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ADVISORY GROUP REPORT

ADVISORY GROUP REPORT

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INTRODUCTION

The Civil Justice Reform Act Advisory Group for the District of Wyoming began the arduous task of preparing a Report and a Recommended Plan for the reduction of costs and delay in the District of Wyoming on April 14, 1991.

Prior to the April meeting, each Advisory Group member was provided with comprehensive statistical information, federal and local court rules, general orders of the court and federal statutes. The information included an outline prepared by the Court explaining in detail all of the Court's procedures and case management techniques, together with copies of various forms used by the Court.

During the months following the April meeting, the Advisory Group developed written questionnaires which were sent to all attorneys belonging to the Wyoming State Bar and litigants who had appeared in civil litigation from 1986 to present. The response rate by those surveyed was excellent, with thirty percent (30%) of all attorneys and fifteen percent (15%) of all litigants responding. The results of the surveys assisted the Advisory Group in narrowing the many issues under consideration to those which impacted costs and delay.

Voluminous statistics were prepared by the Clerk's Office, in addition to statistics provided by the Administrative Office of the United States Courts which were provided to the Advisory Group in April, 1991. The Advisory Group studied the statistics from April

through June, 1991, and made a determination of the condition of the docket in July, 1991. The Advisory Group considered updated statistics supplied in November, 1991, by the Administrative Office and the Clerk's Office, and amended its determination of the docket shortly before the completion of the Report.

The Advisory Group invited fifteen (15) attorneys to meet personally with the Advisory Group and provide testimony concerning their perceptions of excessive costs and delay of litigation in the District. The attorneys were selected on the basis of their experience in the practice of law, and on the basis of the type of cases they have litigated. It was particularly important to the Advisory Group that the attorneys had represented both plaintiffs and defendants. Each attorney was furnished a copy of the Civil Justice Reform Act of 1990 (CJRA) and a letter from the Advisory Group Chairman explaining in detail all of the issues to be discussed.

The meeting afforded an opportunity for members of the Advisory Group to question the attorneys. This process developed into a candid discussion which ultimately provided the Advisory Group with a penetrating analysis of the causes of excessive costs and delay in the District. The combined use of the responses to the written questionnaires and the information learned from the discussions with the individual attorneys significantly assisted the Advisory Group in identifying solutions to the various problems.

The Advisory Group interviewed all Court officials to obtain their views on data and explain the procedures followed by the Court.

The Advisory Group was divided into six (6) sub-groups to advise the entire group and to make recommendations. Five (5) of the sub-groups were assigned one of the following topics: excessive costs, excessive delay, alternative dispute resolution, differentiated case management, and expert witness fees. The sixth sub-group was assigned the responsibility of integrating the information furnished by the other sub-groups and preparing a draft Report and Recommended Plan for consideration by the entire Advisory Group.

The use of these sub-groups proved to be a manageable and effective method for conducting an in-depth analysis of the issues. This procedure also fostered a broad exchange of ideas among the sub-groups members concerning proposed solutions to problems of excessive costs and delay.

The following Report and Recommended Plan is the result of the methods and techniques set out above and the dedication and hard work of the individual members of the Advisory Group. The Advisory Group believes its efforts in preparing the Report and Recommended Plan will promote an efficient, expeditious, and fair litigation process.

HONORABLE CLARENCE A. BRIMMER
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Chairman

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District Judge

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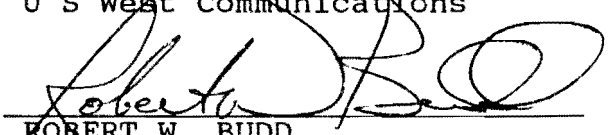

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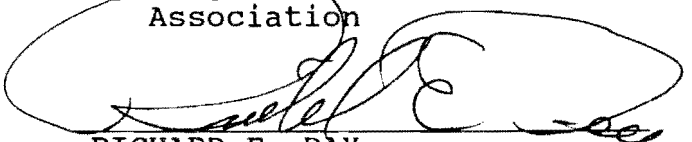

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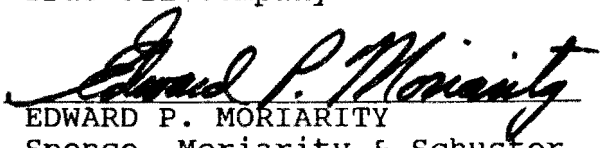

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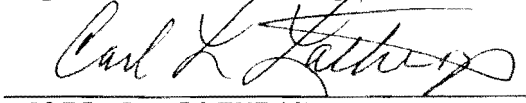

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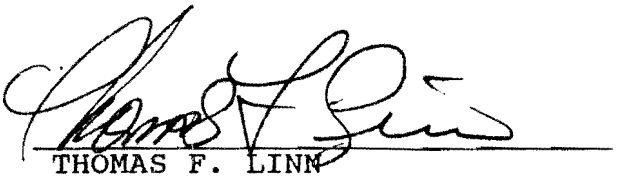

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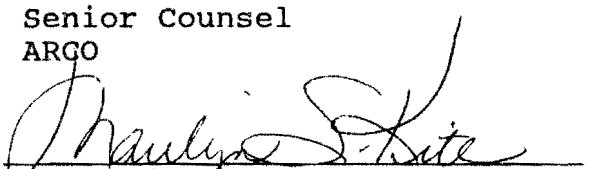

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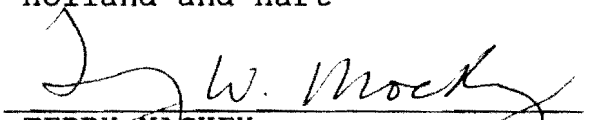

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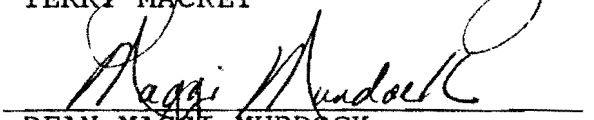

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ADVISORY GROUP REPORT

I. DEFINITIONS

A. The term "Court" means the United States District Judges or the United States Magistrate Judge.

B. The acronym "CJRA" means Civil Justice Reform Act of 1990, 28 U.S.C. 471, *et seq.*

C. The use of the citation "Fed.R.Civ.P." means the Federal Rules of Civil Procedure.

D. The term "District" includes the entire State of Wyoming, Yellowstone National Park, and those portions of the Park located in Idaho and Montana.

E. The term "Trial Judge" means a United States District Court Judge.

II. ASSESSMENT OF CIVIL AND CRIMINAL DOCKET

A. INTRODUCTION

The United States District Court for the District of Wyoming comprises all of the State of Wyoming and those portions of Yellowstone National Park situated in Montana and Idaho.

The Court is headquartered in Cheyenne, Wyoming and, since January 1, 1986, has maintained a full-time office in Casper, Wyoming.

The District of Wyoming has three Judges:

Honorable Clarence A. Brimmer
Chief Judge
Assigned to Cheyenne, Wyoming

Honorable Alan B. Johnson
District Judge
Assigned to Casper, Wyoming

Honorable Ewing T. Kerr
Senior Judge
Assigned to Cheyenne, Wyoming

Federal law authorizes holding court in Jackson, Sheridan, Lander and Evanston. The Court maintains unstaffed facilities in Jackson and Lander, but no facilities exist in Sheridan or Evanston.

The District has one (1) full-time Magistrate Judge located at Mammoth, Yellowstone National Park, Wyoming. An additional full-time Magistrate Judge, sitting in Cheyenne, will be added by early 1992. Currently, six (6) part-time Magistrate Judges are located in Cheyenne, Jackson, Casper, Sheridan, Lander, and Green River, Wyoming.

The statistical data provided in this report were prepared by the Office of the Clerk of Court on a calendar year basis. Statistics provided by the Administrative Office of the United States Courts are gathered on either a statistical year or fiscal year basis, often leading to confusing comparisons. As a result, the Advisory Group determined that the calendar year statistics are more readily understood. The statistics provided by the Administrative Office of the United States Courts are attached as Appendix A.

B. DETERMINATION OF CONDITION OF CIVIL AND CRIMINAL DOCKET

1. NUMBER OF CASES FILED

The number of civil cases filed in the District increased over the last eleven (11) years, peaking in 1985 when there were 569 civil cases filed. Since 1985 civil cases have declined and, in 1990, there were 371 civil cases filed. Data from the Administrative Office

1990 Management Statistics indicate total filings have decreased nationwide by five percent (5%) from the previous year. In 1990 total civil and criminal filings decreased by seventeen percent (17%) from the previous year for the District. Cases filed in Casper since 1986 peaked at a high of 70 cases in 1987. In 1990, 47 cases were filed in Casper. In 1988, ninety-six (96) criminal cases were filed in the District. In 1989, 136 criminal cases were filed, and 117 were filed in 1990.

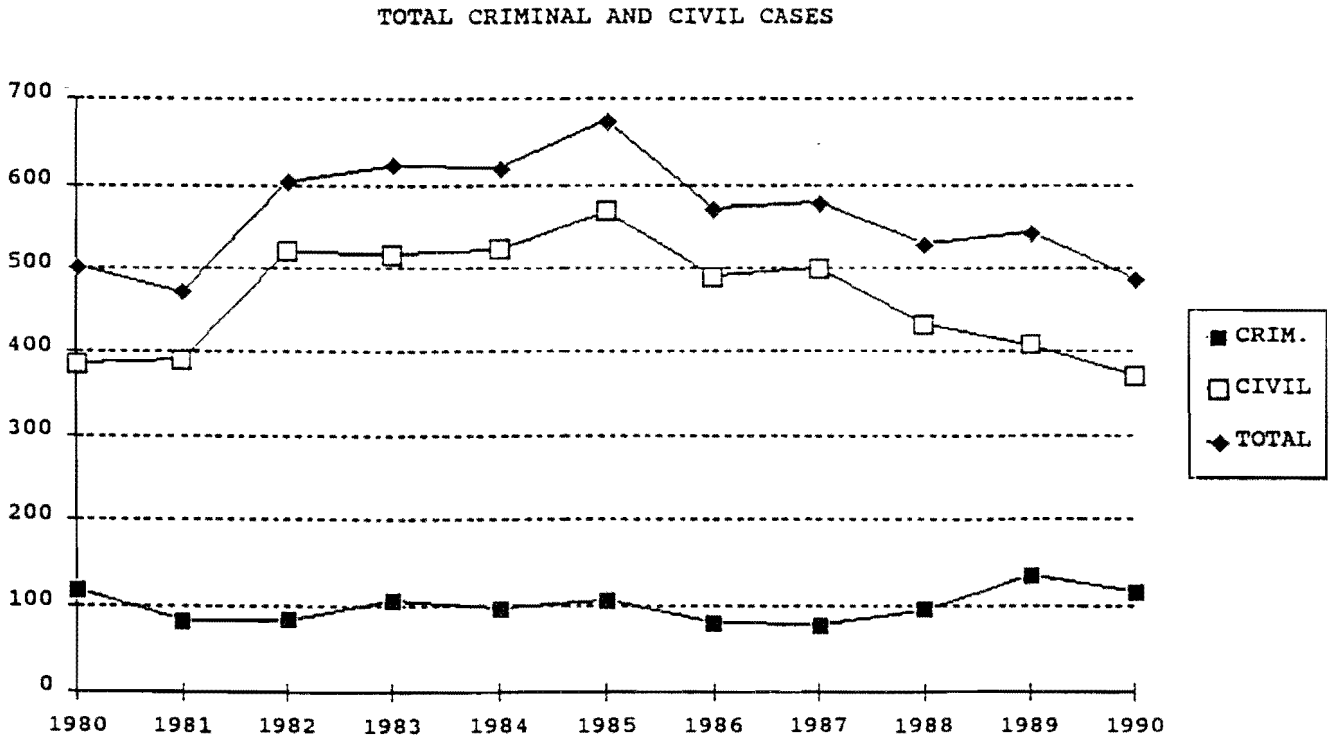

Figure 1

2. JURISDICTION

There are four (4) categories of jurisdictional filings:

a. United States as plaintiff

b. United States as defendant

c. Federal questions

d. Diversity of citizenship.

The majority of cases filed from 1986 through 1990 have been diversity and federal question cases. The Administrative Office of United States Courts has indicated that, since May 1989, when the jurisdictional amount increased from $10,000 to $50,000, diversity cases nationwide decreased by approximately fifteen percent (15%). This may account for the decrease in diversity cases filed in this District. Cases relating to federal questions increased by seven percent (7%) in 1989 but decreased in 1990 by six percent (6%) in this District.

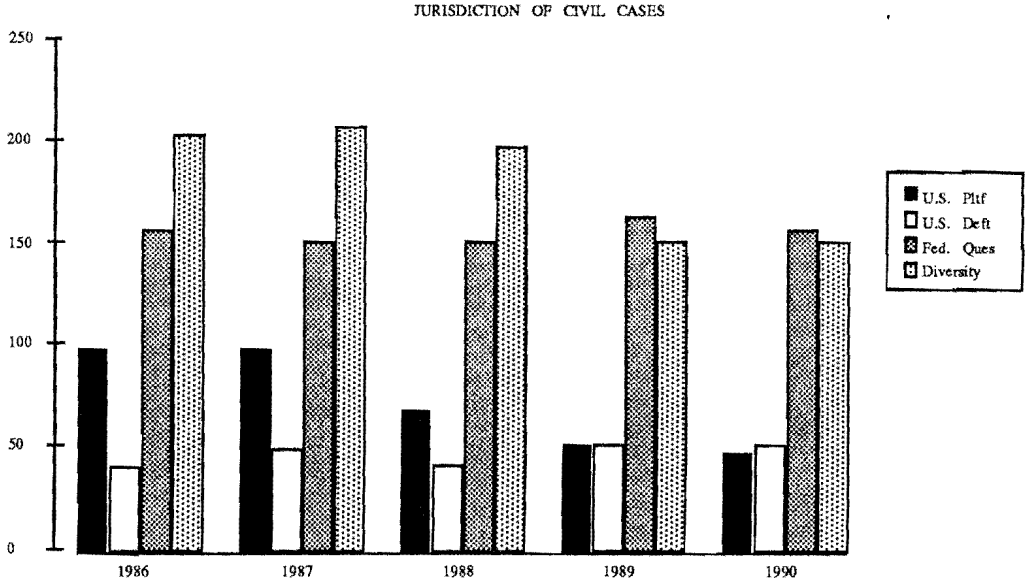

FIGURE 2

3. NATURE OF CASES FILED IN THE DISTRICT

Nature of Case	1986	1987	1988	1989	1990
Contracts	170	157	114	110	90
Real Property	41	38	18	21	12
Torts	108	125	119	125	109
Civil Rights	46	46	51	35	37
Prisoner Petitions	32	29	21	19	31
Forfeiture/Penalty	0	2	10	6	0
Labor	11	13	20	8	19
Bankruptcy Appeals	14	27	29	37	16
Property Rights/Trademarks/ Patents/Copyrights	4	4	4	4	4
Social Security	5	10	10	5	4
Federal Tax	6	4	5	8	4
Other Cases	54	46	33	30	35

There has been a decline in contract and real property cases. In 1989 there was an increase in bankruptcy appeals, which then declined sharply in 1990. Civil rights cases decreased in 1989 and 1990 compared to the previous years.

4. UTILIZATION OF COURT TIME

Set out in Figures 3 and 4 are computations of time spent by trial judges for trials and other matters.

NUMBER OF TRIALS, HEARINGS,

AND TRIAL TIME

YEAR	JUDGE	JURY	NON-JURY	MISC.HRG.	CRIMINAL	CIVIL	HOURS	DAYS
1986	Kerr	9	6	3	4	14	192.0	42
	Brimmer	11	5	2	4	14	686.5	142
	Johnson	14	6	4	3	21	403.5	86
1987	Kerr	8	4	3	2	13	199.0	45
	Brimmer	14	8	0	2	20	329.5	77
	Johnson	22	9	3	3	31	548.0	105
1988	Kerr	0	1	2	2	1	12.5	4
	Brimmer	24	6	6	14	22	454.0	115
	Johnson	8	5	4	5	12	446.5	98
1989	Kerr	0	1	6	5	2	21.0	8
	Brimmer	17	6	5	10	18	316.0	95
	Johnson	17	8	13	13	25	528.0	123
1990	Kerr	0	0	6	5	1	8.0	6
	Brimmer	26	6	11	17	26	638.0	161
	Johnson	17	7	10	16	18	536.5	118

Figure 3

NUMBER OF COURT PROCEEDINGS AND

TIME OTHER THAN TRIALS

YEAR	JUDGE	PLEAS ARRAIGNMENTS	SENTENCINGS	FINAL PRETRIALS	MOTIONS	OTHERS*	HOURS	DAYS
1986	Kerr	30	31	16	105	34	141.0	125
	Brimmer	18	29	45	61	48	134.5	126
	Johnson	29	16	61	86	24	203.0	123
1987	Kerr	13	25	16	66	21	89.0	100
	Brimmer	13	25	53	111	35	205.0	146
	Johnson	29	17	53	142	21	227.5	136
1988	Kerr	31	11	17	81	33	106.0	121
	Brimmer	30	27	42	113	32	197.5	147
	Johnson	43	27	46	169	20	268.0	155
1989	Kerr	47	21	8	42	24	77.0	97
	Brimmer	55	33	34	99	28	276.5	142
	Johnson	69	43	34	177	33	307.5	168
1990	Kerr	40	28	7	31	8	52.5	90
	Brimmer	49	64	35	139	31	182.0	162
	Johnson	67	33	40	194	25	282.5	168

*This includes grand jury proceedings, naturalizations, attorney admissions, and any other miscellaneous proceedings.

Figure 4

5. PETIT JURY COSTS

Petit jury costs for civil and criminal trials have increased over the last ten (10) years, peaking in 1990. Total civil and criminal jury trials for the years 1986 through 1990 are as follows:

1986	7 Criminal Trials 27 Civil Trials
1987	7 Criminal Trials 37 Civil Trials
1988	11 Criminal Trials 21 Civil Trials
1989	8 Criminal Trials 26 Civil Trials
1990	18 Criminal Trials 25 Civil Trials

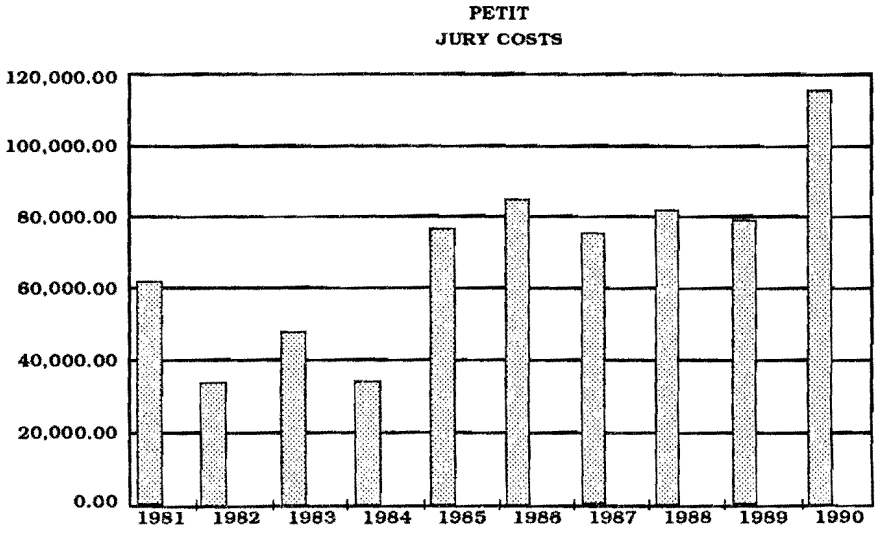

FIGURE 5

The increased jury costs are due to the rising number of criminal trials and the increased number of trial days:

1986	270 days
1987	244 days
1988	217 days
1989	226 days
1990	285 days

6. TOTAL PENDING CIVIL CASES

The total number of pending civil cases at the end of the calendar years were as follows:

1986	412 cases
1987	334 cases
1988	354 cases
1989	318 cases
1990	324 cases

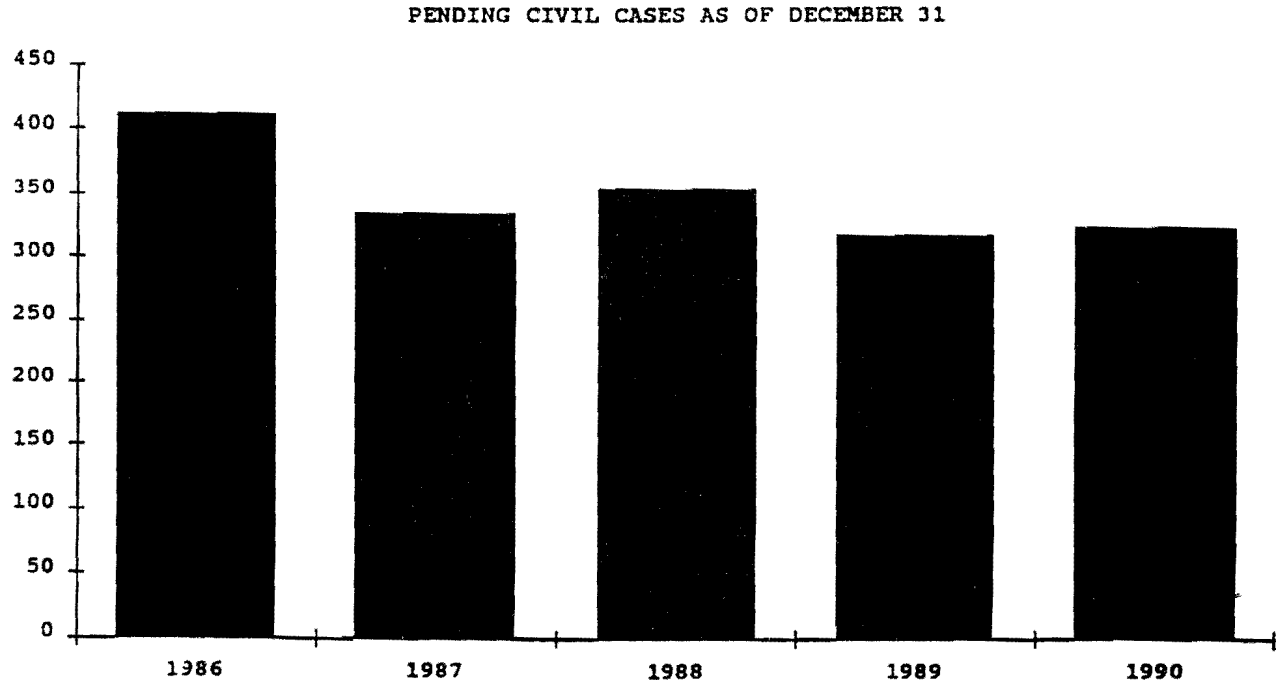

Figure 6

7. CASES THREE YEARS OR OLDER

Cases three (3) or more years old as of the end of June of each year are as follows:

1986	3 cases
1987	7 cases
1988	7 cases
1989	10 cases
1990	18 cases

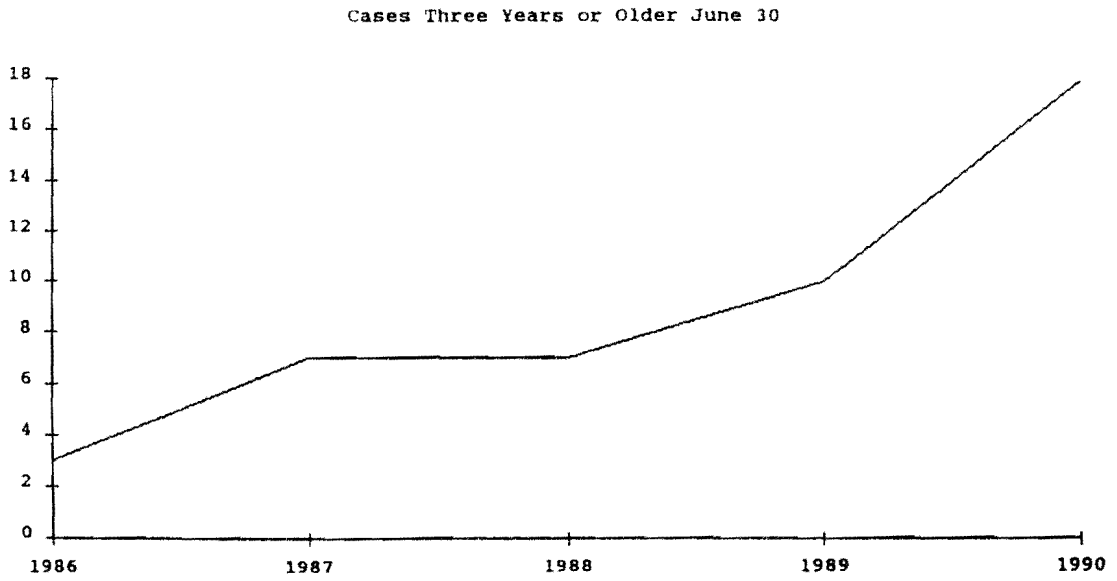

Figure 7

8. TIME INTERVALS

For cases filed in 1988, 1989, and 1990, the average time for cases from filing to initial pretrial conference was:

1988	1989	1990
80 days	83 days	83 days

The average time set in the initial pretrial order from discovery cutoff to trial is:

1988	1989	1990
70 days	103 days	70 days

The average time from filing to closing is:

1989	1989	1990
247 days	232 days	154 days

(Data for 1986 and 1987 are unavailable.)

9. CURRENT CASELOAD VOLUME

a) Civil Cases

As of November 30, 1991 Total of 325 cases pending

Judge Kerr	26 cases
Judge Brimmer	129 cases
Judge Johnson	167 cases
Judge Matsch	1 case
Judge Burciaga	2 cases

b) Criminal Cases

As of November 30, 1991, there were a total 109 pending criminal cases. The total number of defendants in those 109 cases are assigned to each Judge as follows:

Judge Kerr	50 defendants
Judge Brimmer	57 defendants
Judge Johnson	45 defendants
Magistrate Judge Beaman	2 defendants

C. SUMMARY AND TRENDS

The docket appears to be stable with some evidence that the number of civil cases is declining. Both civil and criminal cases are becoming more complex. This is reflected by the decline in the number of cases filed and the increase in the number of trial days. The significant number of diversity cases filed appears to confirm utilization of the Court for its intended purpose.

Jury costs are increasing. This appears to be due to the rising demand for jury trials in criminal cases and longer civil jury trials. This is also borne out by the increase in the total number of trial days spent by the Court. The average time from filing to closing is diminishing, indicating that the Court is becoming more efficient. Based upon statistical analysis, it would appear that, as disputes have become more complex, the number of cases three (3) or more years old have increased.

A number of recent Congressional enactments appear to have an impact on the number and kinds of cases being filed and tried in the Court; these include the Speedy Trial Act, the Sentencing Guidelines, amendments to the Federal Rules of Civil Procedure, and the increase in jurisdictional amount in diversity cases. While it is not clear as to the degree, it is apparent that each of these changes have had and will continue to have an impact upon the docket. Court resources are adequate for the time being. The Advisory Group recommends that Congress ensure that the judiciary is provided with the opportunity to comment on proposed legislation prior to enactment. The Advisory Group recommends that Congress consider adopting legislation requiring judicial impact statements be attached to bills affecting the judicial system. Congress should also take the necessary steps to ensure that the courts are provided with the necessary resources to meet the demands of new legislation.

III. IDENTIFICATION AND ANALYSIS OF CAUSES OF EXCESSIVE COST AND AVOIDABLE DELAY IN CIVIL LITIGATION IN THE DISTRICT OF WYOMING

A. CASE ASSIGNMENT POLICIES

EXISTING POLICIES AND PROCEDURES:

Local Rule 202 sets out the procedures for the assignment of both civil and criminal cases.

Generally, the procedures for the assignment of judges to civil cases are as follows:

The Clerk of Court maintains a jury wheel which is filled with color-coded cards for each of the active judges and for the senior active judge. A separate color is assigned for each judge. Thus, twenty color-coded cards are placed in the wheel for each of the active judges and ten color-coded cards are placed in the wheel for the senior active judge, for a total of 50. Once all of the cards in the wheel have been pulled, the Clerk will refill the wheel with the same number of color-coded cards. (Local Rule 202 provides that the number of color-coded

cards for a senior judge cannot exceed one-half the number of cases for any active judge.) A deputy clerk draws a card for the assignment of a judge while the attorney is actually filing the complaint. If the complaint is received by mail, a deputy clerk will draw a card while preparing the papers to open the new case. The drawing of a card is always witnessed by another deputy clerk and both deputies place their initials in the Docket Number Assignment Book, indicating they drew the card for the judge assigned to the case.

A separate jury wheel is maintained for the assignment of judges for criminal cases. The selection process is the same as it is for assignments of civil cases, except that the number of cards placed in the wheel for each judge, including the senior judge, is equal. Ten color-coded cards are placed in the criminal assignment wheel for each active and senior active judge. The number of cards is equal for the reason that the senior judge wishes to receive an equal number of criminal cases.

ANALYSIS:

The Advisory Group has determined that the Court's case assignment policies provide for the random and equal assignment of cases to each of the

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.

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 <u>all</u> civil cases are properly prosecuted.

The Advisory Group has found a strong willingness by all of the judges of the Court to strictly and consistently enforce every time limit which is imposed on counsel and litigants. This practice has fostered an understanding by counsel that they must adhere to the time limits imposed by rules and by the Court, and that the failure to so adhere will not be tolerated by the Court. Likewise, counsel equally understand that the Court's strict enforcement of time limits may be tempered when a strong *bona fide* reason exists to justify an exception.

The fact that the Court does not directly monitor time limits, but leaves that process to counsels' own devices, is an effective method of enforcing time limits. Since counsel are able to anticipate the Court's reaction to violations of time limits, they diligently attempt to meet them. Otherwise, each attorney will advise the Court by motion of any opponent time limit violations. Thus, the adversary system itself provides an acceptable method of monitoring time limits, thereby relieving the Court and Court staff of this arduous task.

Since counsel realize the Court abhors violations of time limits which result in delay of litigation, there are few instances of egregious violations. Therefore, there is little need for the Court to consider disputed motions for continuances or for extensions of time. These two factors eliminate the wasteful expenditure of Court and Clerk staff time in tracking and settling disputes concerning an inordinate number of time limits.

Local Rule 206, which provides for automatic extensions of time,

eliminates the need for costly and time-consuming hearings. However, abuse of this Rule by counsel results in needless and/or chronic delay.

The Advisory Group learned that there have been instances in the past when certain attorneys and litigants have habitually availed themselves of the "automatic" extensions of time to answer complaints or respond to written discovery requests. Fixed time limits are being abused by a few who, without justification, systematically seek additional time, thereby circumventing the various rules.

This is obviously not the intended purpose of Local Rule 206. If the time limits set by Congress in the Federal Rules of Civil Procedure are inadequate, it should be left to Congress to determine if they should be changed. A local Court rule should not be used to, in effect, amend a Congressional Act.

The Advisory Group concludes that Local Rule 206 is the only source of unnecessary delay in litigation in the District of Wyoming. The habitual abuse by certain attorneys and litigants of the provision for automatic extensions of time creates unnecessary delay in every case in which that attorney or litigant is involved, especially when no real need for such delay exists.

RECOMMENDATIONS:

The Advisory Group recommends that the Court continue its current policies and practices concerning the monitoring of service of process and responses to complaints.

The Court should continue its policy, and the Bar should continue

to support the policy, of consistently enforcing compliance with time limits. Relief should be granted to the parties only when a genuine and unavoidable hardship exists.

As new members of the Bench and Bar join the Court, they should be made aware of this policy and encouraged to meet litigants' high expectations that the prompt and effective resolution of disputes continue.

Local Rule 206(b) should be amended to abolish provisions for automatic extensions of time and should require 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 should allow for counsel to contact the Magistrate Judge by telephone or otherwise and seek an immediate ruling. The ruling should be entered on the docket sheet as a minute order, to eliminate the need for a written motion and order. Such a Rule would encourage compliance with time limits and, concurrently, provide an efficient procedure for resolving those few situations which may demand relief from mandatory time limits. This procedure would help eliminate the cause of delays and reduce the chance for excessive costs to be incurred by any party.

It should be understood that this recommendation applies 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 should be submitted to the Court upon written motion.

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.

4. USE OF SANCTIONS

EXISTING POLICIES AND PROCEDURES:

Based upon interviews with the Court judges, pursuant to Rules 11 and 37 of the Federal Rules of Civil Procedure, sanctions are rarely imposed. When imposed, the Court sanctions the offending attorney or party as appropriate, pursuant to Rule 11 and 37 of the Federal Rules of Civil Procedure, and the inherent powers of the Court.

ANALYSIS:

While the Court rarely imposes sanctions, counsel who participated through submission of answers to questionnaires and testified at hearings held before the Advisory Group, stated that a greater use of sanctions could contribute to a reduction in the cost and length of litigation.

However, the Court does not maintain adequate records which reflect the number of and type of matters where sanctions are sought and are either granted or denied by the Court. Therefore, it is not possible to make an accurate analysis of how sanctions inpact upon litigation cost and delay.

RECOMMENDATIONS:

The Court should develop a system which tracks the number, type, and resolution of matters where sanctions are sought. This would enable the Court to analyze the statistics to determine whether its

current policy adversely affects litigation cost and delay.

5. FINAL PRETRIAL CONFERENCES

EXISTING POLICIES AND PROCEDURES:

The trial court conducts all final pretrial conferences.

a) Narrowing issues and limiting trial evidence and trial time.

The trial court requires counsel to narrow and define the issues, and to stipulate to foundation and admission of exhibits where possible. Duplicative exhibits are usually withdrawn at this time and, where stipulation of other resolutions can be found, the number of witnesses is reduced.

The Court inquires of counsel as to the amount of time each believes is necessary to present evidence. Pursuant to the pretrial process defined above, the Court will estimate the amount of time required for trial.

b) Exploring settlement possibilities.

The Court requires the parties to report the status of settlement discussions and encourages the attributes of voluntary settlement. The Court refers the matter to the Magistrate Judge for

a settlement conference, if all parties are willing to voluntarily participate. The Court does not require that the parties submit to a settlement conference and does not otherwise force settlement of cases.

ANALYSIS:

It appears that the existing practices and procedures of conducting final pretrial conferences do prevent excessive cost and delay. Furthermore, the Court's current policy in explaining settlement possibilities at the final pretrial conference is effective and adequate. Finally, by narrowing the issues and evidence at the final pretrial conference, trial time is reduced and costs are correspondingly saved.

RECOMMENDATIONS:

The Advisory Group recommends that the Court continue its current final pretrial conference practices and procedures, including its policy of exploring settlement possibilities.

The Court should consider mandating settlement conferences at an earlier stage of the pretrial proceedings in appropriate cases.

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

Court should adhere to the trial location designated in the initial pretrial order.

In the interest of reducing cost and delay and in order to make the Court accessible to litigants within the District, special attention should be paid by the Court to trial locations. It is believed that this recommendation will foster awareness of the open access and integrity of the Federal Court in Wyoming.

7. USE OF MAGISTRATE JUDGE

EXISTING POLICIES AND PROCEDURES:

a) Availability of a magistrate judge within the District.

Presently, there are six (6) part-time Magistrate Judges located throughout the District. They are located in the cities of Green River, Lander, Jackson, Sheridan, Casper, and Cheyenne. All of these Magistrate Judges conduct petty and misdemeanor proceedings and otherwise carry out the duties prescribed by 28 U.S.C. 636(a). In addition, the part-time Magistrate Judge located in Cheyenne has been assigned broad responsibilities in civil pretrial proceedings by the Court.

A full-time Magistrate Judge is located in Mammoth Hot

Springs, Yellowstone National Park, Wyoming. This Magistrate Judge conducts petty and misdemeanor proceedings and otherwise carries out the duties prescribed by 28 U.S.C. 636(a).

b) Utilization in civil cases.

i) Initial pretrial conferences.

Pursuant to Local Rule 610(a), the Court has authorized the Magistrate Judge located in Cheyenne to set all deadlines for every civil case during initial pretrial conferences. Following the initial pretrial conference, the Magistrate Judge prepares an initial pretrial order which contains the final pretrial and trial dates, as well as interim discovery deadlines.

ii) Dispositive motions.

All dispositive motions are heard and ruled upon by the District Court judges. Local Rules 604 and 608(c) empower a magistrate judge to hear dispositive motions. A magistrate judge is limited to submitting proposed findings and recommendations to the District Court judge. Any objections to a magistrate judge's findings and recommendations filed by a party require the District Court judge to consider anew those objections.

c) Settlement conferences.

Upon motion made pursuant to Local Rule 220, the Court freely grants settlement conferences which are then referred to the Magistrate Judge located in Cheyenne for disposition.

d) Consent trials.

Procedures for consent trials are provided for in 28 U.S.C. 636(c) and Local Rule 608. These provisions are rarely utilized.

e) Use as special masters.

Procedures for the appointment of a magistrate judge as a special master are provided for in 28 U.S.C. 636(b)(2) and Local Rule 607. These provisions are rarely utilized.

ANALYSIS:

The Magistrate Judge position located in Cheyenne is a part-time position; this Magistrate Judge is also Clerk of the Court. Consequently, the Advisory Group finds that the Court utilizes this part-time Magistrate Judge as much as is possible in civil proceedings, given the constraints of the position.

The lack of a full-time Magistrate Judge in Cheyenne has prevented the Court from utilizing all of the available Magistrate Judge's procedures, which may serve to reduce cost and delay within the District.

The Court reported to the Advisory Group that the trial judge's time was not saved by a magistrate judge hearing dispositive motions since most counsel who did not prevail on the motion would file objections, necessitating the trial judge's consideration.

The Court has previously utilized the magistrate judge to conduct final pretrial conferences in several civil cases. The practice was discontinued since the Court believed, and counsel concurred, that it deprived the trial judge of the opportunity to become familiar with the case.

Pursuant to an interview with the Magistrate Judge located in Cheyenne, the Advisory Group found that the use of settlement conferences is growing each year. Over ninety percent (90%) of all cases referred to the Magistrate Judge for settlement are fully resolved as a result of such conferences. Anecdotal evidence indicates that, in those cases where settlement was not reached, the settlement conference was helpful in narrowing the issues to be resolved at trial, thereby reducing the time of trial.

The Advisory Group recognizes that the part-time magistrate judges (other than the Clerk/Magistrate Judge located in Cheyenne) are practicing attorneys and do not have sufficient time to devote to tasks other than those presently assigned to them. The Advisory Group finds that these part-time magistrate judges are adequately utilized by the Court in criminal proceedings.

While demonstrative evidence is not available, it is the sense of the Advisory Group that consent trials before a magistrate judge are not utilized

by trial counsel for two reasons: the fear of magistrate judges' level of trial experience and the opinion that lack of trial delay in the District does not necessitate the need for consent trials. Additionally, several trial counsel reported to the Advisory Group that appeals of a magistrate judge trial to the District Court, which is permitted by 28 U.S.C. 636(c)(4), may result in additional cost and delay. The fact that a magistrate judge trial may be appealed to the District Court, thereby causing additional cost and delay, also prevents consents to magistrate judge trials.

Finally, the availability of magistrate judge consent trials is not widely known or understood by counsel within the District.

The use of special masters has appropriately been reserved for cases where extensive details or complexity of facts will create delay in the District Court.

RECOMMENDATIONS:

The future appointment of a full-time Magistrate Judge in Cheyenne will present the Court with an opportunity to utilize more fully this judicial resource in order to eliminate unnecessary costs and reduce delay. It is recommended that the Court take advantage of this judicial resource by referral of additional matters to the full-time Magistrate Judge. It is recommended that the full-time Magistrate Judge currently located at Mammoth be utilized to conduct additional proceedings, such as *habeas corpus*, 28 U.S.C. 1983 prisoner com-

plaints, and the duties previously imposed upon the Magistrate Judge in Cody, through the available facilities. It is further recommended that this position be fully funded to carry out the additional duties required.

The present utilization of the other magistrate judges in the District is appropriate and no changes are necessary.

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

The Court should educate and strongly encourage the parties to use the consent procedures for dispositive motions and jury and non-jury trials before a magistrate judge, as provided by Local Rules 604 and 608(e) and 28 U.S.C. 636(c). These procedures should be particularly used to avoid inordinate delay created by the stacked setting procedures of the Court and the occurrence of protracted trials, which necessitates the stacking of other trial dates. Incorrect perceptions that use of this process may constitute access to a second trial or create additional delay must be clarified by the Court.

Title 28 U.S.C. Section 636(c) provides for two separate and distinct appeal procedures concerning consent trials and dispositive motions. The Advisory Group has already recognized that the procedure allowing an appeal to the District Court, in effect, creates two

appeals of the same matter. The Advisory Group has determined that this appeal procedure may cause excessive costs and undue delay. It is, therefore, recommended that the statute be amended by Congress to provide that a district court may, in its discretion, require direct appeal to the court of appeals of all magistrate judge consent trials and dispositive motions, in order to eliminate the potential for two appeals.

The current Court procedures for the utilization of magistrate judges as special masters should be continued.

8. USE OF SENIOR AND VISITING JUDGES

EXISTING POLICIES AND PROCEDURES:

a) Senior judges.

There is one active Senior Judge currently serving in this District. The Senior Judge presently handles approximately twenty-five percent (25%) of an active judge's caseload. The Senior Judge handles both civil and criminal cases, unless it is anticipated they will require a jury trial. In that event, those cases are transferred by the Chief Judge to one of the active judges. In this way, the Senior Judge is able to dispose of many cases that do not require a jury trial but would demand the time and attention of the active judges.

b) Visiting judges.

There are situations in which all the judges recuse themselves from a particular case. When this occurs, the Tenth Circuit Court of Appeals designates a visiting judge to sit in this District. During the past ten (10) years, a visiting judge has been designated to sit in Wyoming nine (9) times.

ANALYSIS:

The current utilization of the Senior Judge reduces the caseload of the active judges and expedites the disposition of cases in the District.

Use of visiting judges is a temporary solution exercised only in those unusual circumstances when all active judges recuse themselves from a particular case. Since the caseload in this District is current, the use of visiting judges has not been employed as a means of reducing cost or delay.

RECOMMENDATIONS:

The use of senior judges is an effective method for expediting the prompt disposition of litigation in the District and should be continued. In the event additional senior judges are available in the District, the Advisory Group recommends that the Court fully utilize the talents of such senior judges to further expedite litigation in the District.

The current practice of using visiting judges only in unique situations should be continued unless the Court's caseload increases to the point that excessive delay in litigation occurs and visiting judges could be of assistance.

9. USE OF COURTROOM DEPUTY CLERKS AND OTHER PERSONNEL TO ASSIST JUDGE

EXISTING POLICIES AND PROCEDURES:

a) Scheduling and coordination.

The deputy clerks notify the judges of all civil and criminal filings which require settings of hearings, conferences, and trials.

The secretaries for the trial judges schedule all civil and criminal hearings, conferences, and trials. The Magistrate Judge located in Cheyenne sets the schedule for all matters filed before the Magistrate Judge.

The Clerk's Office and judges' offices coordinate and cooperate in scheduling, monitoring, and acting as liaison with the attorneys, judges, and magistrate judges.

b) Preparation of internal statistical reports.

Several statistical reports are prepared by deputy clerks, either as a result of federal law (e.g., Speedy Trial Act, 18 U.S.C. 3161) or in order to keep the Court advised of the current status of the civil and criminal cases filed in the District. These reports are listed as follows:

i) A weekly criminal speedy trial report is prepared by the Criminal Deputy Clerk and distributed to the judges, Magistrate Judge, United States Marshal, and the United States Probation and United States Attorney's Office.

ii) A monthly report of all pending civil cases is prepared by the Chief Deputy Clerk and distributed to the judges. This report includes motion settings, motions under advisement, and motions that need a setting. Additionally, the report contains a listing of cases ready for settings for initial pretrial conferences, final pretrials and trials, as well as the current settings of these matters. It includes cases tried which are under advisement, as well as cases which are stayed or settled.

iii) A monthly report showing cases which are three (3) years or older is prepared by the Chief Deputy Clerk and distributed to the judges.

iv) A monthly report showing trials scheduled for Casper, Jackson, Sheridan, or Lander is prepared by the Chief Deputy Clerk and distributed to the judges.

v) A monthly report listing *habeas corpus* cases, prisoner cases, and Rule 2255 motions currently pending before the Court is prepared by the Chief Deputy Clerk and distributed to the judges.

c) Administrative and other functions.

Deputy clerks handle all financial affairs for the Court, including paying bills, collecting fines, ordering supplies, and acquiring office equipment and furniture. The deputies assist with the preparation of naturalization proceedings and swearing in of new attorneys. The deputy clerks assist with the safekeeping of exhibits, whether sensitive or non-sensitive.

ANALYSIS:

Given the present facilities and equipment in the Clerk of Court's office, the current system of scheduling and coordination of the Court's caseload effectively assists with the reduction of cost and delay in the District.

The current reports prepared by the Clerk's Office sufficiently aid the Court in the prompt and efficient disposition of litigation in the District.

RECOMMENDATIONS:

The Clerk's Office should continually review its reports to determine if the reports should be amended to provide the judges with additional information which would assist them with the prompt disposition of matters and reduce costs to the litigants.

The Advisory Group recommends that, as electronic technology becomes more sophisticated and available to the Clerk's Office, the judges, the Clerk's Office, and the Bar should work closely together to utilize the technology to its full potential. It is essential that all computers of the Clerk's Office and the judges throughout the District be electronically networked as soon as possible. This will facilitate better and more cost-effective communication among all segments of the Court.

It is further recommended that the Chief Judge and the Clerk of Court actively seek funds to acquire the latest technology which will facilitate case management throughout the District. This is necessary due to the vast geographical expanse of this District. It is essential that the Administrative Office of the United States Courts financially support the Court in the acquisition of the latest electronic technology.

10. USE OF ALTERNATIVE DISPUTE RESOLUTION

EXISTING POLICIES AND PROCEDURES:

In a civil case, pursuant to Local Rule 220, the magistrate judge conducts settlement conferences upon order of the trial judge, with the consent of all of the parties. When the parties consent and a timely request is made, the Court promptly conducts a settlement conference. There is little promotion of other alternative dispute resolution techniques in the District of Wyoming.

ANALYSIS:

The settlement conference appears to be both an appropriate and effective alternative dispute resolution technique for the caseload of the District when it is used. Many parties are employing voluntary alternative dispute resolution techniques, in addition to utilization of the Magistrate Judge.

The absence of the use of Court-directed alternative dispute resolution techniques, other than settlement conferences, is due to the lack of case backlog or delay in litigation and does not add to excessive cost or delay. Furthermore, mandatory use of alternative dispute resolution techniques is not necessary in all circumstances, although they may be useful in complex litigation.

RECOMMENDATIONS:

Notwithstanding the well-accepted use of settlement conferences, the Advisory Group recommends that the Court adopt procedures which encourage earlier utilization of settlement conferences. It is further recommended that the Court consider adopting procedures or rules which provide that any party, or the Court itself, may seek a mandatory settlement conference.

In addition to the use of settlement conferences, the Court should continue to examine the broader use of current alternative dispute resolution techniques such as mediation, arbitration, mini trials and summary jury trials, as well as other techniques which may be developed by the Court and Bar.

11. DIFFERENTIAL CASE MANAGEMENT

EXISTING POLICIES AND PROCEDURES:

Cases are identified as complex or non-complex either by the parties or by the Court. Complex cases generally involve a number of litigants and/or issues.

In some instances of complex litigation, several scheduling conferences may be held, and a case management plan may be developed by the Court. Additionally, the trial judges may participate in case scheduling and management from the beginning but, in most

cases, the Magistrate Judge handles the case scheduling.

ANALYSIS:

Differentiated management of cases is currently handled on an *ad hoc* basis. The failure to identify complex cases earlier in the litigation process may lead to added cost and unnecessary delay. This is a result of the lack of concrete procedures for classification of cases.

RECOMMENDATIONS:

The Advisory Group recommends the adoption of a discovery tracking system which differentiates cases on the basis of their complexity. This will provide the Court, the attorneys, and the litigants with the flexibility to determine the appropriate amount of effort, resources, and time needed to resolve a particular dispute.

The Advisory Group recommends that the Court adopt local rules incorporating the following general procedures.

1. **Classification of cases:**
   a) **Non-complex**
   b) **Complex**
2. **Factors to consider for initial identification of case classifications:**
   a) **Non-complex**
      i) **well defined legal issues**

ii) not more than 20 witnesses

iii) not more than 100 exhibits

iv) number of parties

b) Complex

i) difficult and unsettled legal issues

ii) More than 20 witnesses

iii) More than 100 exhibits

iv) Number of parties

v) Time required for trial.

3. Counsel for the plaintiff should be required to file a written statement with the complaint identifying which classification is appropriate and giving the reasons therefor.

   The defendant should likewise be required to file the same statement with the answer, identifying which classification is appropriate and giving the reasons therefor.

4. The magistrate judge should 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 should also be considered, as well as other procedures.

5. **Cases classified as non-complex should automatically include Social Security cases, debtor examination cases, forfeiture cases, and any case filed on the miscellaneous docket. No initial pretrial conference should be held for these cases, un less requested by the parties or the Court in its discretion. All other non-complex cases should have an initial pretrial confer ence, and discovery should generally be limited to ninety (90) days from the time of the conference.**
6. **The Court should have ultimate discretion in the classification of cases and may, at any time order reclassification. The parties may, at any time, seek reclassification.**

12. **JURY TRIAL PROCEDURES AND PRACTICES**

EXISTING POLICIES AND PROCEDURES:

a) **Method of jury panel selection.**

Selection of potential jurors is conducted on the basis of the District's jury selection plan. The District of Wyoming is divided

into six (6) geographical divisions. Jury panels are maintained at all times in the Cheyenne and Casper divisions. In all other divisions, panels are established as needed.

Through the mutual cooperation of the trial judge, the Clerk of Court's office, and counsel, a minimum number of jurors are required to appear on the day of trial, resulting in one of the lowest juror utilization rates in the United States. In civil cases this is usually fourteen (14) jurors; in criminal cases the number of jurors is usually twenty-eight (28). More jurors may be called when necessary. However, the Court usually requests that several additional jurors agree to be summoned at the last minute.

When two (2) or more jury trials are scheduled to begin on the same day, the judges agree to stagger the commencement of their trials in order to select jurors from one group, thereby eliminating the need to call separate panels for each trial.

It is the practice of the Court to schedule all jury trials to begin on Monday of each week, except in rare instances. Juries are

picked by each judge at the commencement of the trial.

When exceptional circumstances warrant, pre-screening questionnaires are used. Exceptional circumstances occur when a case is sensational, when one or more parties are extremely well known within the community, or when the trial will last several weeks.

b) **Conduct of *voir dire* (i.e., questioning of potential jurors).** The judge conducts the *voir dire* of jurors with the participation of counsel, as permitted by the Court. Counsel are required to submit proposed *voir dire* questions five (5) days in advance of trial. The Court generally uses the *voir dire* questions proposed by counsel. Additionally, the Court may pose its own questions. The Court permits additional *voir dire* questions when requested by counsel.

Jurors may be excused on the basis of challenges by counsel. There are two kinds of challenges: challenges for cause and preemptory challenges. Challenges for cause are based on the demonstrated bias or prejudice of the potential juror. Preemptory challenges, which exclude a potential juror, are used at the

discretion of counsel. There are a limited number of preemptory challenges in civil and criminal cases. Preemptory challenges are normally made by counsel by writing the name of the challenged juror on a form and exchanging the form with opposing counsel. The form is exchanged between opposing counsel until each has exercised all preemptory challenges. On occasion, oral challenges are used by the Court.

c) Use of juror comprehension aids.

The Court allows the jurors to review all exhibits during the trial. In most cases, jurors are not allowed to take notes during the trial. When the Court determines exceptional circumstances exist where it would be helpful to the jurors in their comprehension of trial evidence, it may allow jurors to take notes during the trial and may allow counsel to provide jurors with trial notebooks containing copies of exhibits.

d) Use of jury deliberation aids.

The jury is presented a copy of the written instructions on the law, as given in Court by the judge, together with a verdict form. Jurors are also allowed to have possession of and review all exhibits during deliberations. Calculators and other equipment may be provided when requested.

ANALYSIS:

Close coordination among the trial judges, counsel, and the Clerk of Court eliminates calling more jurors than necessary. The District consistently ranks among the most efficient in the United States according to jury utilization index statistics. This utilization of jurors has resulted in the reduction of unnecessary jury costs.

There is no established procedure for judges to follow when impanelling a jury. Thus, the judges have occasionally used different impanelling techniques, some of which are more efficient than others.

The current procedures for conducting *voir dire* by the trial judges eliminate potential abuses of *voir dire* by counsel, and appear to be fair to both litigants and jurors. These procedures effectively reduce trial delay and unnecessary cost. The present practice of exercising preemptory challenges orally has been criticized by counsel because of its potential prejudicial effect on jurors.

The present utilization of jury comprehension and deliberation aids is satisfactory since it provides jurors assistance when deemed necessary by the trial judge. The utilization of these aids appears to reduce potential delays in the trial proceedings, by reducing both the need for cumulative evidence and the length of deliberation.

RECOMMENDATIONS:

The Court should consider adopting a uniform system of impanelling jurors in order to avoid unnecessary delay and excessive costs. Oral preemptory challenges should be eliminated. This system should not limit the opportunity for the Court to consider new techniques as they develop.

The Advisory Group recommends the continuance of the other policies and procedures discussed above.

IV. ANALYSIS OF SPECIAL PROBLEMS RELATING TO *pro se* LITIGATION

A. NON-PRISONER *PRO SE* LITIGANTS

EXISTING POLICIES AND PROCEDURES:

When a non-prisoner *pro se* litigant presents a complaint *in forma pauperis* (as an indigent), the Court requires the litigant to submit a motion requesting *in forma pauperis* status and an affidavit setting forth facts justifying the motion. Once the Clerk of Court receives the complaint, a miscellaneous case file is opened and a judge is assigned to the case. The motion and affidavit to proceed *in forma pauperis* are referred to the judge who then determines, without hearing, whether to grant the motion. If the judge denies the motion, the Clerk closes

the miscellaneous case file and the litigant must pay the filing fee in order to proceed. If the Court grants the motion, the Clerk of Court will close the miscellaneous case file and open a civil case file. Thereafter, the case is handled in the same manner as all other civil litigation.

ANALYSIS:

Court statistics indicate that an average of fifteen (15) non-prisoner litigants have filed *pro se* complaints during each of the years 1988 through 1990. Statistics do not exist showing the number of defendants appearing *pro se*, but the Clerk's Office advises that the number is equal to or less than the number of *pro se* plaintiffs. Thus, the number of non-prisoner *pro se* litigants represents only a small percentage of the overall civil docket and does not significantly contribute to excessive costs or delay.

It should be recognized, however, that non-prisoner *pro se* litigants do place additional demands upon judicial and staff time to familiarize them with procedures, rules, and general litigation concepts. Since all citizens are entitled to their day in court, whether represented by an attorney or not, it is necessary and proper for the Court to assist them with procedural matters.

Additionally, *pro se* plaintiffs may be more likely to bring frivolous claims than litigants represented by counsel. This creates excessive costs to defendants sued by a *pro se* litigant. It is incumbent upon the Court to

establish a procedure to sort out frivolous from meritorious *pro se* complaints expeditiously so that unnecessary discovery is not undertaken.

RECOMMENDATIONS:

The current practice of treating non-prisoner *pro se* litigation the same as civil litigation where parties are represented by attorneys should be maintained.

However, in order to both assist *pro se* litigants and to relieve the Court, its staff, and other litigants of costly and time-consuming work, it is recommended that the Court, together with the Administrative Office of the United States Courts, prepare a guideline for use by *pro se* litigants. The guideline should explain the general concepts of the adversary system. It should also provide an understandable description of the federal and local rules concerning discovery practices and any other relevant procedures. This guideline should be provided by the Court immediately after a *pro se* litigant has been identified.

Additionally, when dispositive motions are filed alleging a *pro se* complaint is frivolous, the trial court should either conduct an oral hearing or rule upon briefs within two (2) weeks after the filing of the last pleadings which are responsive to the motion. If an oral hearing is conducted, the trial court should make every attempt to rule from the Bench. The Court should stay all discovery and other proceedings,

including initial pretrial conferences, until an order is entered. The Advisory Group is of the opinion that these simple procedures will eliminate unnecessary costs to litigants and, at the same time, provide *pro se* litigants with reasonable access to the courts.

B. PRISONER *PRO SE* LITIGANTS

EXISTING POLICIES AND PROCEDURES:

1. In general.

Generally a prisoner files two types of litigation: petitions for Writ of *habeas corpus*, pursuant to 28 U.S.C. 2254, and civil rights complaints, pursuant to 42 U.S.C. 1983. Writs of *habeas corpus* concern claims of unlawful detention of a State prisoner. Civil rights complaints concern claims involving alleged unlawful conditions of confinement.

The prisoner submits a petition and complaint by mail to the Clerk of Court. The Uniform Rules for United States District Courts within the Tenth Circuit prescribe the procedures and the forms the prisoners must follow when filing a claim.

When a petition or complaint is received by the Clerk of Court, it is immediately filed as a civil case, a trial judge is assigned, and it is referred to the Magistrate Judge located in Cheyenne for review. Local Rules 605, 606, and 610 delegate authority to the

Magistrate Judge to review the pleadings to determine if they comply with the Uniform Rules and whether they are frivolous. The Magistrate Judge must also determine whether a State *habeas corpus* petitioner has exhausted all State court remedies before a petitioner is allowed to proceed in Federal court. Likewise, the Magistrate Judge must determine whether a State prison civil rights complainant has exhausted the Wyoming State Penitentiary Administrative Grievance Procedures (see Appendix B) before the complainant is allowed to proceed. If the Magistrate Judge determines that the claims raised in the pleadings are frivolous, a proposed order of dismissal is prepared for review by the trial judge assigned to the case. If the trial judge determines the matter is frivolous, an order is entered dismissing the case.

If one or more claims are found to have merit after review by the Magistrate Judge or the trial judge, the pleading is then served. The Court employs a part-time law clerk, who works four (4) hours per week, to assist in the review of these cases.

ANALYSIS:

The referral of prisoner *pro se* cases to the Magistrate Judge provides an expeditious procedure to determine whether the prisoner claims are frivolous. The early identification and dismissal of frivolous claims eliminates unnecessary discovery and associated costs.

The Advisory Group has determined that there are numerous prisoner cases in which no action has been taken by the Magistrate Judge for several months. In most of these instances, it was found that the Magistrate Judge had initially determined a claim to be frivolous but no order had been prepared for review by the trial judge. As a consequence, prisoners have petitioned the Court of Appeals for orders requiring the District Court to take action and, in some instances, the Court of Appeals has granted the requests.

It appears that greater priority is given by the Magistrate Judge to non-*pro se* cases. It further appears that it has been difficult for the Court's part-time *pro se* law clerk to catch up with the backlog of old prisoner cases and, at the same time, stay abreast of the new filings. Often, numerous prisoner cases are filed at the same time, which stretches the resources of the Court. The appointment of a full-time Magistrate Judge in Cheyenne will help alleviate much of this problem. Changes in Court procedures may also serve to reduce unnecessary delays.

RECOMMENDATIONS:

It is recommended that the Court continue its practice of automatically referring all prisoner *pro se* litigation to the Magistrate Judge, in accordance with 28 U.S.C. 636(b). Furthermore, the Court should continue to require the prisoner and out-of-town witnesses to participate in evidentiary hearings only by telephone, unless exigent

circumstances exist.

It is also recommended that the Court study and consider the desirability of conducting all prisoner *pro se* litigation, in accordance with 28 U.S.C. 636(b)(1)(B). If possible, the Court should continue its present practice, because it appears to reduce excessive costs and unnecessary delay. Apparent conflicts in the various statutes and rules for the handling of prisoner *pro se* litigation require that Congress review the entire subject matter in order to improve procedures and time limits while preserving appropriate constitutional safeguards.

2. ***Habeas corpus* petitions.**

When a *habeas corpus* petition is initially found to be meritorious, the Court currently follows the mandate of 28 U.S.C. 2243, and serves on the respondent an order to show cause why the writ should not be granted. The respondent is allowed seven (7) days to file a response to the order to show cause, although up to forty (40) days may be allowed for good cause, pursuant to Fed.R.Civ.P., Rule 81(a)(2). The Court then conducts a hearing, as required by Section 2243, within five (5) days after the return of service. Respondents customarily request twenty (20) additional days to respond to an order to show cause. The Court grants all such requests.

After reviewing the response, the Magistrate Judge determines whether the petition should be dismissed for failure to state a claim or whether an evidentiary hearing is necessary. If the Magistrate Judge determines that the petition is not meritorious, a proposed order dismissing the petition is prepared and referred to the trial judge for final determination.

When the Magistrate Judge determines an evidentiary hearing is necessary, a hearing is conducted by telephone whereby all parties and witnesses are able to be present through teleconferencing. At the conclusion of the hearing, the Magistrate Judge will require the parties to submit proposed findings of fact and conclusions of law. The Magistrate Judge will thereafter prepare proposed findings and recommendations and submit them to the trial judge and the parties. The parties are allowed ten (10) days after receipt of the Magistrate Judge's proposed recommendations to file objections. The trial judge will then enter a final order after reviewing the evidence, the pleadings, and the Magistrate Judge's recommendations.

ANALYSIS:

Respondents may find it necessary to obtain transcripts and records

from various courts before responding to an order to show cause. In many instances, this material is not available within the existing seven (7) day time limit. As a result, the respondent requests a twenty (20) day extension of time to respond. The Court routinely grants the requests.

The Court does not generally conduct an evidentiary hearing in five (5) days as is currently required because, historically, most of the *habeas corpus* petitions which are filed have been found to be frivolous. As a result, it appears that the current time limits are unrealistic and that these cases have not been given their proper priority.

The current practice whereby the Magistrate Judge prepares proposed orders dealing with the disposition of *habeas corpus* petitions is an efficient procedure since it reduces delay by eliminating the need to prepare proposed findings and recommendations, which are subject to objections by the parties. While this procedure may be contrary to the provisions of 28 U.S.C. 636(b)(1)(B), its benefits should be weighed by the Court.

The current practice of allowing litigants and witnesses to participate by telephone during evidentiary hearings is an efficient procedure which eliminates costly travel and abrogates any security concerns.

RECOMMENDATIONS:

As a result of the delays experienced in the resolution of *pro se habeas corpus* petitions, the Advisory Group recommends that the Magistrate Judge establish written procedures which provide for review

of the petition. If the petition is deemed frivolous, the preparation of proposed findings and recommendations should be completed, preferably within two (2) weeks after the filing of the petition. The findings and recommendations should be immediately submitted to the trial judge. This procedure should provide the Magistrate Judge ample time to do any necessary research and prepare the findings and recommendations. The Court should develop a report or tickler system which will track these cases so that the findings and recommendations are presented to the trial judges within two (2) weeks. Likewise, the trial judge should attempt to enter the final order within one (1) week after receipt of the proposed order. When it is determined that a petition is not frivolous on its face, it should be served immediately.

The Advisory Group recommends that the Court follow Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts. This Rule provides for more flexible time limits than does 28 U.S.C. 2243. The Court should require a response to a petition within twenty (20) days of service.

It is additionally recommended that the Court establish procedures which will encourage the respondent to file a motion to dismiss in lieu of an answer when it appears to the respondent from the face of the petition that said petition may be deficient under the law.

Adoption of these recommendations, in conjunction with the ap-

pointment of a full-time Magistrate Judge, will eliminate delays in processing *habeas corpus* petitions in all but exceptional situations.

3. Civil rights complaints.

If the Magistrate Judge initially determines that a civil rights complaint is not frivolous and complies with the Uniform Rules, the Clerk of Court is instructed to serve the complaint on the defendant. After the defendant has responded, the Magistrate Judge determines whether any disputed facts exist which must be resolved at an evidentiary hearing. When it is determined that there are no disputed facts, the Magistrate Judge will prepare a proposed order ruling on the complaint for review by the trial judge. If disputed facts are found to exist, an evidentiary hearing will be held and conducted in the same manner as *habeas corpus* petitions.

ANALYSIS:

The management of prisoner *pro se* civil rights cases is not as restrictive as the management of *habeas corpus* petitions. There are no specific rules the Court must follow aside from the Uniform Rules for District Courts.

The Advisory Group has determined that delays in submitting orders to the trial judges occur in a significant number of prisoner civil rights cases, just as in *habeas corpus* cases. The cause of delay is generally the same as for *habeas corpus* cases.

The Wyoming State Penitentiary Administrative Grievance Procedures, which are applicable to prisoners in the Penitentiary, provide an effective system for resolution of prisoner complaints and grievances by the Warden without the need for judicial intervention. The Administrative Grievance Procedures were fully certified by the Attorney General of the United States and were the first such procedures so certified in the country. The Administrative Grievance Procedures provide a prisoner the right to appeal decisions of the Warden to the State Board of Charities and Reform. If a prisoner is still dissatisfied with the decision, the matter may then be filed with the Court. The Administrative Grievance Procedures require that a prisoner exhaust these remedies before resorting to litigation. This relieves the Court of the burden of hearing a multitude of disputes that can be otherwise resolved. Unnecessary costs are then avoided and the litigation of other cases is not delayed.

Despite the existence of the Administrative Grievance Procedures, the Magistrate Judge has not consistently required prisoners to exhaust these administrative remedies as a pre-condition to submitting a civil rights

complaint to the Court. This is especially true when the Magistrate Judge initially determines the civil rights claims are frivolous on their face. The Magistrate Judge believes it to be counter-productive to require exhaustion of the Administrative Grievance Procedure remedies of frivolous claims that will be dismissed upon resubmission.

While this approach may be logical, it tends to undermine the essence of the Administrative Grievance Procedures. A consistent requirement of compliance with the procedures by the Court would properly reinforce in the minds of the prisoners the necessity to avail themselves of the Administrative Grievance Procedures before submitting complaints to the Court. This would ultimately reduce the burden placed on the Court by the filing of numerous prisoner civil rights complaints.

The existence of the Administrative Grievance Procedures has helped reduce the number of penitentiary prisoner *pro se* civil rights submissions to the Court. The statistics demonstrate that the number of filings dropped from 103 in 1986 to 40 in 1990. While there is little doubt that several other factors may have contributed to the reduction of filings, the Advisory Group concurs with the Magistrate Judge that the Administrative Grievance Procedures have had a salutary effect in reducing filings.

The use of telephone conferencing in civil rights evidentiary hearings is an efficient, cost-saving tool.

RECOMMENDATIONS:

The Advisory Group recommends that, once a civil rights complaint is filed by a prisoner, the Magistrate Judge should be given two (2) weeks after the filing to review the complaint and to prepare proposed findings and recommendations, if the complaint is determined to be frivolous. In addition, it is recommended that the Magistrate Judge should require compliance with the provisions of the Wyoming State Penitentiary Administrative Grievance Procedures in all applicable cases.

If the Magistrate Judge determines that the complaint is not frivolous, the complaint should be served on the defendant immediately and the case should be treated the same as any other civil case. The Advisory Group does not believe an initial pretrial conference is always necessary in these cases. However, the Magistrate Judge should enter a scheduling order which provides a reasonable period of time to conduct discovery, and which sets dates for hearings on dispositive motions and evidentiary hearings. The Court should reasonably limit the type and scope of discovery to the particular circumstances of the case.

If the case is not dismissed on pretrial dispositive motions, the Magistrate Judge should conduct an evidentiary hearing and prepare proposed findings and recommendations for the trial court, in accordance with 28 U.S.C. 636 (b). It is recommended that the Court continue

to allow prisoners and witnesses to appear at hearings by telephone, unless exigent circumstances exist.

C. USE OF COURT RESOURCES

EXISTING POLICIES AND PROCEDURES:

The Court utilizes its available resources for non-prisoner *pro se* litigants in the same manner as it does for litigants represented by counsel. The Court automatically refers all prisoner *pro se* litigation matters to the Magistrate Judge for consideration, except for the entry of the final order. The Magistrate Judge is assisted by a part-time *pro se* litigation law clerk who works four (4) hours a week.

ANALYSIS:

The Advisory Group believes the Court presently utilizes its resources effectively for all *pro se* litigation. Through the extensive use of a Magistrate Judge for prisoner *pro se* litigation, trial judges are relieved of many time-consuming responsibilities and are able to devote their time to the remaining civil and criminal dockets. The appointment of a full-time Magistrate Judge, assisted by a full-time law clerk, will provide additional resources for the Court which may be devoted to *pro se* litigation.

RECOMMENDATIONS:

It is recommended that the Court continue to utilize its resources at the current level. When a full-time Magistrate Judge is appointed, the Court should continue to require the full involvement of that office with *pro se* litigation.

D. APPOINTMENT OF COUNSEL

EXISTING POLICIES AND PROCEDURES:

The Court does not appoint counsel to represent any *pro se* litigants, except when public funds are available for appointment of counsel to represent indigent *pro se* prisoner litigants who file habeas corpus petitions. Counsel have been appointed only in habeas corpus cases involving capital offenses concerning compelling issues of fact or law.

ANALYSIS:

The Advisory Group finds the Court's current policies appropriate to prevent the incursion of unnecessary costs, and recognizes that it may be in the best interest of justice to appoint attorneys in *habeas corpus* cases involving serious crimes, as well as in capital cases where compelling issues exist.

RECOMMENDATIONS:

The Advisory Group recommends that the Court continue its present policies and procedures in capital cases, and consider appointment of counsel in other serious cases where compelling issues exist.

V. ANALYSIS OF SPECIAL PROBLEMS RELATING TO UNITED STATES LITIGATION

A. CRIMINAL PRACTICE

EXISTING POLICIES AND PROCEDURES:

1) Charging practices.

Law enforcement agencies present information gathered through their investigations of suspected criminal activity to a "management team" in the United States Attorney's office. This team is generally composed of the United States Attorney and two supervisory assistant United States Attorneys. It is charged with the responsibility to determine whether charges will be brought based on the information presented. It is the policy of the United States Attorney to adhere to the guidelines provided by the United States Attorney Manual.

Offense prosecution priorities are established by the United States

Attorney in conjunction with the guidelines by the Department of Justice. The highest prosecution priority is given to violent crimes, drug offenses, "white collar" offenses, and public corruption offenses.

Defendants are almost always arrested pursuant to complaints or indictments. Warrantless arrests rarely occur in the District.

In situations where concurrent jurisdiction exists between the United States and a state, the United States Attorney may elect, after consultation with appropriate state and local officials, to prosecute criminal cases in the Federal court whenever it is determined to be cost efficient and when a stricter sentence would be imposed under Federal law.

2) Plea negotiation practices.

Generally, the United States Attorney does not engage in plea negotiations in a reduced charge. However, the United States Attorney may agree to recommend a downward departure from the United States Sentencing Commission Guidelines in certain cases. An example of such a case is when a defendant is charged in a

multiple-defendant drug offense, the defendant agrees to truthful and substantial cooperation with the authorities, and changes a plea to guilty. In non-drug multiple offense cases, the United States Attorney generally will agree to dismiss some counts when the defendant agrees to plead guilty to at least one serious charge.

3) Criminal discovery practices.

It is the policy of the United States Attorney to maintain an "open file policy" whereby all investigative information is made available to a defendant for review. The United States Attorney will not reveal any information which may place the safety of a witness in jeopardy.

4) Length of trials.

The majority of criminal trials last five (5) days or less. Multiple-defendant drug conspiracy cases and "white collar" cases involving financial institutions are complex in nature, and the trials will last more than a week and sometimes several weeks.

B. CIVIL PRACTICE

EXISTING POLICIES AND PROCEDURES:

1) Selection of cases.

The vast majority of civil cases handled by the United States Attorney involve the defense of federal agencies. It is the policy of the United States Attorney to attempt to litigate all civil claims involving agencies of the United States.

2) Use of removal from state courts.

Whenever the United States is sued in state court, the United States Attorney will remove the case to federal court, except in cases involving loan defaults where the United States has an interest. Federal statutes (Sec. 28 U.S.C. 2409 and 2410) provide that the determination of priorities of liens may be determined in a state court action, and the United States Attorney utilizes these statutes as authority to determine lien priority in state courts.

3) Exercise of settlement authority.

The United States Attorney has authority to settle civil cases up to the amount of $500,000.00, without prior approval of the Department of Justice. The United States Attorney will exercise settlement authority, when deemed appropriate in his discretion, on a case-by-case basis. The consent of the general counsel of the

federal agency involved in the case is required by the Department of Justice before a settlement can be reached.

4) **Use of alternative, non-adjudicatory procedures.**

Attorneys for the United States will voluntarily participate in settlement conferences when all parties agree. The United States does not utilize any other alternative dispute resolution techniques.

ANALYSIS:

The Rules of Civil Procedure, which provide the United States sixty (60) days to respond to a complaint, cause delays in the prosecution of civil litigation.

The priority given to criminal case trials by the Speedy Trial Act does adversely impact the litigation of civil cases by causing delays in civil case trials. The Advisory Group did not identify any special problems which relate to United States litigation.

RECOMMENDATIONS:

The Advisory Group sees no reason why the United States should be treated any differently from any other civil litigant. The extra thirty (30) days given the United States to file a responsive pleading injects automatic, unnecessary delay and should be abolished.

VI. ANALYSIS OF SPECIAL PROBLEMS RELATING TO STATE AND LOCAL GOVERNMENT LITIGATION

It appears that State law relating to post-conviction relief, as developed by the Wyoming Supreme Court, has had a significantly adverse impact on prisoner *pro se* litigation in Federal court. The appearance of a lack of enforcement of State post-conviction remedies results in the filing of a large number of prisoner *pro se* actions in this Court. The increased number of these actions requires utilization of valuable Court resources that could be better utilized to reduce delay in civil litigation.

RECOMMENDATION:

The Advisory Group makes no recommendation in this area, but recognizes the tension created by the concurrent jurisdiction relating to federal constitutional questions.

CONCLUSIONS

The Advisory Group has determined from its analysis of the civil and criminal dockets, as set forth in Section II above, and from the assessment of the District-wide procedures, as set forth in Section III above, that avoidable delay is not a significant problem in the District. The statistics

overwhelmingly demonstrate that litigants and their counsel may anticipate, on average, that their disputes will be resolved within eight (8) months from filing of their complaint. This period of time is far less than the eighteen (18) months prescribed by CJRA Section 473(A)(2)(B).

The Advisory Group has concluded that some costs of litigation in the District are excessive. Excessive costs appear to arise most often from discovery abuses and expert witness fees. Additionally, the geographical location of the trials and the Court's procedures for calendaring trials have occasionally created unnecessary costs. The Advisory Group also concludes that the failure of the trial court to render expeditious opinions on dispositive motions prolongs litigation and creates unnecessary costs by necessitating discovery on matters which may be ultimately dismissed.

The Advisory Group has attached a Recommended Plan to this Report. This Plan deals with methods by which the Court can correct those causes of excessive cost or delay which have been identified. The Plan ultimately adopted by the Court should take these matters into account, and implementation of the Plan will require ongoing evaluation by the Advisory Group, as required by the CJRA. The Recommended Plan, as required by CJRA Section 472(b)(4), is submitted together with this Report. The Advisory Group believes that, if adopted, the Recommended Plan will comply with the requirements of CJRA Section 473.

RECOMMENDED PLAN

INTRODUCTION

The CJRA Advisory Group for the District of Wyoming may be unique in that both active Trial Judges are voting members, having no more influence on matters taken under consideration by the Advisory Group than any other member. Because of this unique arrangement, the needs of the Court have been considered and the Court has had the benefit of the deliberations of the Advisory Group on all of the principles and techniques required to be considered by the Civil Justice Reform Act of 1990.

The unanimous concurrence of the Advisory Group of this Recommended Plan therefore represents the Court's full acceptance of the Report and Recommended Plan.

RECOMMENDED PLAN

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RECOMMENDED PLAN

The Advisory Group believes that the CJRA requires that it recommend a Plan to the Court, taking into account the principles and techniques set forth in Section 473 of the Act. The following is the Recommended Plan:

A. STANDING COMMITTEE ON LOCAL RULES

To implement this Plan by the Court, it is recommended that the Court create a standing committee to draft local rules. These rules should 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 mentioned in the Recommended Plan. This standing committee should be comprised of no more than six (6) members who represent a broad segment of the Federal Bar having experience litigating many types of cases.

The Court should select and appoint the committee no later than January 31, 1992. The Court should first charge the committee with the responsibility to consider and recommend new rules and amendments to the existing local rules that 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 should adopt new rules or amendments within thirty (30) days, after reasonable notice and opportunity for comment from the Bar and the public. It is further recommended that the standing committee review the effectiveness of the rules and consider further amendments to them at least once each year. Finally, the Court should consider limiting the length of membership on the committee to four (4) years and staggering 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 should be continued for non-complex cases. A method must be developed for the early identification of complex cases so that appropriate management principles can be applied to prevent unnecessary delay or expense in these cases. The Court will submit to the standing committee on local rules a recommendation that rules be drafted for adoption,

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

[2] 28 U.S.C. 473 (a) (1) (See Advisory Group Report, Part III, C, 11, for the analysis forming the basis of this recommendation.)

classifying cases as to their complexity and incorporating the following general procedures:

a. Classification of cases:

i) Non-complex

ii) Complex.

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. Counsel for the plaintiff shall be required to file a written statement

with the filing of the complaint identifying which classification 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. The Magistrate Judge should 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 should also be considered, as well as other procedures.

e. Cases classified as non-complex should automatically include Social Security cases, debtor examination cases, forfeiture cases, and any case filed on the miscellaneous docket. No initial pretrial conference should be held for these cases, unless requested by the parties or the Court in its discretion. All other non-complex cases should have an initial pretrial conference, and discovery should

generally be limited to ninety (90) days from the time of the conference.

f. The Court should have ultimate discretion in the classification of cases and may at any time order reclassification. The parties may at any time seek reclassification.

2. EARLY INVOLVEMENT OF A JUDICIAL OFFICER[3]

The Court will continue its current policies and practices concerning the monitoring of service of process and responses to complaints.[4]

The Court will continue its policy, and seek to obtain support from the Bar for the policy of consistently enforcing compliance with time limits. Relief will 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 should be

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[3] 28 U.S.C. 473 (a) (2)

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

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

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 will encourage the formation of mentor groups and other forms of continuing legal education for all members of the Bar.

The Court will recommend to a standing committee on local rules that Local Rule 206(b)[6] be amended to abolish provisions for automatic extensions of time and require 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 should allow for counsel to contact the Magistrate Judge by telephone or otherwise and seek an immediate ruling. The ruling should be entered on the docket sheet as a minute order to eliminate the need for a written motion and order. Such a rule would encourage compliance with time limits and provide an efficient procedure for resolving those few situations which may demand relief from mandatory time limits. This procedure will help eliminate the cause of delays and reduce the

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[6] Appendix C.

chance for excessive costs to be incurred by any party.

This recommendation will 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 should be submitted to the Court upon written motion.

Local Rule 216[7] requires a magistrate judge to conduct an initial pretrial conference at 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 the trial judge to determine the earliest available trial date and establish a schedule for hearing dispositive motions. With rare exception, cases within the District are completed in a period of eight (8) months and, consequently, no changes are required.

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 attorneys involved, and the estimated length of trial for the cases to be tried first will be set out in the initial pretrial order. This information will be

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[7] Appendix C.

maintained for all judges and trial counsel by the Clerk of Court. The Court will require counsel to determine the status of cases preceding them in the stacked setting.

The Court will immediately notify counsel involved in 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 will be changed to Wednesday noon of the week preceding the trial. Counsel in the trailing cases will then be excused. In the event of post-Wednesday settlement of the case, such counsel, upon consultation with the Court, will have the option of proceeding to trial. If a case is settled after the Wednesday noon deadline, the parties may be required to pay costs imposed by law.

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 will be continued.[8] The Court will adhere to the trial location designated in the final pretrial order, absent exceptional

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[8] See Advisory Group Report, Part III, 6, a-c, for a description of the current methods.

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 will be paid by the Court to trial locations. This will 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 control discovery and motion practice should be continued.[9] The standing committee on local rules should consider adopting these procedures by local rule 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 shall be immediately referred to the District Judge for a setting unless already set for hearing in the initial pretrial order.

The Clerk's Office shall continue to monitor the filing of all motions for immediate referral to the appropriate judge. The Clerk will continue to monitor the filing of briefs and responses in cases where motions

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[9] See Advisory Group Report, Part III, C, 2 a), b), and d) for a description of the current practices.

are scheduled to be determined without hearing. The Clerk will continue to monitor all motions argued and taken under advisement, and will prepare a monthly report for each of the trial judges.

Internal operating procedures of the Court will be implemented to provide for the prompt ruling on dispositive motions. The judges will rule on dispositive motions at the conclusion of oral hearings and have an order prepared immediately thereafter by the prevailing party, when possible. A trial judge should take dispositive motions under advisement only when complex issues exist. The Chief Judge will monitor the progress of dispositive motions to ensure they are promptly resolved. When appropriate, the Court will consider staying all pretrial discovery proceedings during the pendency of motions filed, pursuant to Fed.R.Civ.P. Rule 12(b).

The Court will require 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 conclu-

sions of law should be determined by the Magistrate Judge at the initial pretrial.

The Court will monitor the filing of motions and will enforce existing rules. This will ensure the current policy of ready access to the Court is not used for improper purposes, such as delay or harassment.

3. COMPLEX CASE MANAGEMENT.[10]

Once a case has been identified as complex, the Magistrate Judge will set scheduling conferences as needed and will 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 early involvement of the trial judge assigned to the case. 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.

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

4. SELF-EXECUTING ROUTINE DISCOVERY EXCHANGE[11]

The Court will recommend that the standing committee on local rules draft a rule which sets procedures requiring the parties to exchange "routine" discovery. The rule should define "routine" discovery as follows:

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

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

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

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 when obtained. The overall policy of the Court for open, full, and complete discovery will 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 will 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 will continue its practice of not setting a hearing on a discovery motion until a certificate of compliance is filed.

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

The Court will recommend to the standing committee on local rules that Local Rule 207(o) be amended 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 the Court through a magistrate judge available to the 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 Court resources to resolve disputes short of trial.

The Court will recommend that the standing committee on local rules amend current local rules to provide as follows:

a) Incorporate procedures which will require the parties to consider early settlement discussion and report the results of such discussion at the initial pretrial conference;

b) Assign settlement conferences to retired judges or other counsel, subject to the approval of the Court, in addition to existing procedures;

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

c) Incorporate procedures which permit the Court to mandate alternative dispute resolutions in appropriate cases;

d) Continue the use of Local Rule 220 which requires that an individual having binding authority to settle a dispute be present in person during settlement conferences; and

e) Consider utilizing other alternative dispute resolution techniques on an *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 which are recommended for adoption in accordance with this Plan are sufficient to move the cases along in an efficient and speedy manner. The Court will recommend to the standing committee on local rules that it consider a rule allowing the Court to require a joint discovery plan in complex cases.

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[16] 28 U.S.C. 473(b).
[17] 28 U.S.C. 473(b)(1).
[18] See Advisory Group Report, Part III, C, 1, 2, 3, and 6.

2. BINDING REPRESENTATIVES AT PRETRIAL CONFERENCES[19]

Local Rule 208(d)[20] contains the requirement that "counsel who will try the case will attend [final pretrial conferences] unless excused by the Court, . . .". The local rule is adequate.

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

The Court will continue to enforce consistent compliance with time limits. Relief will 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 litigants' high expectations that efficient and effective resolution of disputes continue.

The Court will recommend that the standing committee on local rules amend Local Rule 206(b)[22] to abolish provisions for automatic extensions of time and require strict compliance with all time limits. The rule should provide for discretion of the Court in circumstances demonstrating the need for an exception. The local rule should require

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[19] 28 U.S.C. 473 (b) (2).
[20] Appendix C.
[21] 28 U.S.C. 473 (b) (3).
[22] Appendix C.

counsel to contact the Magistrate Judge by telephone or otherwise and informally seek an immediate ruling on any request for an extension of a time limit. The ruling should be entered by the Clerk of Court on the docket sheet as a minute order.

The Court rejects the adoption of a requirement that parties as well as attorneys sign requests for extensions of time and continuances, since the recommended local rule will negate the filing of meritless requests. The Court 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.

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

Local Rule 220[25] already requires that an individual with binding authority to settle a dispute be present in person during settlement conferences.

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[23] 28 U.S.C. 473 (b) (4).
[24] 28 U.S.C. 473 (b) (5).
[25] Appendix C.

APPENDIX

APPENDIX A - Statistics of Administrative Office of the United States Courts

APPENDIX B - Wyoming State Penitentiary Administrative Grievance Procedures

APPENDIX C - Local Rules of the United States District Court for the District of Wyoming

APPENDIX A

Statistics of Administrative Office of
the United States Courts

TABLE C. U.S. DISTRICT COURTS
CIVIL CASES COMMENCED, TERMINATED AND PENDING
DURING THE THELVE MONTH PERIODS ENDED JUNE 30, 1990 AND 1991

CIRCUIT AND DISTRICT	FILINGS			TERMINATIONS			PENDING		
	PERIOD ENDED JUNE 30, 1990	PERIOD ENDED JUNE 30, 1991	PERCENT CHANGE	PERIOD ENDED JUNE 30, 1990	PERIOD ENDED JUNE 30, 1991	PERCENT CHANGE	PERIOD ENDED JUNE 30, 1990	PERIOD ENDED JUNE 30, 1991	PERCENT CHANGE
7TH...	17,007	16,686	-1.9	17,784	17,021	-4.3	14,991	14,656	-2.2
IL,N....	7,989	8,273	3.6	8,687	8,014	-7.8	6,313	6,572	4.1
IL,C....	1,131	1,192	5.4	1,061	1,140	7.4	1,225	1,277	4.2
IL,S....	1,224	1,327	8.4	1,430	1,302	-9.0	1,515	1,540	1.7
IN,N....	1,385	1,431	3.3	1,807	1,634	-9.6	1,490	1,287	-13.6
IN,S....	2,907	2,080	-28.5	2,400	2,528	5.3	2,793	2,345	-16.1
WI,E....	1,476	1,321	-10.5	1,477	1,359	-8.0	1,357	1,319	-2.8
WI,W....	895	1,062	18.7	922	1,044	13.2	298	316	6.0
8TH...	14,328	13,898	-3.0	15,093	13,856	-8.2	15,021	15,063	0.3
AR,E....	2,274	1,928	-15.2	2,384	2,250	-5.6	2,056	1,734	-15.7
AR,W....	975	945	-3.1	1,104	916	-17.0	567	596	5.1
IA,N....	557	629	12.9	624	579	-7.2	586	636	8.5
IA,S....	1,036	1,060	2.3	1,136	1,121	-1.3	2,244	2,183	-2.7
MN.....	2,089	1,942	-7.0	2,140	1,936	-9.5	1,912	1,918	0.3
MO,E....	2,772	2,879	3.9	2,822	2,664	-5.6	2,887	3,102	7.4
MO,W....	2,399	2,292	-4.5	2,661	2,256	-15.2	2,481	2,517	1.5
NE.....	1,361	1,261	-7.4	1,355	1,271	-6.2	1,505	1,495	-0.7
ND.....	447	548	22.6	450	450	0.0	454	552	21.6
SD.....	418	414	-1.0	417	413	-1.0	329	330	0.3
9TH...	30,699	30,523	-0.6	31,136	30,058	-3.5	33,328	33,793	1.4
AK.....	595	642	7.9	563	615	9.2	1,029	1,056	2.6
AZ.....	2,863	2,893	1.0	2,597	2,639	1.6	3,240	3,494	7.8
CA,N....	4,801	4,643	-3.3	4,837	4,360	-9.9	4,600	4,883	6.2
CA,E....	2,549	2,228	-12.6	2,182	2,193	0.5	2,750	2,785	1.3
CA,C....	8,824	9,479	7.4	8,966	8,806	-1.8	8,465	9,138	8.0
CA,S....	1,923	1,861	-3.2	2,243	2,044	-8.9	2,325	2,142	-7.9
HI.....	1,025	784	-23.5	1,148	823	-28.3	1,756	1,717	-2.2
ID.....	618	566	-8.4	655	585	-10.7	749	730	-2.5
MT.....	772	753	-2.5	914	1,062	16.2	1,268	959	-24.4
NV.....	1,625	1,698	4.5	1,615	1,935	19.8	1,863	1,626	-12.7
OR.....	1,964	1,948	-0.8	1,987	2,026	2.0	1,638	1,560	-4.8
WA,E....	714	690	-3.4	1,096	850	-22.5	627	467	-25.5
WA,W....	2,323	2,226	-4.2	2,239	2,016	-10.0	2,081	2,291	10.1
GUAM....	81	81	0.0	66	80	21.2	897	898	0.1
NMI.....	22	31	40.9	28	24	-14.3	40	47	17.5
10TH..	11,340	10,382	-8.5	11,538	11,069	-4.1	11,271	10,584	-6.1
CO.....	2,355	2,083	-11.6	2,324	2,403	3.4	2,124	1,804	-15.1
KS.....	1,931	1,885	-2.4	2,118	1,836	-13.3	1,979	2,028	2.5
NM.....	1,295	1,233	-4.8	1,291	1,165	-9.8	1,764	1,832	3.9
OK,N....	1,136	986	-13.2	1,082	1,103	1.9	1,607	1,490	-7.3
OK,E....	684	710	3.8	633	740	16.9	386	356	-7.8
OK,W....	2,288	1,949	-14.8	2,470	2,100	-15.0	1,345	1,194	-11.2
UT.....	1,240	1,143	-7.8	1,189	1,338	12.5	1,753	1,558	-11.1
WY.....	411	393	-4.4	431	384	-10.9	313	322	2.9
11TH..	22,003	21,616	-1.8	20,267	19,394	-4.3	19,928	22,150	11.2
AL,N....	2,785	3,018	8.4	2,644	2,815	6.5	2,088	2,291	9.7
AL,M....	1,493	1,456	-2.5	1,434	1,403	-2.2	1,102	1,155	4.8
AL,S....	1,170	1,031	-11.9	1,120	987	-11.9	1,165	1,209	3.8
FL,N....	1,075	1,164	8.3	972	1,031	6.1	1,171	1,304	11.4
FL,M....	4,248	4,216	-0.8	4,133	3,673	-11.1	4,216	4,759	12.9
FL,S....	5,100	4,748	-6.9	4,481	4,176	-6.8	4,019	4,591	14.2
GA,N....	3,432	3,291	-4.1	3,344	3,120	-6.7	3,382	3,553	5.1
GA,M....	1,099	1,074	-2.3	972	911	-6.3	1,415	1,578	11.5
GA,S....	1,601	1,618	1.1	1,167	1,278	9.5	1,370	1,710	24.8

*Revised

TABLE D. U.S. DISTRICT COURTS
CRIMINAL CASES COMMENCED, TERMINATED, AND PENDING IN THE DISTRICT COURTS
DURING THE TWELVE MONTH PERIODS ENDED JUNE 30, 1990 AND 1991
(EXCLUDES TRANSFERS)

CIRCUIT AND DISTRICT	FILINGS			TERMINATIONS			PENDING		
	1990	1991	PERCENT CHANGE	1990	1991	PERCENT CHANGE	1990 *	1991	PERCENT CHANGE
7TH...	2,345	2,020	- 13.9	2,040	1,730	- 15.2	1,599	1,887	18.0
IL,N....	807	729	- 9.7	587	551	- 6.1	855	1,042	21.9
IL,C....	243	268	10.3	269	225	- 16.4	157	195	24.2
IL,S....	208	179	- 14.0	179	163	- 8.9	105	121	15.2
IN,N....	221	165	- 25.3	225	183	- 18.7	145	128	- 11.7
IN,S....	471	312	- 33.8	438	295	- 32.7	117	134	14.5
WI,E....	259	255	- 1.6	210	203	- 3.3	161	208	29.2
WI,W....	136	112	- 17.7	132	110	- 16.7	59	59	-
8TH...	2,835	2,674	- 5.7	2,565	2,650	3.3	1,366	1,381	1.1
AR,E....	261	234	- 10.4	174	276	58.6	167	136	- 18.6
AR,W....	115	119	3.5	91	125	37.4	50	43	- 14.0
IA,N....	119	108	- 9.3	118	99	- 16.1	84	91	8.3
IA,S....	113	120	6.2	89	120	34.8	70	65	- 7.2
MN.....	322	327	1.6	350	292	- 16.6	148	186	25.7
MO,E....	263	273	3.8	297	248	- 16.5	155	175	12.9
MO,W....	1,019	896	- 12.1	903	923	2.2	347	320	- 7.8
NE.....	195	183	- 6.2	147	186	26.5	159	157	- 1.3
ND.....	171	166	- 2.9	171	167	- 2.3	73	70	- 4.1
SD.....	257	248	- 3.5	225	214	- 4.9	113	138	22.1
9TH...	10,131	9,905	- 2.2	9,195	8,265	- 10.1	8,293	9,996	20.5
AK.....	225	191	- 15.1	168	180	7.1	99	101	2.0
AZ.....	1,040	977	- 6.1	890	926	4.0	973	1,033	6.2
CA,N....	729	681	- 6.6	571	605	6.0	779	873	12.1
CA,E....	625	678	8.5	602	604	.3	421	493	17.1
CA,C....	1,055	1,112	5.4	1,006	837	- 16.8	1,702	2,008	18.0
CA,S....	1,699	1,463	- 13.9	1,511	1,077	- 28.7	1,908	2,305	20.8
HI.....	1,758	1,892	7.6	1,483	1,466	- 1.2	1,006	1,427	41.8
ID.....	97	87	- 10.3	90	79	- 12.2	43	55	27.9
MT.....	223	238	6.7	194	214	10.3	131	153	16.8
NV.....	352	390	10.8	338	283	- 16.3	296	401	35.5
OR.....	392	570	45.4	345	433	25.5	322	463	43.8
WA,E....	502	484	- 3.6	533	489	- 8.3	214	208	- 2.8
WA,W....	1,250	1,003	- 19.8	1,287	962	- 25.3	358	409	14.2
GUAM....	181	129	- 28.7	168	103	- 38.7	36	60	66.7
NMI.....	3	10	-	9	7	-	5	7	-
10TH..	2,350	2,383	1.4	2,294	2,214	- 3.5	1,317	1,475	12.0
CO.....	405	380	- 6.2	422	337	- 20.2	194	238	22.7
KS.....	305	333	9.2	310	348	12.3	197	175	- 11.2
NM.....	540	608	12.6	480	473	- 1.5	420	549	30.7
OK,N....	141	155	9.9	153	125	- 18.3	90	120	33.3
OK,E....	86	60	- 30.2	85	60	- 29.4	28	27	- 3.6
OK,N....	403	411	2.0	420	437	4.0	151	128	- 15.2
UT.....	327	330	.9	295	324	9.8	182	185	1.6
WY.....	143	106	- 25.9	129	110	- 14.7	55	53	- 3.6
11TH..	6,409	6,042	- 5.7	6,016	5,502	- 8.6	4,006	4,606	15.0
AL,N....	315	258	- 18.1	307	266	- 13.4	94	90	- 4.3
AL,M....	345	237	- 31.3	301	267	- 11.3	156	124	- 20.5
AL,S....	170	222	30.6	174	157	- 9.8	119	182	52.9
FL,N....	240	231	- 3.8	235	228	- 3.0	215	215	-
FL,M....	831	858	3.2	717	755	5.3	574	696	21.3
FL,S....	1,262	1,517	20.2	1,158	1,179	1.8	2,186	2,568	17.5
GA,N....	498	378	- 24.1	453	352	- 22.3	376	404	7.4
GA,M....	2,376	1,959	- 17.6	2,347	1,914	- 18.5	145	191	31.7
GA,S....	372	382	2.7	324	384	18.5	141	136	- 3.6

NOTE: PERCENT CHANGE COMPUTED ON 10 OR MORE.

*Revised

NOTES:

The pages that follow provide an update to section IIb of the February 28, 1991 "Guidance to Advisory Groups" memorandum, incorporating data for Statistical Year 1991 (the twelve months ended June 30, 1991). The pages have been formatted exactly like the corresponding pages of the original memorandum, and may replace the corresponding pages in the original. There are no changes to the text of the document, except for a few references to the dates covered by the data. Certain discrepancies may be apparent between the original document and this update, as follows:

1. Table 1 (page 12) may show slightly different counts of case filings for recent years (e.g., SY88-90) than were shown in Table 1 of the original document. The variations arise from two sources. First, some cases actually filed in a particular statistical year are not reported to the Administrative Office until after it has officially closed the data files for that year (it is a practical necessity that the A.O. at some point close the files so that it may prepare its annual statistical reports). This can result in increased counts of cases filed in prior years. Second, both filing dates and case-type identifiers are occasionally reported incorrectly when a case is filed, but corrected when the case is terminated. The corrections can result in both increases and decreases in case filing counts.

2. Chart 6 (page 15) in the original document was incorrectly based on a subset of the "Type II" cases (as defined on page 10). It has been replaced in this update with a chart entitled "Chart 6 Corrected," which is based on all Type II cases. In most districts, the difference between the original, incorrect Chart 6 and the new version will be insignificant. In only a few districts is the difference significant.

3. An error was made in constructing Chart 8 in the original document. The text indicating the percentage of cases in the "Other" category lasting 3 years or more was shown as "8.0%," without regard to the actual percentage. The bars shown in the chart, however, were accurate. The error has been corrected in this update.

b. Caseload mix and filing trends. The variety of cases making up the caseload in most district courts will be surprising to many who study them for the first time. That variety may be important to advisory groups in assessing the docket and in considering what groups of cases, if any, should be treated differently in management plans. Different types of cases tend to move through the courts in different ways. For example, some are almost always disposed of by default judgment (student loan); some are in the nature of an appeal (bankruptcy); some are a unique subset of another category (asbestos cases in the personal injury category). From readily available data we cannot discern how a specific case moved through the system nor how a future case may move. Some types of cases, however, may move through the system in distinctive ways often enough to warrant your special attention. Do they affect court performance distinctively? Do they consume court resources distinctively?

We have sorted case types into two categories to illustrate the point of distinctive paths. Type I case types are distinctive because within each case type the vast majority of the cases are handled the same way; for example, most Social Security cases are disposed of by summary judgment. Type II case types, in contrast, are disposed of by a greater variety of methods and follow more varied paths to disposition; for example, one contract action may settle, another go to trial, another end in summary judgment, and so on. (See the table in Appendix B for a complete definition of the case types.)

Type I includes the following case types, which over the past ten years account for about 40% of civil filings in all districts:

- student loan collection cases
- cases seeking recovery of overpayment of veterans' benefits
- appeals of Social Security Administration benefit denials
- condition-of-confinement cases brought by state prisoners
- habeas corpus petitions
- appeals from bankruptcy court decisions
- land condemnation cases
- asbestos product liability cases

The advisory group may wish to consider whether, in this district, these categories or any others identified by the group are distinctive enough to warrant special attention in assessing the condition of the docket or in recommending future actions. Careful documentation of analyses and decisions of this kind will contribute significantly to the final report the Judicial Conference must make to Congress.

Type II includes the remainder of the case types, which collectively account for about 60% of national civil filings over the past ten years. Case types with the largest number of national filings were:

- contract actions other than student loan, veterans' benefits, and collection of judgment cases
- personal injury cases other than asbestos
- non-prisoner civil rights cases
- patent and copyright cases
- ERISA cases
- labor law cases
- tax cases

- securities cases
- other actions under federal statutes; e.g., FOIA, RICO, and banking laws

Chart 1 shows the percentage distribution among types of civil cases filed in your district for the past three years.

Chart 1: Distribution of Case Filings, SY89-91

District of Wyoming

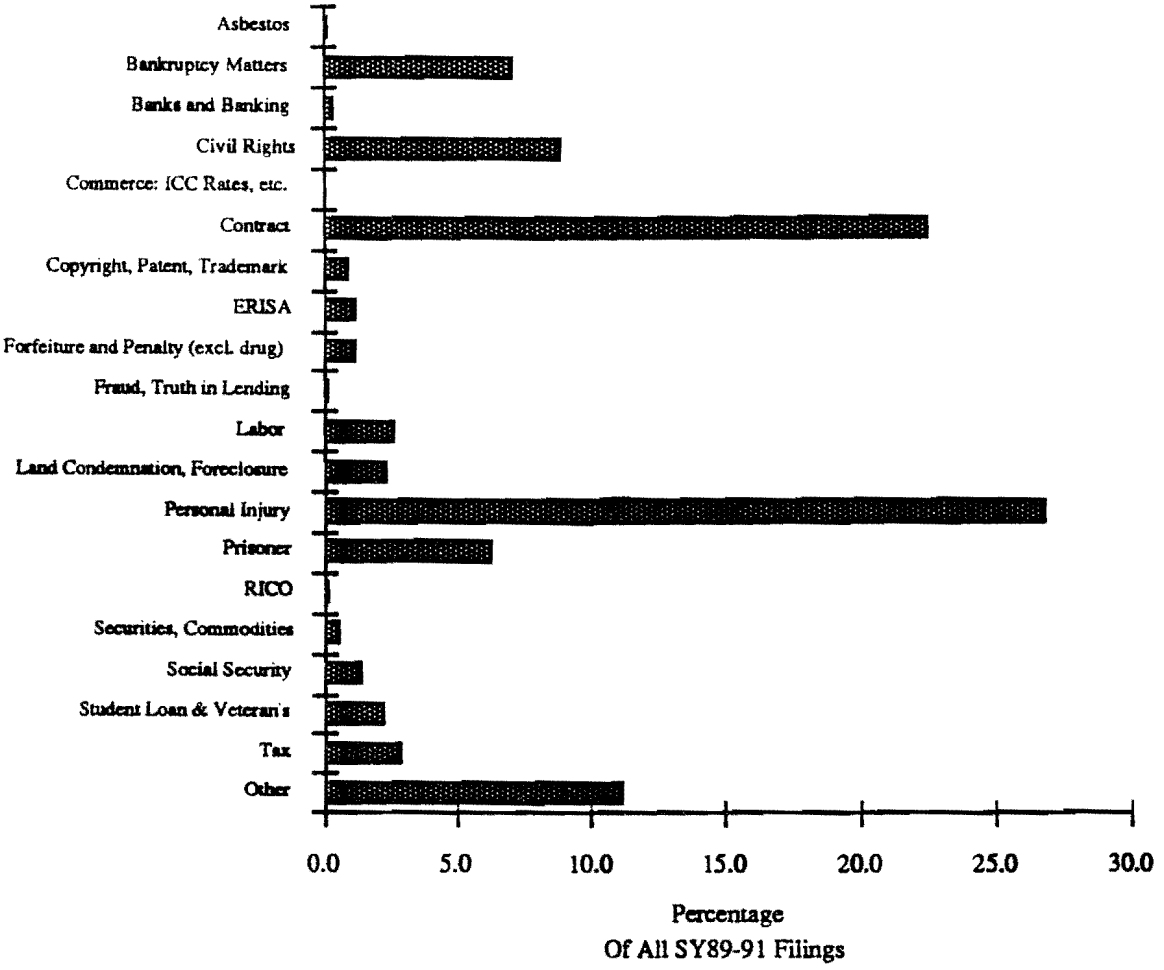


Chart 2 shows the trend of case filings over the past ten years for the Type I and Type II categories. Table 1 shows filing trends for the more detailed taxonomy of case types.

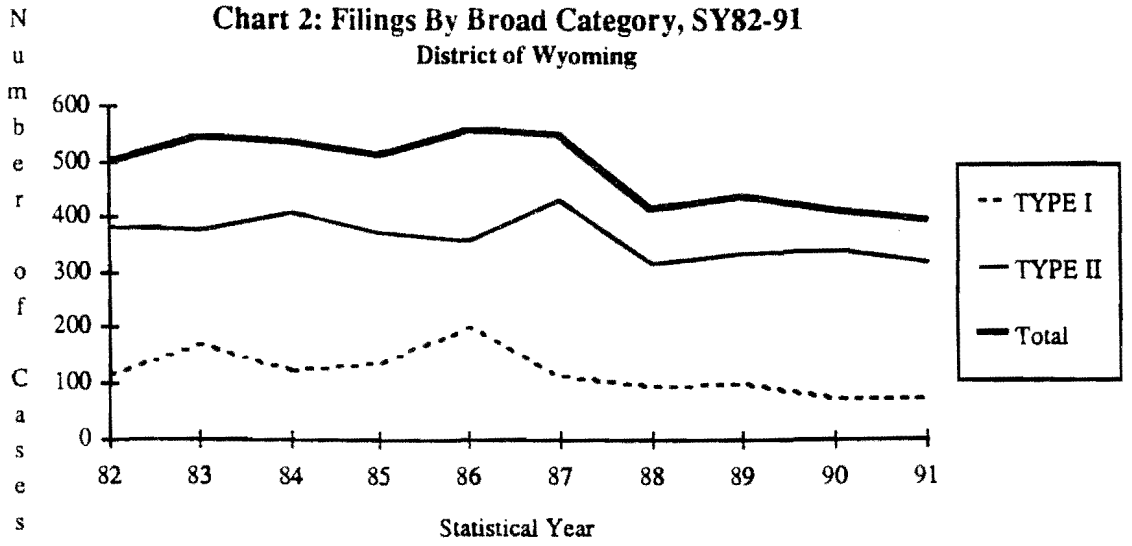


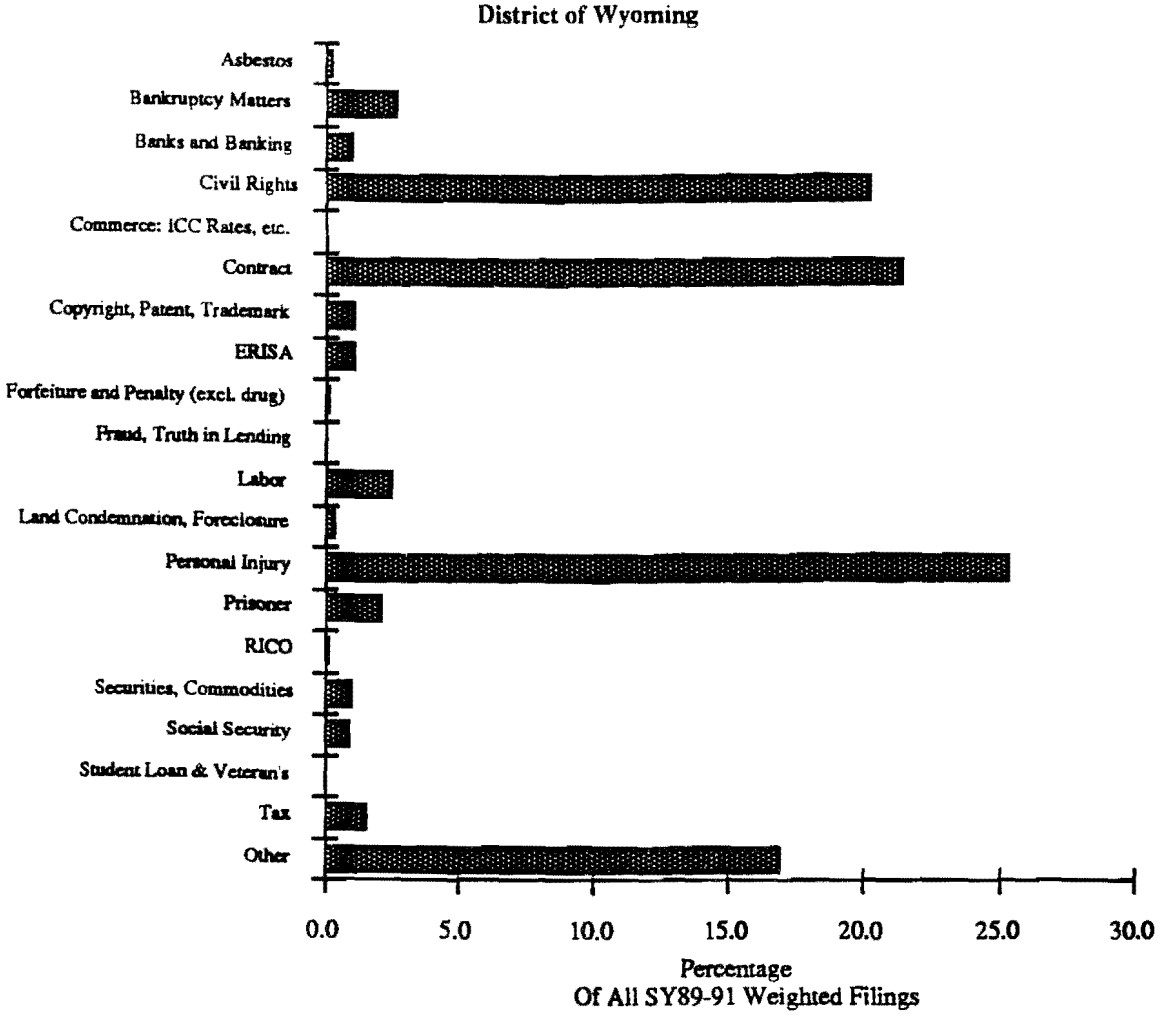
Table 1: Filings by Case Types, SY82-91

District of Wyoming

	82	83	84	85	86	87	88	89	90	91
Asbestos	0	0	0	2	1	3	4	2	0	1
Bankruptcy Matters	4	6	6	14	17	20	25	39	25	25
Banks and Banking	1	1	0	3	3	9	3	1	4	0
Civil Rights	34	23	49	39	47	49	47	42	36	34
Commerce: ICC Rates, etc.	9	15	5	0	1	0	1	0	0	0
Contract	94	144	125	102	100	151	96	108	86	86
Copyright, Patent, Trademark	7	3	4	8	4	7	3	2	4	6
ERISA	0	3	2	2	0	2	3	5	5	5
Forfeiture and Penalty (excl. drug)	0	1	0	2	2	1	4	6	4	5
Fraud, Truth in Lending	1	7	0	8	3	2	2	1	1	1
Labor	10	8	16	13	9	11	8	15	7	11
Land Condemnation, Foreclosure	8	10	14	19	19	23	21	13	6	10
Personal Injury	83	78	80	99	110	118	89	99	133	102
Prisoner	34	52	45	44	77	30	21	25	22	32
RICO	0	0	0	0	0	2	0	2	0	1
Securities, Commodities	1	5	1	5	4	4	5	1	3	3
Social Security	5	1	8	6	7	8	9	8	8	2
Student Loan and Veteran's	64	99	48	52	79	30	16	15	9	4
Tax	33	17	11	10	7	9	5	5	15	17
All Other	110	71	119	83	67	69	51	49	43	48
All Civil Cases	498	544	533	511	557	548	413	438	411	393

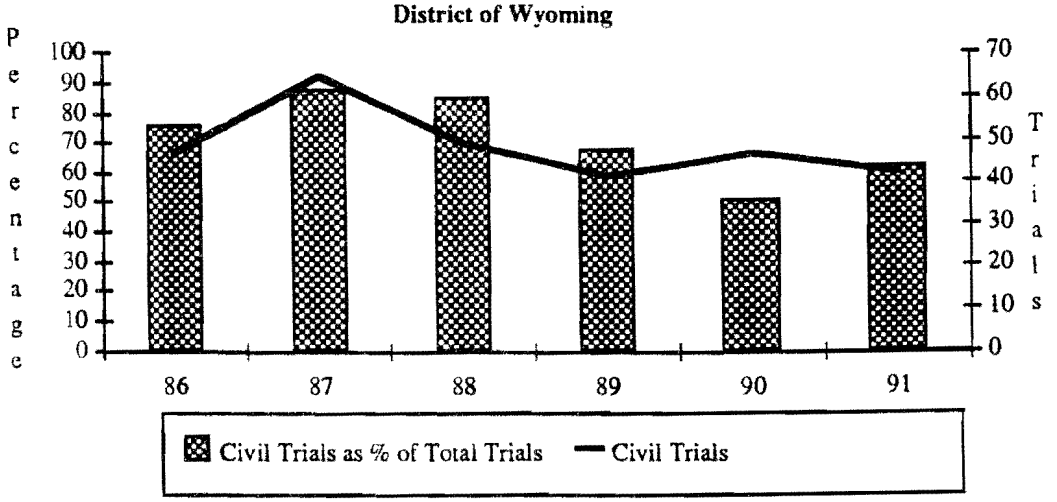
c. Burden. While total number of cases filed is an important figure, it does not provide much information about the work the cases will impose on the court. For this reason, the Judicial Conference uses a system of case weights based on measurements of judge time devoted to different types of cases. Chart 3 employs the current case weights to show the approximate distribution of demands on judge time among the case types accounting for the past three years' filings in this district. The chart does not reflect the demand placed on magistrate judges.

Chart 3: Distribution of Weighted Civil Case Filings, SY89-91



Another indicator of burden is the incidence of civil trials. Chart 4 shows the number of civil trials completed and the percentage of all trials accounted for by civil cases during the last six years.

Chart 4: Number of Civil Trials and Civil Trials as a Percentage of Total Trials, SY86-91
District of Wyoming



d. Time to disposition. This section is intended to assist in assessments of "delay" in civil litigation in this district. We first look at conventional data on the pace of litigation and then suggest some alternative ways of examining data to estimate the time that will be required to dispose of newly filed cases. The *MgmtRep* table shows the median time from filing to disposition for civil cases and for felonies. Time from joinder of issue to trial is also reported for civil cases that reached trial. These data are commonly used to assess the dispatch with which cases have moved through a court in the past. When enough years are shown and the data for those years are looked at collectively, reasonable assessments of a court's pace might be made.

Data for a single year or two or three may not, however, provide a reliable predictor of the time that will be required for new cases to move from filing to termination. An obvious example of the problem arises in a year when a court terminates an unusually small portion of its oldest cases. Both average and median time to disposition in that year will show a decrease. The tempting conclusion is that the court is getting faster when the opposite is actually the case. Conversely, when a court succeeds in a major effort to clean up a backlog of difficult-to-move cases, the age of cases terminated in that year may suggest that the court is losing ground rather than gaining.

Since age of cases terminated in the most recent years is not a reliable predictor of next year's prospects, we offer other approaches believed to be more helpful. *Life expectancy* is a familiar way of answering the question: "How long is a newborn likely to live?" Life expectancy can be applied to anything that has an identifiable beginning and end. It is readily applied to cases filed in courts.

A second measure, *Indexed Average Lifespan* (IAL), permits comparison of the characteristic lifespan of this court's cases to that of all district courts over the past decade. The IAL is indexed at a value of 12 (in the same sense that the Consumer Price Index is indexed at 100) because the national average for time to disposition is about 12 months. A value of 12 thus represents an average speed of case disposition, shown on the charts below as IAL Reference. Values below 12

indicate that the court disposes of its cases faster than the average, and values above 12 indicate that the court disposes of its cases more slowly than the average. (The calculation of these measures is explained in Appendix B.)

Note that these measures serve different purposes. Life expectancy is used to assess change in the trend of actual case lifespan; it is a timeliness measure, corrected for changes in the filing rate but not for changes in case mix. IAL is used for comparison among districts; it is corrected for changes in the case mix but not for changes in the filing rate. Charts 5 and 6 display calculations we have made for this district using these measures.

Chart 5: Life Expectancy and Indexed Average Lifespan, All Civil Cases SY82-91

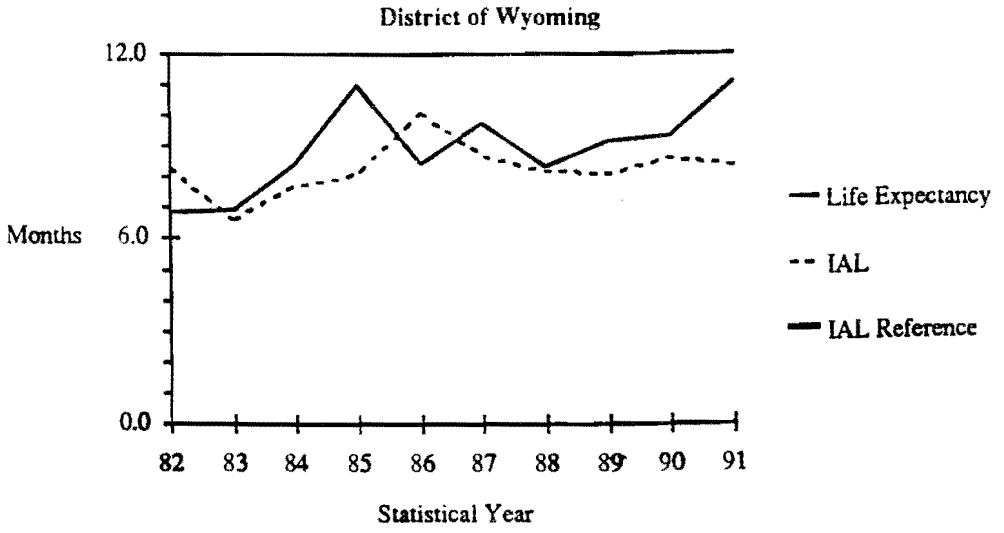
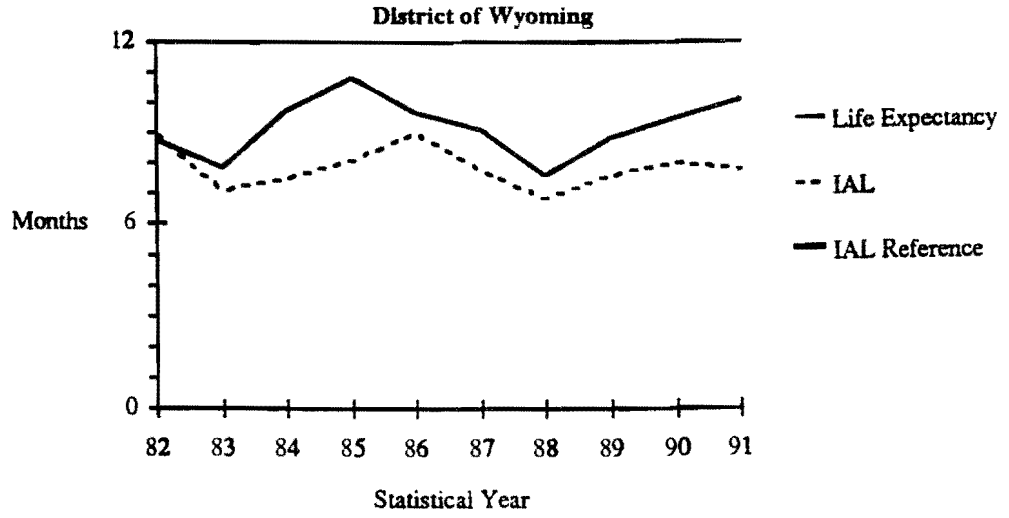


Chart 6 Corrected: Life Expectancy and Indexed Average Lifespan, Type II Civil Cases SY82-91



e. Three-year-old cases. The *MgmtRep* table shows the number and percentage of pending cases that were over three years old at the indicated reporting dates. We have prepared Charts 7 and 8 to provide some additional information on these cases.

Chart 7 shows the distribution of case terminations among a selection of termination stages and shows within each stage the percentage of cases that were three years old or more at termination.

Chart 7: Cases Terminated in SY89-91, By Termination Category and Age

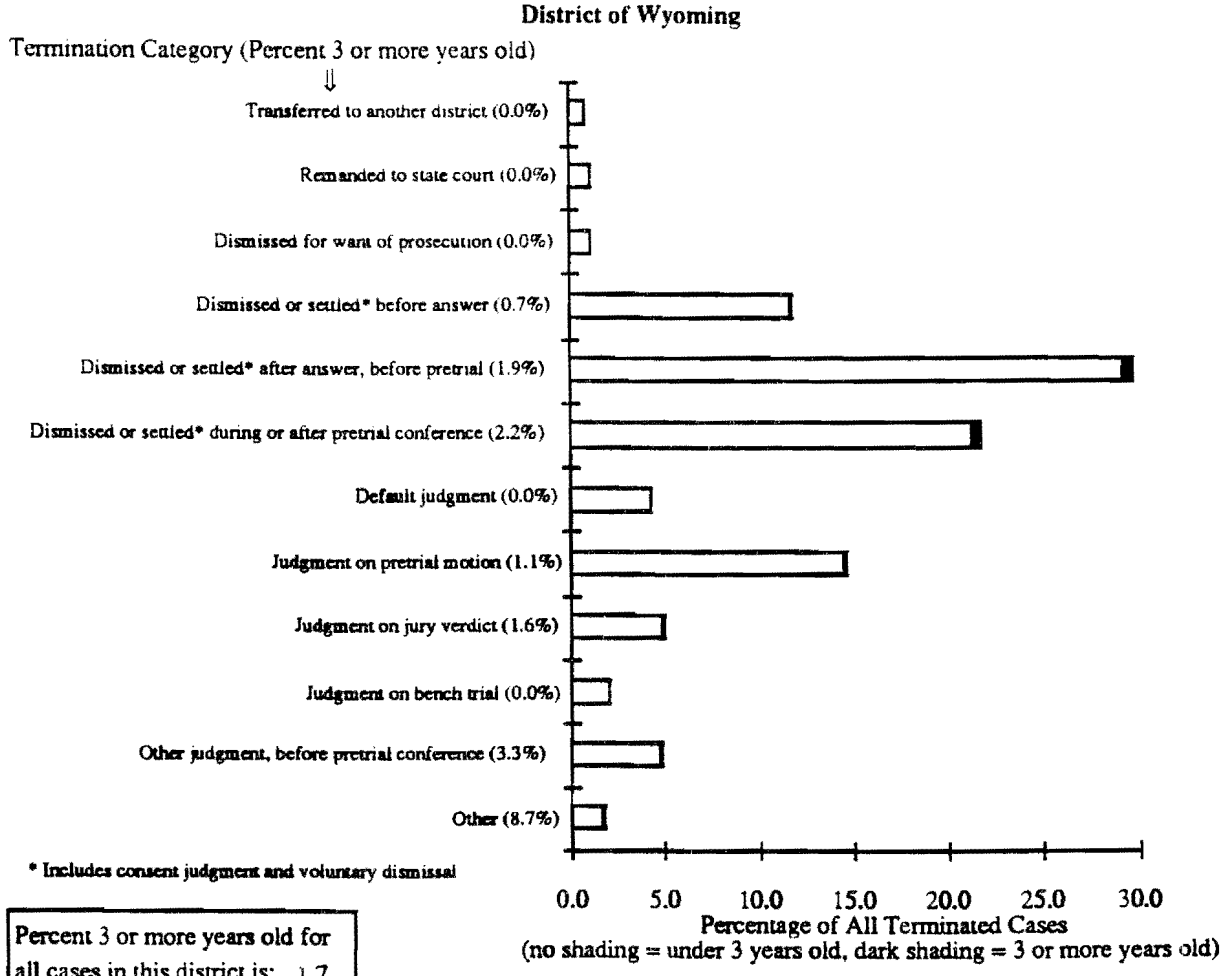
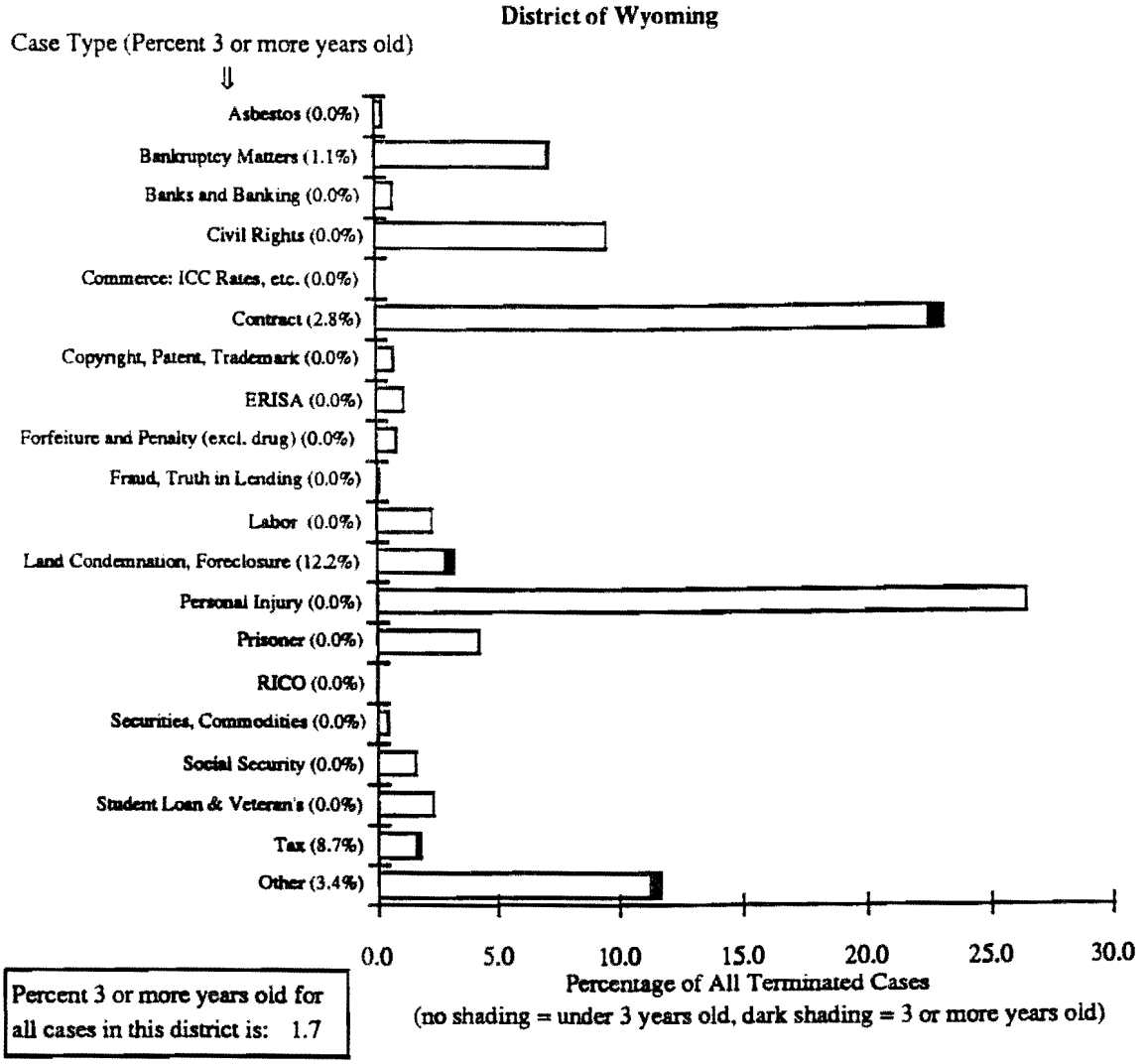


Chart 8 shows the distribution of terminations among the major case types and shows within each type the percentage of cases that were three years old or more at termination.

Chart 8: Cases Terminated in SY89-91, By Case Type and Age



f. Vacant judgeships. The judgeship data given in *MgmtRep* permit a calculation of available judge power for each reported year. If the table shows any vacant judgeship months for this district, a simple calculation can be used to assess the impact: Multiply the number of judgeships by 12, subtract the number of vacant judgeship months, divide the result by 12, and then divide the result into the number of judgeships. The result is an adjustment factor that may be multiplied by any of the per-judgeship figures in the *MgmtRep* table to show what the figure would be if computed on a per-available-active-judge basis. For instance, if the district has three judgeships and six vacant judgeship months, the adjustment factor would be 1.2 (36 – 6 = 30; 30 / 12 = 2.5; 3 / 2.5 = 1.2). If terminations per judgeship are 400, then terminations per available active judge would be 480 (400 × 1.2). This will overstate the workload of the active judges if

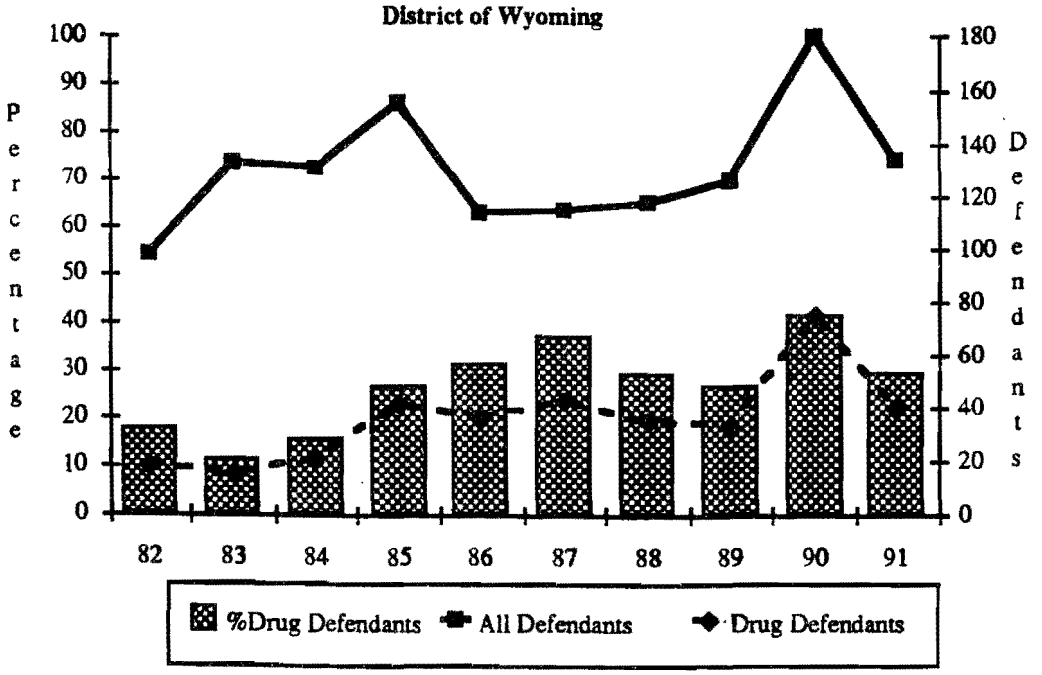
there are senior judges contributing to the work of the district. Because of the varying contributions of senior judges, however, there is no standard by which to take account of their effect on the workload of the active judges.

2. The Criminal Docket

a. The impact of criminal prosecutions. In calling on the advisory group to consider the state of the criminal docket, Congress recognized that the criminal caseload limits the resources available for the court's civil caseload. It is important to recognize that the Speedy Trial Act mandates that criminal proceedings occur within specified time limits, which may interfere with the prompt disposition of civil matters.

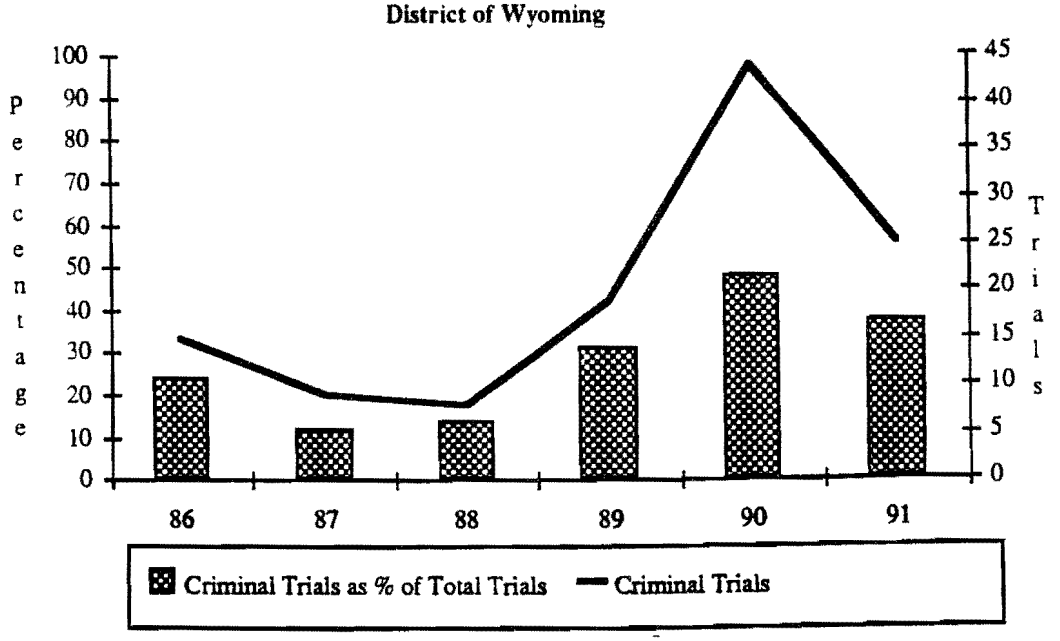
The trend of criminal defendant filings for this district is shown in Chart 9. We have counted criminal defendants rather than cases because early results from the current FJC district court time study indicate that burden of a criminal case is proportional to the number of defendants. Because drug prosecutions have in some districts dramatically increased demands on court resources, we have also shown the number and percentage of defendants in drug cases. A detailed breakdown of criminal filings by offense is shown on the last line of the table reproduced on page 8. A more detailed, five-year breakdown of the district's criminal caseload is available from David Cook of the Administrative Office's Statistics Division (FTS/633-6094).

Chart 9: Criminal Defendant Filings With Number and Percentage Accounted for by Drug Defendants, SY82-91



b. The demand on resources by criminal trials. Chart 10 shows the number of criminal trials and the percentage of all trials accounted for by criminal cases during the last six years.

Chart 10: Number of Criminal Trials and Criminal Trials as a Percentage of Total Trials, SY86-91



For more information on caseload issues

This section was prepared by John Shapard of the Federal Judicial Center with assistance from David Cook and his staff in the Statistics Division of the Administrative Office of the U.S. Courts. Questions and requests for additional information should be directed to Mr. Shapard at (FTS/202) 633-6326 or Mr. Cook at (FTS/202) 633-6094.

APPENDIX B

Wyoming State Penitentiary Administrative
Grievance Procedures

Guidance to Advisory Groups Appointed Under the Civil Justice Reform Act of 1990

SY91 Statistics Supplement

October 1991

Prepared for the United States District Court for the District of Wyoming

CHAPTER XXXVI

ADMINISTRATIVE GRIEVANCE PROCEDURE

Each inmate who has been sentenced to the Wyoming State Penitentiary may seek formal review of complaints and grievances which relate to their imprisonment if informal procedures have not satisfactorily resolved the matter.

Although the staff at the prison hopes each inmate will be able to serve his sentence without any major problems, some might occur. When a grievance related to the institution does occur which you feel was not informally resolved in a fair and reasonable manner, you may file a formal grievance through administrative remedy procedure as explained and set forth below.

Section 1: Statement of General Policy

A. The grievance procedure shall be readily available to all inmates. Upon arrival, each inmate shall receive written notification and an oral explanation of the procedure, including the opportunity to have questions regarding the procedure answered orally. The written procedure shall be available in any language spoken by a significant portion of the institution's population and appropriate provisions will be made for those who speak those languages, as well as for the impaired or handicapped.

B. Each inmate shall be entitled to invoke the grievance procedure regardless of any disciplinary, classification, or other administrative or legislative decision to which the inmate may be subject. The penitentiary will ensure that the procedure is accessible to impaired and handicapped individuals.

C. This grievance procedure is applicable to a broad range of complaints including, but not limited to, complaints by inmates regarding policies and conditions within the jurisdiction of the penitentiary and the Board of Charities and Reform that affect them personally, as well as actions by employees and inmates, and incidents occurring within the institution that affect them personally, (i.e. the grievance procedure is not a means by which disciplinary action may be appealed).

D. The grievance procedure will afford a successful grievant a meaningful remedy to include, but not be limited to, modification of penitentiary policy, restoration or restitution for personal property, the discipline of or termination of employees who willfully violate penitentiary policy, the assurance that deprivation of necessary care of the use of unjustifiable abuse will not recur, and such other remedies that will meaningfully solve the problem presented.

E. Although it is highly recommended that informal solutions to problems be sought at the unit level, simple forms for initiating a grievance will be made available to all inmates and assistance will be provided by staff to those inmates who, for any reason, are unable to complete the form for themselves. The form shall not demand unnecessary technical compliance with formal structure or detail, but shall encourage a simple and straightforward statement of the inmate's grievance. If staff is unable to read or understand an inmate's grievance, the staff shall endeavor to determine the nature of the grievance through personal contact so that a solution to the alleged grievance can be found.

F. In order to promote the credibility of the inmate grievance procedure, a committee, known as the "grievance Procedure Review Committee" shall be implemented. This committee shall be made up of three (3) inmates and four (4) penitentiary employees, and it shall participate in the disposition of grievances challenging general policy and practices and to review periodically the effectiveness and credibility of the grievance procedure. In any instance where the committee is to act in an advisory role in the disposition of an individual grievance, the opportunity for such participation shall occur before the initial adjudication of the grievance. Such participation, however, may be limited to advisory comment on policy questions which are raised or implicated in a grievance, without identification of individual names or specific facts. No inmate shall participate in the resolution of any other inmate's grievance over the objection of the grievant.

1. Appointments of the members of the committee shall be for terms of one (1) year, and letters notifying members of their appointments shall be delivered to each member.

2. The committee shall meet at least quarterly or so often as is necessitated by the filing of grievances which must be reviewed by the committee.

3. The committee shall report its determination of questions presented to it in a written form to the Warden. The report shall include the individual views of each member, as well as the consensus determination of a majority of the committee.

4. The report of the committee shall be attached to the grievance as finally determined by the Warden.

G. No inmate or employee who appears to be involved in the matter shall participate in any capacity in the resolution of the grievance.

H. Each grievance shall be answered in writing at each level of decision and review. The response shall state the reasons for the decision reached and shall include a statement that the inmate is entitled to further review, if such is available, and shall contain simple directions for obtaining such review.

I. All grievances must be processed within the time limits fixed herein, unless a grievant agrees, in writing, to an enlargement of time for a fixed period. Expiration of a time limit at any stage of the process shall entitle the grievant to move to the next stage of the process, unless the grievant has agreed, in writing, to an extension of the time for response.

J. The grievant shall be entitled to a review by a person or other entity, not under the penitentiary's supervision or control, of the disposition of all grievances, including alleged reprisals by an employee against an inmate. A request for review shall be allowed automatically without interference by administrators or employees of the penitentiary and such review shall be conducted without influence or interference by administrators or employees of the penitentiary.

K. These procedures contemplate resolution of a grievance within eighty-five (85) or fewer days. Normally, shall the total dispositional time from filing of the grievance to resolution of an appeal shall not take more than ninety (90) days.

L. All inmates are assured that use of or participation in the grievance mechanism will not result in formal or informal reprisal. "Reprisal" means any action or threat of action against anyone for the use of or participation in the grievance procedure. An inmate shall be entitled to pursue, through the grievance procedure, a complaint that a reprisal has occurred.

M. Records regarding the filing and disposition of a grievance shall be collected and maintained and shall be preserved for at least three (3) years following the disposition of the grievance. At a minimum, such records shall include aggregate information regarding the numbers, types and disposition of grievances, as well as individual records of the date of and the reasons for each disposition at each stage of the procedure. These records shall be considered confidential and shall be handled under the same procedures used to protect other confidential case records. Consistent with ensuring confidentiality, staff who are participating in the disposition of a grievance shall have access to records essential to resolution of the grievance.

Section 2: Definitions

A. Grievance:

1. A grievance is any complaint against the Wyoming State Penitentiary involving:

a. A rule or policy;

b. The manner in which a rule or policy is applied;

c. An action or inaction by any staff member, employee or administrator;

d. An exercise of authority by an employee;

e. Classification or reclassification decisions;

f. Disciplinary action;

g. Other good faith complaint.

B. Grievant:

1. Any inmate or group of inmates incarcerated in the Wyoming State Penitentiary is subject to the prison's control. This includes inmates on work release and trusty status. A grievant must file a formal and written grievance on the grievance form provided by the inmate's counselor or supervisor in order to initiate and comply with his administrative remedy appeal procedure.

2. A grievant may act in his own behalf or through another inmate who is also a grievant in the same matter.

C. Grievance Officer:

A neutral employee assigned to a supervisory position who has been chosen by the Warden to investigate and answer written grievances.

D. Warden or Acting Warden:

When the term Warden is used, it may mean the Acting Warden if the Warden is not present at the institution or is unavailable for any reason and an Acting Warden is appointed.

E. Final Appeal:

A final appeal from the decision of the Warden or Acting Warden about a grievance may be made to the Board of Charities and Reform.

Section 3: Procedure for Filing a Grievance

A. Discuss the problem with your counselor or supervisor.

B. If the problem cannot be solved by talking to your counselor or supervisor, then obtain a grievance form from your counselor or supervisor.

C. Explain the grievance in writing on the form. Each separate grievance must be on a separate form. Be sure to state your problem clearly. Include dates, times, names, places, references to the rule book and other information which will fully explain your problem.

D. The grievance form must be filed no later than thirty (30) days after the problem occurred. However, where a grievance concerns an established or a continuing policy or practice, the grievance need not be filed within thirty (30) days of the implementation of that policy or practice, but can be filed at any time.

E. Explain on the written grievance form exactly what relief or remedy you expect.

F. Put your written grievance form in an envelope addressed to the Warden and give it to the control center officer who will deliver it to the Warden's mailbox.

Section 4: Procedure Taken After Grievance is Filed

A. The Warden will assign a neutral grievance officer who will thoroughly investigate your grievance.

B. The grievance officer will consult with you and others involved in the grievance.

C. After the grievance officer has investigated the problem completely, a written report will be submitted to the Warden for evaluation and possible action.

D. The Warden will then determine whether or not there is any factual basis for the grievance and any appropriate remedy action. Before making that determination, the Warden may require a hearing if further facts are needed. A hearing is not required for each grievance--only those where the Warden feels it is necessary.

E. The Warden will then give the grievant a written response either accepting or rejecting the grievance. The written response shall contain reasons for decisions made. This written decision will be given to the inmate within thirty (30) days after the Warden receives the written grievance from the grievant, unless an extension has been agreed to by the grievant.

Section 5: Emergency Grievance

A. Sometimes a grievance may be of an emergency nature. The Warden will make a determination as to whether or not any particular grievance is to be treated as an emergency, applying these general criteria to his determination.

An emergency is generally an unforeseen combination of circumstances or the resulting state that calls for immediate action. If disposition of the grievance according to the regular time limits would subject the inmate to a substantial risk of personal injury, or cause other serious and irreparable harm to the inmate, it will be considered an emergency.

B. If the Warden determines that a grievance is an emergency, he will instruct the grievance officer that it is to be investigated immediately.

C. The Warden will determine whether a grievance is an emergency within twenty-four (24) hours after receipt of the grievance. The Warden will then direct the grievance officer to investigate the grievance as an emergency. Emergency grievances will be resolved and a written response provided to the grievant within seventy-two (72) hours from the receipt of the grievance.

D. If an emergency grievance is of a nature that can only be decided by the Board of Charities and Reform, then the Warden shall, within seventy-two (72) hours of receipt of the grievance, refer it to the Board for determination in accordance with Section 6(F) of this procedure.

Section 6: Appeals

A. If an inmate is dissatisfied with the decision of the Warden, he may appeal to the Board of Charities and Reform.

B. An appeal to the Board of Charities and Reform must be made in writing within ten (10) days following receipt of the Warden's written decision. If a grievance is determined to be an emergency, the inmate shall be afforded the opportunity to fill out and file his grievance appeal immediately upon receipt.

C. The appeal must be submitted to the Board of Charities and Reform, Herschler Building, Cheyenne, Wyoming 82002.

D. The appeal must not be frivolous or without merit and must state the grievant's reasons for appeal and disagreement with the Warden's grievance ruling.

E. The Board of Charities and Reform shall review all material regarding the grievance and appeal. The Board may make a further independent investigation or inquiry into the matter as a matter of discretion, but is not required to do so.

F. The Board of Charities and Reform will then either find basis for the appeal and direct the Warden to take appropriate remedy action, or deny the appeal within forty-five (45) days after receipt of the appeal. Either shall require a written decision to both the Warden and the inmate giving reasons for the appeal decision. In cases of emergency grievances, the Board shall dispose of the appeal within ten (10) days.

Most courts require evidence that administrative remedies have been exhausted before ruling on an inmate's complaint and the administrative grievance and appeal procedure is designed to resolve valid and justified grievances without resorting to overburdening the courts. It also provides the courts with a written record of the grievance and administrative action, if it should reach the courts. Using the grievance procedure does not prohibit or prevent you from writing to the Governor, the Attorney General or members of the Board of Charities and Reform.

APPENDIX C

Local Rule 202

Local Rule 206

Local Rule 207

Local Rule 220

Local Rule 316

Local Rule 604

Local Rule 605

Local Rule 606

Local Rule 607

Local Rule 608

Local Rule 610

Rule 202
ASSIGNMENT OF CASES

It is the policy of this Court insofar as practicable and efficient to provide for the assignment of cases among the judges of this District by random selection. It is the further policy of the Court to provide for parity of work among the active judges of the District and to provide to the senior judge(s) of this Court the opportunity to participate in the business of the Court to the fullest extent that each senior judge chooses to accept. In order to implement these policies, the following procedures shall obtain:

(a) *Filing and Assignment of Civil Cases.*

(1) The Clerk of the Court shall provide a civil cover sheet which shall be completed by the person filing any civil case. The person filing the civil cover sheet shall indicate whether the case is related to any other action pending or determined within the previous twelve (12) months and the nature of the relationship. If no such relationship is indicated, the case shall be assigned as provided in paragraph (i) below. If such relationship is indicated, the case shall be assigned as provided in paragraph (ii) below.

(i) The Clerk shall maintain a block of fifty (50) assignment cards in a drawing wheel which shall begin with an equal number of the names of each active judge. A senior judge may have his name cards placed in the drawing in any number he desires which does not exceed one-half the number of cards for any active judge.

Appeals from decisions of Magistrates and Bankruptcy Judges shall be assigned to District Judges in accordance with the procedures set forth herein.

At the time a new case is filed, a card from the drawing wheel shall be drawn and a case shall be assigned to the Judge named on the card. The cards shall be thoroughly mixed so that sequence shall be random and secret. After having received a case by assignment, a senior judge may return the case to the Clerk for redrawing without stating any reason for such action.

In cases of an emergency nature requiring immediate attention by a Judge, the Clerk shall determine the availability of a Judge to act who, having acted, shall promptly return the case to the Clerk for assignment or advise the Clerk that he intends to keep the case. Should the Judge elect to keep the case, the Clerk shall remove one (1) of that Judge's cards from the block of assignment cards then in use. The Clerk shall determine such availability by

contacting each Judge, senior or active, on a rotating basis. Any Judge may notify the Clerk of his or her availability for the handling of emergency matters and the Clerk may direct the emergency matter to that Judge without further or additional inquiry.

(ii) If it is indicated that a relationship to a pending case or one terminated within the previous twelve (12) months exists, the Clerk shall deliver the case file to the Judge assigned to the earlier related case or cases. That Judge shall promptly review the determination of relationship and return the file to the Clerk if such relationship does not exist for assignment. If the Judge determines that such relationship does exist, the case shall be assigned to that Judge and the Clerk shall remove one (1) of that Judge's cards from the block of assignment cards then in use.

(iii) After all cards are drawn from the wheel, the Clerk or a designate shall return the block of fifty (50) assignment cards to the wheel.

(2) Recusal and disqualification of a Judge shall be by formal order setting forth the reasons for that action. Upon such recusal or disqualification, the Chief Judge shall order the case to be redrawn. After the redrawing, the Clerk shall add an additional assignment card bearing the name of the recusing Judge to the block of assignment cards then in use.

(3) It shall be the responsibility of the Chief Judge to review at least annually, the pending case loads of the Judges in service and to suggest reassignment when it is determined that there is an imbalance which is adversely affecting litigants. In considering the question of such reassignment, this Court will consider the categories of cases for which Congress has mandated priorities. All reassignments or transfers of cases from one Judge to another shall be only with the approval of the Chief Judge.

(b) *Filing and Assignment of Criminal Cases.*

(1) There will be a separate block of assignment cards for criminal cases. The number of cards for each Judge shall be equal, except as otherwise may be determined by the Chief Judge. A senior judge may have his name cards placed in any number he desires. The assignment cards shall be thoroughly mixed by the Clerk so that the sequence of the Judges' names will be random and secret. After having received a criminal case by assignment, a senior judge may return the case to the Clerk for redrawing without any reason for such action.

Rule 610
ASSIGNMENT OF DUTIES OF MAGISTRATES

(a) *Automatic References.* The Clerk of Court shall refer the following matters to a Magistrate upon filing:

(1) Loan cases (including S.B.A. and Student Loan cases).

(2) I.R.S. Summons Enforcement.

(3) Overpayment cases.

(4) All civil and criminal non-dispositive pretrial motions.

(5) All initial pretrial conferences.

(6) Prisoner 1983 and 2254 actions.

(b) *Selected References.* A Magistrate may conduct other proceedings upon specific designation of a Judge or pursuant to an order of the Court.

(c) *Misdemeanor Cases.* All misdemeanor cases shall be assigned, upon the filing of an information, complaint, or violation notice, or the return of an indictment, to a Magistrate, who shall proceed in accordance with the provisions of 18 U.S.C. Section 3401 and the Rules of Procedure for the Trial of Misdemeanors before the United States Magistrate.

(d) *Additional duties.* The Magistrate shall have authority to accept petit jury verdicts in the absence of a Judge; conduct necessary proceedings leading to the potential revocation of probation; issue subpoenas, writs of habeas corpus ad testificandum or habeas corpus ad prosequendum, or other orders necessary to obtain the presence of parties, witnesses or evidence needed for court proceedings; order the exoneration or forfeiture of bonds, conduct proceedings for the collection of civil penalties of not more than Two Hundred ($200.00) Dollars assessed under the Federal Boat Safety Act of 1971, in accordance with 46 U.S.C. Section 1484(d); conduct remand proceedings and issue commitments to another district in accordance with Rule 40, Fed.R. Crim.P., conduct examinations of judgment debtors in accordance with Rule 69 of the Federal Rules of Civil Procedure; conduct proceedings for initial commitment of narcotic addicts under Title III of the Narcotic Addict Rehabilitation Act; supervise proceedings on requests for letters rogatory in civil and criminal cases if designated by a District Judge under 28 U.S.C. Section 1782(a); consider and rule upon applications for administrative inspection warrants and orders permitting entry upon a taxpayer's premises to effect levies in satisfaction of unpaid tax deficits; and perform any additional duty as is not inconsistent with the Constitution and laws of the United States.

(2) A criminal case will be publicly drawn by the Clerk or his designate and assigned to a Judge at the time of the filing of any indictment or complaint. Reassignments shall be made in accordance with 202(a)(2) above except that the Clerk or his designate shall perform the redrawing in public.

(3) If, at the time of filing, the U.S. Attorney or defense counsel shall advise the Clerk that the case is related to any other pending case or one terminated within the previous twelve (12) months, the Clerk or his designate shall determine whether the case is related. The Clerk shall consult with the Judge or Judges involved. Criminal cases are deemed related when the case filed involves the same defendants or the same occurrence as another case pending within the previous twelve (12) months.

(4) The transfer of probation jurisdiction is accepted by the Chief Judge when Probation Form 22 is signed by him. Transfer of probation jurisdiction may be accepted by a Magistrate when the offense for which the probationer was convicted is a misdemeanor and the probationer in the District of prosecution consented to a Magistrate's jurisdiction.

(c) *Assignment Register and Reports.*

(1) The Clerk shall maintain an assignment register in form as approved by the Court containing an account of all civil, criminal and appeal cases assigned to each of the Judges of the Court or to any visiting Judge and all reassignments among Judges.

(2) At the end of each month the Clerk will prepare a report showing the number of cases assigned to and pending before each Judge and such other information as the Chief Judge may direct.

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

under Rule 56, Fed.R. Civ.P., or a motion seeking remand under 28 U.S.C. §1447 shall be supported by a brief filed with the motion. A brief opposing a motion under Rule 56, Fed.R. Civ.P., shall be filed within ten (10) days, exclusive of holidays and weekends, after service of the motion or within such extended time as may be allowed by the Court. Briefs opposing a motion to remand under 28 U.S.C. §1447 may be filed only with permission of the Court. Reply briefs to a motion under either Rule 56, Fed.R. Civ.P., or 28 U.S.C. §1447 may be filed only with permission of the Court.

(d) *Motions in Limine.* Motions in Limine shall be filed and heard as provided in Rule 403 infra.

(e) *Discovery Hearing Before Magistrate.* Motions to compel discovery under Rule 37(a), Fed.R. Civ.P., shall be referred to a Magistrate for hearing and disposition. The Magistrate shall have full authority to enter appropriate orders granting such motions and compelling discovery. In addition, the Magistrate may make such protective order as the Court would have been empowered to make on any motion pursuant to Rule 26(c), Fed.R. Civ.P. The Magistrate shall not, however, enter any order which is dispositive of a substantive issue in the case. The Magistrate may award the expense of a motion pursuant to Rule 37(a), Fed.R. Civ.P. (The provisions of 28 U.S.C. §636(b)(1)(A) cover review of magistrates' orders).

(f) *Attendance at Hearings.* Any party either proposing or opposing a motion or other application, who does not intend to actively urge or oppose the same, shall immediately notify all counsel of record, the Clerk of Court and the secretary of the Judge in order that the Court and counsel are not required to devote unnecessary attention to the matter. Unless excused by the Court from attendance, failure of counsel to be present at the hearing noticed for any motion, or to attend at the time to which the hearing is continued, shall be deemed either a waiver of the motion or other pleading if such counsel represents the moving party, or a consent to the sustaining of the motion or objection or the granting of the motion or other application if such counsel represents the responding party.

Rule 207
DISCOVERY

(a) *Prompt Commencement.* Discovery shall be commenced promptly by the plaintiff in accordance with the Federal Rules of Civil Procedure upon filing of the case or by the defendant upon filing of his first motion or answer.

(b) *Reasonable Notice.* Unless otherwise ordered by the Court, "reasonable notice" for the taking of depositions under Rule 30(b)(1), Fed.R. Civ.P., shall be not less than five (5) days. Rule 6, Fed.R. Civ.P. governs the computation of time.

(c) *Motion to Quash Deposition Notice.* Pending resolution of any motion under Rule 26(c) or Rule 30(d), Fed.R. Civ.P., neither the objecting party, witness, nor any attorney is required to appear at the deposition to which the motion is directed until the motion is ruled upon. The filing of a motion under either of these rules shall stay the discovery at which the motion is directed pending further order of the Court. Any motion for relief under Rule 26(c) directed to a deposition must be filed and served as soon as practicable after receipt of the discovery request, but in no event less than three (3) days prior to the scheduled depositions. Counsel seeking such relief shall request the Court for a ruling or a hearing thereon promptly after the filing of such motion, so that discovery shall not be delayed in the event such motion is not well taken.

(d) *Interrogatories or requests.* Motions under Rules 26(c) or 37(a), Fed.R. Civ.P., directed at interrogatories or requests under Rules 33 or 34, Fed.R Civ.P., or at the responses thereto, shall set forth the interrogatory, request or response constituting the subject matter of the motion.

(1) *Number of Interrogatories.* No party shall serve on any other party more than one set of fifty (50) interrogatories in the aggregate, including all subparts, without leave of Court. Subparagraphs of any interrogatory shall relate directly to the subject matter of the interrogatory. Any party desiring to serve additional interrogatories shall file a written motion setting forth the proposed additional interrogatories and the reasons establishing good cause for their use.

(e) The party serving interrogatories, pursuant to Rule 33 of the Federal Rules of Civil Procedure, serving requests for production of documents or things, pursuant to Rule 34 of the Federal Rules of Civil Procedure, or serving requests for admission, pursuant to Rule 36 of the Federal Rules of Civil Procedure, shall provide a space after each such inter-

rogatory, request, or admission, for the answer, response, or objection thereto. The party answering, responding, or objecting to written interrogatories, requests for production of documents or things, or requests for admission shall either set forth the answer, response, or objection in the space provided or shall quote each such interrogatory or request in full immediately preceding the statement of any answer, response, or objection thereto. The parties shall also number each interrogatory, request, answer, response, or objection sequentially, regardless of the number of sets of interrogatories or requests.

(f) *Filing of Discovery Pleadings.* Interrogatories under Rule 33, Fed.R. Civ.P., and answers thereto, requests for production or inspection under Rule 34, Fed.R. Civ.P. and requests for admissions under Rule 36, Fed.R. Civ.P., and responses thereto shall be served upon other counsel or parties, but shall not be filed with the Court. If relief is sought under Rule 26(c), Fed.R. Civ.P. or Rule 37, Fed.R. Civ.P., concerning any interrogatories, requests for production or inspection, requests for admissions, answers to interrogatories or responses to requests for admissions, copies of the portions of the interrogatories, requests, answers or responses in dispute shall be filed with the Court contemporaneously with any motion filed under Rule 26(c), Fed.R. Civ.P. or Rule 37, Fed.R. Civ.P. If interrogatories, requests, answers or responses are to be used at trial, the portions to be used shall be filed with the Clerk at the outset of the trial insofar as their use reasonably can be anticipated.

(g) *Telephonic Depositions.* The motion of a party to take the deposition of an adverse party by telephone will presumptively be granted. Where the opposing party is a corporation, the term "adverse party" means an officer, director, managing agent or corporate designee pursuant to Fed.R. Civ.P. 30(b)(6).

(h) *Depositions of Witnesses Who Have No Knowledge of the Facts.* Where an officer, director or managing agent of a corporation or a government official is served with a notice of deposition or subpoena regarding a matter about which he or she has no knowledge, he or she may submit reasonably before the date noticed for the deposition an affidavit stating and identifying a person with the corporation or government entity having knowledge of the subject matter involved in the pending action.

The noticing party may, notwithstanding such affidavit of the noticed witness, proceed with the deposition, subject to

the witness's right to seek a protective order.

(i) *Directions Not to Answer.* Repeated directions to a witness not to answer questions calling for non-privileged answers are symptomatic that the deposition is not proceeding as it should. When direction is given to a witness not to answer, it should be made only on the ground of privilege.

Where a direction not to answer such a question is given and honored by the witness, either party may seek an immediate ruling as to the validity of such direction. If the validity of the direction not to answer is thereafter sustained, the witness's answer may be stricken. If the witness refuses to answer questions calling for non-privileged answers and the attorney giving such direction does not withdraw such direction, the Court may require the attorney to pay all costs for retaking the deposition.

If a prompt ruling cannot be obtained, the direction not to answer made on grounds of privilege may stand and the deposition should continue until (1) a ruling is obtained or (2) the problem resolves itself, but a direction not to answer on any other ground except privilege shall not stand and the witness shall answer.

(j) *Suggestive Deposition Objections.* If the objection to a deposition question is one that can be obviated or removed if presented at the time, the proper objection is "objection to the form of the question." If the objection is on the ground of privilege, the privilege shall be stated and established. If the objection is on another ground, the objection is "objection" stating briefly the specific ground of objection. Objections in the presence of the witness which are used to suggest an answer to the witness are presumptively improper.

(k) *Conferences Between Deponent and Defending Attorney.* An attorney for a deponent shall not initiate a private conference with the deponent during the actual taking of deposition, except for the purpose of determining whether a privilege should be asserted.

(l) *Requests for Documents.* Attorneys requesting documents pursuant to Fed.R. Civ.P 34 and 45 shall have reviewed the request or subpoena to ascertain that it is specifically applicable to the facts and contentions of the particular case. A form request or subpoena which is not specifically directed to the facts and contentions of the particular case shall not be used.

(1) *Requests for Documents and Subpoenas Duces Tecum Shall be Drafted and Read Reasonably.* Requests for docu-

ments and subpoenas *duces tecum* shall be drafted reasonably, clearly and concisely and be limited to documents discoverable pursuant to Fed.R. Civ.P. 36(b).

(2) A request for documents or subpoena *duces tecum* shall be read reasonably in the recognition that the attorney serving it generally does not have knowledge of the documents being sought and the attorney receiving the request or subpoena generally does have such knowledge or can obtain it from the client.

(m) *Discovery of Experts.* After completion of fact discovery and within a reasonable period but in no event less than thirty (30) days prior to the time for completion of all discovery or at such time shall be set in the scheduling order, each party shall identify each person the party expects to call as an expert witness at trial and shall state the subject matter and the substance of the facts and opinions on which the expert is expected to testify and a summary of the grounds for each opinion.

(n) *Privilege.* Where a claim of privilege is asserted during a deposition and information is not provided on the basis of such assertion:

(1) The attorney asserting the privilege shall identify during the deposition 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

(2) The following information shall be provided during the deposition at the time the privilege is asserted, if sought, unless divulgence of such information would cause disclosure of privileged information:

(i) for documents, to the extent the information is readily obtainable from the witness being deposed or otherwise: (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;

(ii) for oral communication: (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.

(iii) objection on the ground of privilege asserted during a deposition may be amplified by the objector subsequent to the objection.

(3) After a claim of privilege has been asserted, the attorney seeking disclosure shall have reasonable latitude during the deposition to question the witness to establish other relevant information concerning the assertion of the privilege, including (i) the applicability of the particular privilege being asserted; (ii) circumstances which may constitute an exception to the assertion of the privilege; (iii) circumstances which may result in the privilege having been waived, and (iv) circumstances which may overcome a claim of qualified privilege.

(4) Where a claim of privilege is asserted in responding to or objecting to other discovery devices, including interrogatories, requests for documents and requests for admissions, and information is not provided on the basis of such assertion:

(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 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.

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.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF WYOMING

ORDER ADOPTING LOCAL RULE

This matter comes before the Court to adopt Local Rule 316 as an additional rule of this Court, to read as follows:

STANDARDS OF LITIGATION CONDUCT

A. The following standards of practice shall be observed by all attorneys appearing in civil and criminal actions in this district.

1. Attorneys shall at all times exercise candor, diligence and utmost respect to the judiciary, litigants and other attorneys.

2. Attorneys shall extend to opposing counsel cooperation and courteous behavior at all times.

3. Attorneys shall demonstrate personal dignity and professional integrity at all times.

4. Attorneys shall treat each other, the opposing party, the Court and members of the court staff with courtesy and civility and conduct themselves in a professional manner at all times.

5. A client has no right to demand that attorneys abuse the opposite party or indulge in offensive conduct. An attorney shall always treat adverse witnesses and suitors with fairness and due consideration.

6. Although clients are litigants in adversary proceedings and ill feelings may exist between clients, such ill feelings shall not influence an attorney's conduct, attitude or demeanor towards opposing counsel.

7. An attorney shall not use any form of discovery, or the scheduling of discovery, as a means of harassing opposing counsel or counsel's client.

8. Attorneys shall be punctual in communcations and in honoring scheduled appearances (including court appearances).

9. Attorneys shall not arbitrarily or unreasonably withhold consent to opposing counsel's just requests for cooperation or scheduling accommodations.

10. Attorneys shall not engage in obnoxious or antagonistic behavior.

11. Attorneys shall adhere to the higher standard of conduct which the courts, attorneys, clients and the public rightfully expect.

12. A lawyer should be patient, dignified and courteous in all court proceedings, including depositions, meetings or telephone calls concerning aspects of pending cases to litigants, witnesses and lawyers with whom the lawyer deals in his capacity as a legal representative of a party. Cursing, sarcastic commentary, use of a lawyer's voice in a loud or angry or hostile manner in the course of out-of-court depositions or other proceedings is a violation of this standard.

B. The above rules are specifically designed to apply to those attorneys who perceive themselves solely as combatants, or believe they are retained to win at all costs without regard to fundamental principles of justice.

C. Those attorneys whose behavior does not comport with the above rules can expect to suffer an appropriate response from the Court, including open court reprimands, compulsory legal education, monetary sanctions and other punitive measures approporiate to the circumstances.

D. It is the intent of this Court by adopting these rules to curtail the enormous number of motions now filed with the Court which are necessitated by the kind of behavior these rules attempt to address. These motions create unnecessary delay and costs for the Court as well as the litigants.

E. It is the many delays and costs which this Court is desirous of eliminating, and these rules should not be construed by counsel as creating another avenue for filing unnecessary or inappropriate motions. The mere fact the above-cited rules were adopted by this Court should in and of itself be enough

incentive for the few errant attorneys to repent, thereby resolving the problems which now exist. The Court contemplates that only in certain rare instances will it be necessary for the Court to admonish an attorney pursuant to these rules for unacceptable behavior.

Dated this 4th day of March, 1991.

CHIEF JUDGE
District of Wyoming

Rule 604
RECOMMENDATIONS REGARDING DISPOSITIVE MOTIONS
28 U.S.C. §636(b) (1) (B)

(a) *Court May Designate Magistrate or Referee.* The Court may designate a Magistrate or Referee to conduct hearings, including evidentiary hearings, and submit to the Court proposed findings and recommendations for the disposition by the Court, pretrial motions in civil and criminal cases including:

(1) Motions for injunctive relief, including temporary restraining orders and preliminary and permanent injunctions;

(2) Motions for judgment on the pleadings;

(3) Motions for summary judgment;

(4) Motions to dismiss or permit the maintenance of a class action;

(5) Motions to dismiss for failure to state a claim upon which relief may be granted;

(6) Motions to involuntarily dismiss an action;

(7) Motions for review of default judgments;

(8) Motions to dismiss or quash an indictment or information made by a defendant; and

(9) Motions to suppress evidence in a criminal case.

(b) *Magistrate to Determine Preliminary Matters and Conduct Evidentiary Hearings.* A Magistrate may determine any preliminary matters and conduct any necessary evidentiary hearing or other proceeding arising in the exercise of the authority conferred by this subsection.

Rule 605
PRISONER CASES UNDER 28 U.S.C. §2254

A Magistrate may perform any or all of the duties imposed upon a Judge by the rule governing proceedings in the United States District Courts under §2254 of Title 28, United States Code. In so doing, a Magistrate may issue any preliminary orders and conduct any necessary evidentiary hearing or other appropriate proceeding and shall submit to a Judge a report containing proposed findings of fact and recommendations for disposition of the petition by the Judge. Any order disposing of the petition may be made only by a District Judge.

Rule 606

PRISONER CASES UNDER 42 U.S.C. SECTION 1983 AND 28 U.S.C. SECTION 2241

A Magistrate may issue any preliminary orders and conduct any necessary evidentiary hearing or other appropriate proceeding and shall submit to a Judge a report containing proposed findings of fact and recommendations for the disposition of complaints and petitions filed by prisoners pursuant to 42 U.S.C. Section 1983 and 28 U.S.C. Section 2241.

Rule 607
SPECIAL MASTER REFERENCES

A Magistrate may be designated by a Judge to serve as a special master in appropriate civil cases in accordance with 28 U.S.C. §636(b) (2) and Rule 53 of the Federal Rules of Civil Procedure. Upon the consent of the parties, a Magistrate may be designated by a Judge to serve as a special master in any civil case, notwithstanding the limitations of Rule 53(b) of the Federal Rules of Civil Procedure.

Rule 608
CONDUCT OF TRIALS AND DISPOSITION OF CIVIL CASES UPON CONSENT OF THE PARTIES 28 U.S.C. §636(c)

Upon the consent of the parties, the Magistrate located in Cheyenne, Wyoming, or such other Magistrate as may be designated by the Court, may conduct any or all proceedings in any civil case which is filed in this Court, including the conduct of a jury or non-jury trial, and may order the entry of a final judgment, in accordance with 28 U.S.C. §636(c). In the course of conducting such proceedings upon consent of the parties, such Magistrate may hear and determine any and all pretrial and post-trial motions which are filed by the parties, including case-disposition motions.

(a) *Notice to Parties.* The Clerk of Court shall notify the parties in all civil cases that they may consent to have a Magistrate conduct any or all proceedings in the case and order the entry of a final judgment. Such notice shall be handed or mailed to the plaintiff or his representative at the time an action is filed and to other parties as attachments to copies of the compiaint and summons, when served. Additional notices may be furnished to the parties at later stages of the proceedings and may be included with pretrial notices and instructions.

(b) *All Parties to Sign Consent Form.* The Clerk shall not accept a consent form unless it has been signed by all the parties in a case. The plaintiff shall be responsible for securing the execution of a consent form bv the parties and for filing such form with the Clerk of Court. It is not necessary for one form to be excuted by all the parties; each party may separately sign a consent form and file it individually with the Clerk. Each party shall serve a copy of the executed consent form on all other parties at the time of filing. The parties shall file consent forms within ten (10) days after the last defendant or third-party defendant is required to answer. In the event one or more of the parties fail to file a consent within the allotted time the matter shall proceed before a District Judge, unless leave of court to proceed before a Magistrate is first obtained. No consent form will be made available, nor will its contents be made known to any Judge or Magistrate, unless all parties have consented to the reference to a Magistrate. No Magistrate, Judge, or other Court official may attempt to persuade or induce any party to consent to the reference of any matter to a Magistrate. This rule, however, shall not

preclude a Judge or Magistrate from informing the parties that they have the option of referring a case to a Magistrate.

(c) *After Consent Form Executed.* After the consent form has been executed and filed, the Clerk shall transmit it to the Judge to whom the case has been assigned for approval and for order of referral of the case to a Magistrate. Once the case has been assigned to a Magistrate, the Magistrate shall have the authority to conduct any and all proceedings to which the parties have consented and to direct the Clerk of Court to enter a final judgment in the same manner as if a Judge had presided.