifies the plaintiff's attorney that the case will be dismissed for failure to prosecute unless service of process is perfected within thirty (30) days of notification.

2. Monitoring time of responsive pleadings to civil complaints.

The Clerk of Court monitors all filings of responsive pleadings to civil complaints. Immediately upon the filing of responsive pleadings to complaints (answers or dispositive motions) from all or most of the defendants, the case is immediately referred by the Clerk of Court to the Magistrate Judge for an initial pretrial conference. Depending upon the scheduling of the Magistrate Judge, this initial pretrial conference is held within one (1) week of the referral. If an answer has not been filed and if no default has been taken within three (3) months after service of the complaint, the Clerk notifies the plaintiff that the case will be dismissed without prejudice within thirty (30) days of notification unless action is taken.

3. Enforcing time limits in rules and orders.

The Court requires strict compliance with all time limits. Relief from a time limit will be granted only in the event a meritorious reason for an exception exists. However, no matter how meritorious the reason for an exception may be, relief will be denied if the continuance will result in a party incurring unnecessary costs or in an unreasonable delay of trial.

APPENDIX B

Advisory Group Report
Part III, B 3

2. Monitoring time of responsive pleadings to civil complaints.

The Clerk of Court monitors all filings of responsive pleadings to civil complaints. Immediately upon the filing of responsive pleadings to complaints (answers or dispositive motions) from all or most of the defendants, the case is immediately referred by the Clerk of Court to the Magistrate Judge for an initial pretrial conference. Depending upon the scheduling of the Magistrate Judge, this initial pretrial conference is held within one (1) week of the referral. If an answer has not been filed and if no default has been taken within three (3) months after service of the complaint, the Clerk notifies the plaintiff that the case will be dismissed without prejudice within thirty (30) days of notification unless action is taken.

3. Enforcing time limits in rules and orders.

The Court requires strict compliance with all time limits. Relief from a time limit will be granted only in the event a meritorious reason for an exception exists. However, no matter how meritorious the reason for an exception may be, relief will be denied if the continuance will result in a party incurring unnecessary costs or in an unreasonable delay of trial.

The Court does not directly monitor compliance with time limits since an opposing party will alert the Court to a time limit violation by filing a motion. The motion is then set for hearing before the Magistrate Judge, usually within ten (10) days, and the motion is ruled on at the conclusion of the hearing.

4. Practices regarding extensions of time.

Local Rule 206(b) gives the Clerk of Court the authority to grant, upon the first request only, *ex parte* fifteen (15)-day extensions of time to file an answer to a complaint or to respond to written discovery. In all other situations, the Magistrate Judge conducts oral hearings for time extension requests and continuances of pretrial time limits, as explained above. The trial date is rarely continued, except when actual prejudice or extreme inconvenience will otherwise occur. Only the trial judge is empowered to grant trial continuances.

ANALYSIS:

The existing policies and procedures for monitoring service of process and responses to complaints appear to be working well. They adequately assure that all civil cases are properly prosecuted.

APPENDIX C

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Part III, C 6 a-c

6. TRIAL SETTING PROCEDURES

EXISTING POLICIES AND PROCEDURES:

a) Methods of scheduling trials.

The trial judges or their secretaries set the cases for trial. The trial date is determined immediately upon the conclusion of the Magistrate Judge's initial pretrial conference. Six (6) trials are stacked for hearing every Monday morning. A stacked setting is a setting in which a case is placed on the docket to be heard in the event the preceding case is settled, continued, or otherwise resolved. If one or more cases remain to be heard, the remaining cases are continued to the next available trial date. Counsel for the first case set for trial are required to notify the Court no later than noon on the Friday before the trial whether or not the case will proceed to trial or will settle. In the event counsel fail to so advise the Court of a settlement prior to the deadline, the local rules provide that the Court may require counsel or the parties to pay jury costs as a sanction. When the Magistrate Judge establishes the discovery schedule at the initial pretrial conference, a trial judge is immediately consulted to establish the earliest available trial date, usually within five (5) months of the date of the initial pretrial conference.

b) Timing of setting dates for trials.

The Court determines the timing of setting dates for trials based on the circumstances of the case, such as statutory preference (if any), the age of the case, the length of trial time required, and the complexity of the issues. Criminal case trials always have priority over civil trial settings and the final pretrial conference is set to occur approximately four (4) weeks after the discovery cutoff date. The trial is normally scheduled four (4) weeks following the final pretrial conference.

c) Adherence to trial dates.

All civil trial dates, once set, will not be changed except in extraordinary circumstances.

d) Procedures for determining trial location within the District.

Cases are authorized to be tried at the following locations within the District: Cheyenne, Casper, Sheridan, Lander, Evanston, and Jackson. A recommendation is made to the trial judge by the Magistrate Judge as to the most efficient trial location for witnesses, parties, and counsel as a preliminary matter. The trial location is finally determined by the trial judge near the time of trial.

APPENDIX D

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APPENDIX E

Advisory Group Report
Part III, C 1, 2, 3 and 6

C. CASE MANAGEMENT PROCEDURE

1. RULE 16 INITIAL PRETRIAL CONFERENCES - Fed.R.Civ.P. Rule 16

EXISTING POLICIES AND PROCEDURES:

a) Exemptions for categories of cases.

The Magistrate Judge conducts an initial pretrial scheduling conference setting deadlines on all cases, except for Social Security, forfeiture, prisoner petitions, student loans, and bankruptcy cases. In some complex cases, the trial judge conducts the initial pretrial conference.

b) Format of conference.

The initial pretrial conference is informal and is not reported. Counsel may participate in person or by telephone. Counsel explain, in general terms, the facts and legal issues. They specifically state the nature and extent of discovery and motions they intend to undertake. Based on this information, the magistrate judge sets all necessary deadlines.

c) Development of scheduling orders.

Generally, three (3) months are provided from the date of the

initial pretrial conference to conduct discovery. The period of discovery will be adjusted as required by the complexity of the case.

Deadlines for designation of experts and completion of discovery are set at that time. Hearings on dispositive motions and final pretrial and trial dates are also set at that time. Matters concerning bifurcation, consolidation, RICO claims, and any other important issue are discussed and resolved since they affect scheduling of discovery.

d) Timing of conferences.

The initial pretrial conference is set immediately after the last defendant has responded to the complaint by answer or dispositive motion. The Court's policy is to require that the Magistrate Judge attempt to hold the hearing one (1) week later.

In complex cases, more than one scheduling conference is conducted.

ANALYSIS:

The initial pretrial conference conducted by the Magistrate Judge is an effective use of judicial resources which has facilitated cost-efficient and prompt resolution of litigation. Rule 16 is effectively and efficiently utilized by the current initial pretrial conference format, the development of scheduling orders, and the timing of the initial pretrial conferences. This format allows counsel the opportunity to call the Court's attention to potential complexities of the case which may require additional case management. The informal method of conducting conferences in simple or non-complex cases lends itself to more effective case resolution. To alter this approach would be detrimental to the process.

RECOMMENDATIONS:

The current procedures for conducting initial pretrial conferences and non-dispositive motions in this District should be continued for non-complex cases. For complex cases, refer to the initial pretrial conference procedures recommended in Section 11: Differential Case Management.

2. DISCOVERY PROCEDURES AND PRACTICES

EXISTING POLICIES AND PROCEDURES:

a) Use and enforcement of cutoff dates.

Discovery procedures and practices are established at the initial pretrial conference where the deadlines are set. The Court relies upon the parties to ensure enforcement of deadlines or to demonstrate the need for schedule adjustment. However, the Court generally adheres to the critical deadlines, including the discovery cutoff date and final pretrial and trial dates, as established by the initial pretrial conference order.

b) Control of scope and volume of discovery.

Local Rule 207 is a guideline for the parties in conducting discovery. The Rule limits the number of interrogatories to fifty (50), including subparts. It also requires that requests for production of documents seek only relevant information and that the requests and subpoena *duces tecum* be read reasonably. Furthermore, the Rule provides that instructions by counsel to a witness at deposition not to answer a question may only be made on the ground of privilege. In addition, witnesses may be instructed not to answer on the basis of the case law

created doctrine of work product. The Rule and case law prescribe the procedure to follow when an objection in a deposition or in written discovery is raised based on a privilege or work product doctrine.

Rule 207(m) and case law governing the District also requires each party to fully identify experts to be called at trial and to divulge the opinions and the basis of the opinions to be rendered by the experts.

c) Use of Rule 26(f) conferences.

The initial pretrial conference, pursuant to Fed.R.Civ.P. Rule 16, precludes the need for Rule 26 conferences and, as a result, Rule 26(f) conferences are rarely held.

d) Use of voluntary exchanges and disclosures, and other alternatives to traditional discovery.

Pursuant to Local Rule 316(a)(7) and (a)(9), voluntary exchanges and disclosures are encouraged by the Court. The Court's consistent policy of open, full, and complete discovery fosters an attempt among the parties to use voluntary exchanges and disclosures.

e) Procedures used for resolving discovery disputes.

Rule 207(o) requires the parties to confer in an attempt to resolve the dispute before seeking a Court hearing. In the event the parties are unable to resolve the dispute themselves, a motion may be filed after it has been certified to the Court in writing that every attempt was made to resolve the dispute before seeking Court intervention. When a motion is filed, it is promptly set for hearing and ruling. When disputes occur during depositions, counsel may contact the Magistrate Judge by telephone for an immediate ruling. The ruling of the Magistrate Judge is subject to appeal to the trial court within ten (10) days after the entry of an order.

The parties may request and, occasionally, the Court will grant sanctions against the parties for an egregious violation.

f) Phased discovery.

Phased discovery is currently carried out on an *ad hoc* basis as its need is determined. The determination is made at the initial pretrial conference when cases involve complex factual or legal issues.

ANALYSIS:

The current procedures are adequate in non-complex cases. Beginning in the 1980s, the District began to experience the filing of more complex litigation. While the Court has attempted to adopt rules for the more complex cases, such adaptation has been on an *ad hoc* basis, and may require more formalized procedures in order to alert the parties to their responsibilities. The voluntary spirit of discovery practice, as explained above, has led to a strong approach by the counsel for the parties to the prompt resolution of discovery disputes without Court intervention.

RECOMMENDATIONS:

A local rule should be adopted which requires the parties to voluntarily exchange "routine" discovery without Court involvement. Such exchange may include the following:

1. **Lists of fact witnesses with a summary of their expected testimony.**
2. **Documents available for inspection and copying, as under Rule 34, Fed.R.Civ.P., including:**
   a) **Copies of contracts in dispute.**
   b) **Medical reports and laboratory tests.**
   c) **Copies of, or a description by category and location of, all documents, data compilations, and tangible items in the**

possession, custody, or control of the party that are likely to bear significantly on any claim or defense.

d) Copies of documents or other evidentiary material which contains a computation of any category of damages claimed by the disclosing party, including materials bearing on the nature and extent of injuries suffered.

e) Copies of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment.

The rule should provide that all parties have a continuing obligation to immediately submit routine discovery to the opposing party once obtained. (See Section 11: Differential Case Management.)

The overall policy of the Court for open, full, and complete discovery should be maintained and made a pertinent part of the local rules.

The Court should continue its present practice of determining the necessity for phased discovery, and its inclusion in scheduling order, on an *ad hoc* basis.

3. MOTION PROCEDURES AND PRACTICES

EXISTING POLICIES AND PROCEDURES:

a) Scheduling of motions.

Non-dispositive motions are immediately referred to the Magistrate Judge to be scheduled for hearing.

Dispositive motions are referred to the District Judge for a setting, unless said motions have already been set for hearing in the initial pretrial order. It is left to the trial judge's discretion whether motions are considered on briefs and memoranda without an oral hearing.

At the time of the initial pretrial conference, the Magistrate Judge consults with a trial judge to obtain the earliest available date for hearing dispositive motions. Motions are usually set for hearing immediately after the parties have completed the required briefs. When a motion not anticipated at the initial pretrial conference is filed, the Clerk immediately refers the motion to a trial judge to be set for hearing.

b) Monitoring the filing of motions, responses, and briefs.

Filing of motions is monitored by the Clerk's Office for immedi-

ate referral to the appropriate judge. The Clerk does not monitor the filing of responses or briefs except in cases when motions are scheduled to be determined without oral hearing. The Clerk monitors all motions argued and placed under advisement and prepares a monthly report of the same for each of the trial judges.

c) Hearing and calendaring practices.

The Magistrate Judge and the trial judges set the hearings on motions which require an oral argument. Each trial judge schedules motion hearings on a regular basis, according to the Court's availability. The Magistrate Judge sets motion hearings at any time the schedule permits. Often the parties are permitted to participate in the hearing by telephone.

d) Method and timing of ruling on motions.

The Magistrate Judge rules on almost all non-dispositive motions from the Bench and a written order is filed immediately thereafter. The Magistrate Judge normally requires counsel to prepare the order of the Court, although the Court occasionally prepares its own order.

The trial judges normally take dispositive motions under advisement after arguments or submission on briefs and issue an order some time thereafter, although occasionally the Court will rule from the Bench. There are no rules requiring the Court to informally rule upon a pending motion within a given period of time. It appears to be the policy of the Court that dispositive motions which are taken under advisement are generally ruled on within one to four (1-4) weeks after the hearing. There are instances when the ruling takes much longer than four (4) weeks.

e) Use of proposed orders.

In civil cases, counsel generally prepare and submit to the Court for signature proposed orders for matters which do not require a hearing, such as extensions of time, orders granting admission *pro hac vice* and orders of dismissal. The Court does not require the preparation of proposed orders for other types of motions.

f) Limitation of motions.

Local Rule 207(o) states that discovery motions to compel will not be set for hearing unless the moving party certifies in writing

that all reasonable efforts to resolve the dispute without the involvement of the Court have been exhausted. The Court may set time limits when certain motions may be filed, but there are no other limitations on the filing of motions.

ANALYSIS:

The practice adopted by this Court of accepting all motions filed by the parties provides an opportunity to have an issue concerning the party heard. Although this practice may have the potential for abuse, the open access to the Court facilitates the prompt and reasonable resolution of pretrial disputes.

The current system of scheduling, monitoring, and having all motions brought before the Court appears to work adequately. The Court practice of hearing motions on oral argument gives the litigants an added sense of fairness in the judicial process. The current use of telephone hearings is an effective tool to reduce costs to the litigants.

The method and timing of ruling on dispositive motions is the single most criticized Court procedure discussed by counsel who were asked to provide input to the Advisory Group. The Advisory Group finds this criticism to be well founded. The timing for ruling on dispositive motions has a significant effect on both the cost and length of litigation.

The failure to rule upon a dispositive motion in a timely manner adversely affects the course of litigation. This failure results in delay of issue

definition and narrowing the scope of discovery. This failure also adds to the cost of discovery by requiring the parties to proceed with what may become unnecessary discovery and trial preparation.

Another result of the failure to timely rule on dispositive motions is that it interferes with the ability and incentive of the parties to resolve their disputes while the issues raised by the motions are pending.

It presently appears that the current policy of open motion practice is not being abused, although the potential for abuse does exist.

RECOMMENDATIONS:

1. The Advisory Group recommends that the Court's practice of scheduling, monitoring, and having oral arguments on motions be continued. The Group also recommends that the use of telephonic hearings be encouraged and expanded, if possible, with modern technological advances.

2. The Advisory Group feels that there is general satisfaction with the quality of the decisions being made by the Court but believe that, given the state of the docket, some of these decisions should be made in a more timely fashion. It is recommended by the Advisory Group that internal operating procedures of the Court be developed and implemented which will provide for the prompt disposition of dispositive motions. It is recommended that the judges rule on dispositive motions, when appropriate, at the conclusion of the oral hearings. The

Advisory Group further recommends that taking dispositive motions under advisement should be the exception rather than the rule.

3. It is recommended that the Chief Judge monitor the progress of dispositive motion, and ensure that the trial court provide reasonably prompt decisions.

4. It is recommended that the Court require counsel, prior to the time of the hearing on dispositive motions, to provide the Court with proposed findings of fact and conclusions of law, and proposed orders supported by the record which will reflect the positions taken by the parties at the hearing. The time requirements for submission of proposed findings of fact and conclusions of law should be determined by the Magistrate Judge at the initial pretrial. This procedure will assist the Court in expediting its determination.

5. It is recommended that the Court monitor the filing of motions and enforce existing rules to ensure that the current policy of open access to the Court is not used for improper purposes, such as delay or harrassment.

6. When appropriate, the Court should consider staying all pretrial discovery proceedings during the pendency of Federal Rules of Civil Procedure Rule 12(b) motions, in order to reduce unnecessary costs.

6. TRIAL SETTING PROCEDURES

EXISTING POLICIES AND PROCEDURES:

a) Methods of scheduling trials.

The trial judges or their secretaries set the cases for trial. The trial date is determined immediately upon the conclusion of the Magistrate Judge's initial pretrial conference. Six (6) trials are stacked for hearing every Monday morning. A stacked setting is a setting in which a case is placed on the docket to be heard in the event the preceding case is settled, continued, or otherwise resolved. If one or more cases remain to be heard, the remaining cases are continued to the next available trial date. Counsel for the first case set for trial are required to notify the Court no later than noon on the Friday before the trial whether or not the case will proceed to trial or will settle. In the event counsel fail to so advise the Court of a settlement prior to the deadline, the local rules provide that the Court may require counsel or the parties to pay jury costs as a sanction. When the Magistrate Judge establishes the discovery schedule at the initial pretrial conference, a trial judge is immediately consulted to establish the earliest available trial date, usually within five (5) months of the date of the initial pretrial conference.

b) Timing of setting dates for trials.

The Court determines the timing of setting dates for trials based on the circumstances of the case, such as statutory preference (if any), the age of the case, the length of trial time required, and the complexity of the issues. Criminal case trials always have priority over civil trial settings and the final pretrial conference is set to occur approximately four (4) weeks after the discovery cutoff date. The trial is normally scheduled four (4) weeks following the final pretrial conference.

c) Adherence to trial dates.

All civil trial dates, once set, will not be changed except in extraordinary circumstances.

d) Procedures for determining trial location within the District.

Cases are authorized to be tried at the following locations within the District: Cheyenne, Casper, Sheridan, Lander, Evanston and Jackson. A recommendation is made to the trial judge by the Magistrate Judge as to the most efficient trial location for witnesses, parties, and counsel as a preliminary matter. The trial location is finally determined by the trial judge near the time of trial.

ANALYSIS:

The current method of scheduling trials appears to maintain currency of the docket. While stacked settings cause some uncertainty among the parties and counsel, this process promotes the effective and efficient use of the Court's time since a substantial percentage of cases settle before the trial date. However, when two (2) or more cases remain to be heard in the stacked settings, there can be added cost and delay created by the uncertainty. These practices were criticized by attorneys who appeared before the Advisory Group. Rules exist which allow the parties to consider alternative trial disposition by the Magistrate Judge, although it does not appear that this option is utilized.

Based upon the current status of the docket and discussions with the Clerk of Court, cases receiving statutory preference for early trial setting do not cause significant additional cost or delay in disposition of civil cases. Only four to five (4-5) civil cases per year are stricken as the result of statutory preference.

The strict adherence to trial dates in this District is a primary factor in the early disposition and elimination of delay in this District.

While it may not seem demographically sound, the seat of the Court rests in the capital city of Cheyenne. The Court is authorized to hear cases throughout the District, and one-third of all cases are assigned to satellite locations. It has been the experience of the Court that eighty-five percent (85%) of these cases are settled, which may lend itself to the appearance that

fewer cases are actually set for trial in locations other than Cheyenne.

RECOMMENDATIONS:

The trial court should set stacked trials in the order they are intended to proceed to trial. The caption of the cases, the names of attorneys involved, and the estimated length of trial for the cases to be tried first should be set out in the initial pretrial order. This information should be maintained by the Clerk of Court for all judges. It should be the responsibility of counsel to determine the status of cases preceding them in the stacked setting.

The Court should immediately notify counsel for the remaining cases when a case to be tried first is stricken from the Court calendar. The current District practice of requiring counsel in the first case to effectuate settlement by Friday noon of the week preceding the trial should be changed to Wednesday noon of the week preceding the trial. Counsel in the trailing cases may then be excused, but, in the event of post-Wednesday settlement of the case, such counsel, upon consultation with the Court, should have the option of proceeding to trial. Upon failure to settle by Wednesday noon, the parties should be required to pay such costs as may be imposed by law.

It is recommended that the method of setting trial dates and the strict adherence to trial dates be continued.

It is recommended that, absent exceptional circumstances, the

APPENDIX F

Local Rules

Rule 206
MOTIONS AND MOTION PRACTICE

(a) *Motion Days.* Motion days are not regularly scheduled by the Court. Each Judge, at the request of counsel or upon the Judge's own motion, shall set motions upon which the Judge deems oral argument to be helpful. Motions which require written memoranda will be resolved upon the written memoranda unless the Court, in its discretion, orders otherwise. All other motions will, at the Judge's discretion, be resolved upon oral argument or written memoranda as required by the Court. However, oral argument upon motions for summary judgment will be allowed upon the request of any party.

(b) *Extensions of Time.* Motions for extensions of time of not more than fifteen (15) days within which to:

(1) Answer or move to dismiss the complaint;

(2) Answer or object to interrogatories under Rule 31, Fed.R. Civ.P. or Rule 33, Fed.R. Civ.P.;

(3) Respond to requests for production or for inspection under Rule 34, Fed.R. Civ.P.;

(4) Respond to requests for admissions under Rule 36, Fed.R. Civ.P.;

may be granted once, ex parte and routinely, if accompanied by a statement of specific reasons for the request, by order entered by the Clerk, subject to the right of the opposing party to move to set aside the order so extending time. Such motions shall be made in writing, and counsel seeking the extension shall provide written statement that he or she has endeavored in good faith to contact opposing counsel concerning such extension. Motions for further extensions of time and motions for extensions of time to file any brief shall be presented to the Court.

(c) *Filing of Written Memoranda.*

(1) *Briefs on Motions.* A moving party under Rule 12 or Rule 37, Fed.R. Civ.P., shall serve and file with his motion a written memorandum containing a short, concise statement of his reasons in support of the motion and a list of authorities upon which he relies. Each party opposing the motion may, within ten (10) days after service of said motion upon him, serve upon all other parties a written memorandum containing a short, statement of his reasons in opposition to the motion and a list of authorities upon which he relies. Such memoranda or briefs shall not exceed fifteen (15) pages unless otherwise ordered by the Court.

(2) *Briefs on Summary Judgment and Remand.* A motion

(i) the attorney asserting the privilege shall in the response or objection to the discovery request identify the nature of the privilege (including work product) which is being claimed and if the privilege is being asserted in connection with a claim or defense governed by state law, indicate the state's privilege rule being invoked; and

(ii) the following information shall be provided in the response or objection, unless divulgence of such information would cause disclosure of privileged information:

(a) for documents: (1) the type of document, *e.g.*, letter or memorandum; (2) general subject matter of the document; (3) the date of the document; and (4) such other information as is sufficient to identify the document for a subpoena *duces tecum*, including, where appropriate, the author, addressee, and any other recipient of the document, and, where not apparent, the relationship of the author, addressee, and any other recipient to each other;

(b) for oral communications: (1) the name of the person making the communication and the names of persons present while the communication was made and, where not apparent, the relationship of the persons present to the person making the communication; (2) the date and place of communication; and (3) the general subject matter of the communication.

(o) *Duty of Counsel to Confer.* Except as otherwise ordered, the Court will not entertain any motion under Rule 37, Fed.R. Civ.P., unless counsel for the moving party has conferred in person, by telephone or by written communication, or has made reasonable efforts to confer with opposing counsel concerning the matters in dispute prior to the filing of the motion. Counsel for the moving party shall file a certificate of compliance with this rule with any motion filed under Rule 37(a), Fed.R. Civ.P., stating the substance of the conference.

(p) *Discovery Time Limit.* Whenever possible, discovery proceedings in all civil actions filed in this Court shall be completed within ninety (90) days after joinder of issue or after such issues may have been determined at the initial pretrial conference; provided that, upon good cause shown, and upon timely application, exceptions hereto may be granted and the time for completion of such discovery proceedings therein extended by order of this Court.

for discovery, including dates for completion of discovery, and proposed dates for depositions, for the filing of interrogatories and answers thereto, and for the production and inspection of documents. Prior to the scheduling conference, the attorneys for the parties shall attempt to agree to a discovery schedule to submit to the Court.

(5) Exchange proposals for stipulation and agreement upon facts to avoid discovery.

(6) Schedule a date for a final pretrial conference and a date for trial of the case.

(b) *Additional Pretrial Conferences.* The Court may schedule and any party at any time may request the Court in writing for one or more additional scheduling conferences in order to expedite disposition of any case, particularly one which is complex or in which there is a delay. The *Manual for Complex Litigation* is recommended to counsel and will be used by the Court as a guide for the conduct of cases involving difficult or complicated factual or legal issues.

(c) *Magistrate.* The Court may designate a United States Magistrate to hold scheduling or discovery conferences or any pretrial conference, but the Court will conduct the final pretrial conference in all contested cases unless unforseen problems prevent it from doing so. The United States Magistrate located in Cheyenne is hereby granted authority to conduct initial and final pretrial conferences as set by the Court.

(d) *Final Pretrial Conference.* A final pretrial conference shall be held when ordered by the Court. Counsel who will try the case will attend, unless excused by the Court, shall submit pretrial conference memorandum as herein required and will be prepared on all of the items covered by the pretrial notice and check list approved by the Circuit Committee on Pretrial of the Judicial Conference of the Tenth Circuit (Appendix A). The pretrial order shall be prepared by the Court or the Magistrate, except when otherwise directed by the Court, in form similar to Appendix B.

(e) *Final Pretrial Conference Preparation.* Five (5) days prior to the date fixed for the final pretrial conference, counsel for the parties herein shall:

(1) Submit to the Court, with a copy to the opposing counsel, a pretrial conference memorandum, containing a brief statement of the issues, legal theories and positions of the parties, a list of the names and addresses of the witnesses whom the parties intend to call to testify at the

Rule 216
PHOTOCOPYING OF TRANSCRIPTS AND DEPOSITIONS

Where a transcript of Court proceedings or a deposition has been filed in a case, the attorneys in the case may have access to it for reading in the Office of the Clerk. Attorneys are not permitted to make photocopies from the transcript, depositions or administrative records, nor pemitted to send any member of the personnel from their offices for that purpose. Attorneys are advised that the copy in the Clerk's Office is the prima facie transcript of the testimony filed by the reporter pursuant to 28 U. S. C. §753, covering the duties of the court reporter, and it is a part of the Clerk's files and any copies of the transcript (or parts thereof) must be obtained from the court reporter.

Rule 220
SETTLEMENT CONFERENCES

Any party seeking a settlement conference with the Court shall file a written motion requesting the same. The Court encourages all parties to the action to join in said motion, if possible. In the event the Court agrees to a settlement conference, it will issue an order assigning the matter to a United States Magistrate for purposes of settlement.

All parties will be required to be present in person and not by telephone, together with lead counsel. All parties are required to have full power and authority to negotiate a binding settlement. Individuals representing corporate or governmental parties shall have authority to settle the dispute in an amount at least equal to the last offer made by the opposing party.