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UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO
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JUDGE

May 27, 1997

TO: Members, Civil Justice Reform Act Advisory Group

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RE: 1996 CJRA Assessment Report

The 1996 Annual Assessment of the Condition of the Court's Civil and Criminal Dockets has been completed and as a contributor to the report and a member of the Civil Justice Reform Act Advisory Committee, I enclose a copy for your records.

Your efforts as a member of the CJRA Advisory Committee are most appreciated. Thank you for your time and assistance.

Sincerely,



James A. Parker

Enclosure

cc w/enc: Donna Stienstra, FJC Research Division
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Robert L. Hoecker, Circuit Executive-10th Circuit

**1996 Annual Assessment of the
Condition of the Court's Civil and Criminal Dockets**

**United States District Court
for the
District of New Mexico**



**Prepared in accordance with the
Civil Justice Reform Act of 1990**

**Honorable James A. Parker, Chairman
Jesse Casaus, Reporter**

Table of Contents

Background	1
Statistical Overview	1
Review of Previous Assessment Recommendations	
Increase the number of Article III and magistrate judges	8
The district should plan for a sufficient number of court-rooms as Article III and magistrate judges are added	9
Application of case management procedures should be flexible and more individualized	9
The district judges should be apprised of the bar's perception of delay in ruling on dispositive motions	9
Magistrate judges review discovery plans to curb discovery abuse	9
Use of early, firm trial settings, to the extent practicable	10
To maximize effectiveness, the status conference with a district judge should not be scheduled too soon after the Rule 16 case management conference	10
Use magistrate judges to preside over trials	10
Monitor the effect on magistrate judge workloads of increases in magistrate judge civil consent cases	10
Magistrate judges should each have two law clerks	11
Acceptance of binding plea bargains and stipulations	11
Open file policy	11
Improvement of the management of the criminal caseload in Las Cruces	11
The chief judge should address the members of the bar at the annual bar convention	12
General Conclusions	12
Recommendations	14

I. BACKGROUND

In accordance with *28 U.S.C. 478*, on February 28, 1991, the U. S. District Court for the District of New Mexico appointed an Advisory Group to comply with the provisions of the Civil Justice Reform Act of 1990. The Advisory Group submitted its initial report in November 1992. The Court, pursuant to *Section 472(a) of Title 28 of the United States Code* and the recommendations of the Advisory Group, on January 1, 1993, adopted its Civil Justice Expense and Delay Reduction Plan. On September 28, 1995, the Advisory Group submitted its 1994 annual assessment of the court's civil and criminal dockets and made further recommendations to reduce cost and delay in the district.

On August 7, 1996, the second Advisory Group appointed under the Act submitted the 1995 annual assessment of the conditions of the court's dockets. The 1995 assessment reflected that implementation of the Court's Expense and Delay Reduction Plan had resulted in the expeditious and orderly disposition of civil cases. The Advisory Group did not recommend significant amendments to the Plan but indicated that greater flexibility in the Plan's implementation would help achieve the goals of the Plan. The evaluation identified and made pertinent recommendations regarding several areas which the Court could consider for improvement.

This 1996 and final evaluation under the Civil Justice Reform Act reviews the statistical update of the Court's civil and criminal filings, terminations and pending caseloads, total trials, ages and categories of terminated civil cases, number and percent of civil cases over three years old, total motions filed, ages of terminated and pending dispositive motions and total magistrate judge civil consent cases. This 1996 annual assessment also comments on the recommendations made in the 1995 annual assessment and sets forth conclusions from the data with attendant recommendations.

II. STATISTICAL OVERVIEW

A. Overall Judicial Workload

Table 1 reflects New Mexico's total case filings, terminations and pending caseloads for twelve month periods ending September 30 for the years 1991 through 1996. The table reflects a 14.3 percent increase in total filings in 1996 compared to 1995 and a 33.4 percent increase when compared to filings during 1991. The percentage increase from 1995 to 1996 reflected that New Mexico had the highest increase in total filings within the Tenth Circuit.

Table 1
Total Filings, Terminations, and Pending Cases

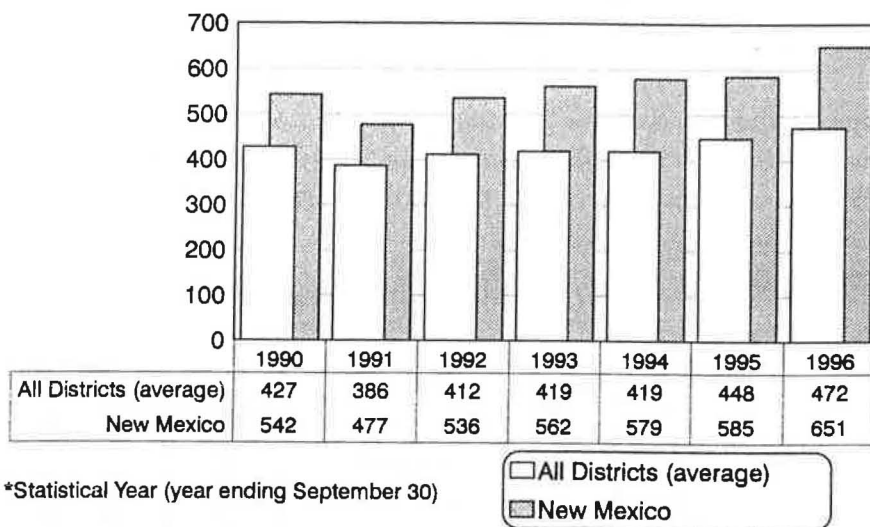
Year Ending September 30	Cases Filed		Cases Terminated		Cases Pending	
		% chg from '96		% chg from '96		% chg from '96
1991	1,855	33%	1,751	32%	2,371	-5%
1992	2,016	23%	2,079	11%	2,308	-2%
1993	2,198	13%	2,368	-2%	2,059	10%
1994	2,200	12%	2,059	12%	2,148	5%
1995	2,165	14%	1,999	16%	2,136	6%
1996	2,474		2,313		2,258	

B. Actions Per Judgeship

1. Weighted Filings

The Judicial Conference of the United States uses a system of case values based on measurement of judge time devoted to different types of cases to determine weighted filings. Graph 1 compares New Mexico with the national average of weighted filings for Statistical Years (SY) 1990 through 1996. For SY 1996, New Mexico attained a total of 651 weighted case filings per active judgeship, a 11.3% increase over the weighted case filings for 1995. The District of New Mexico ranked first in the Circuit and ninth in the nation in weighted filings. Furthermore, the graph shows that in 1996, New Mexico's weighted filings were 179 more filings than the national average of 472. The Judicial Conference of the United States has established 500 weighted case filings as the appropriate number for each active judgeship. Graph 1 demonstrates the urgent need for the additional Article III judgeships recommended for New Mexico, as is discussed more fully in this report.

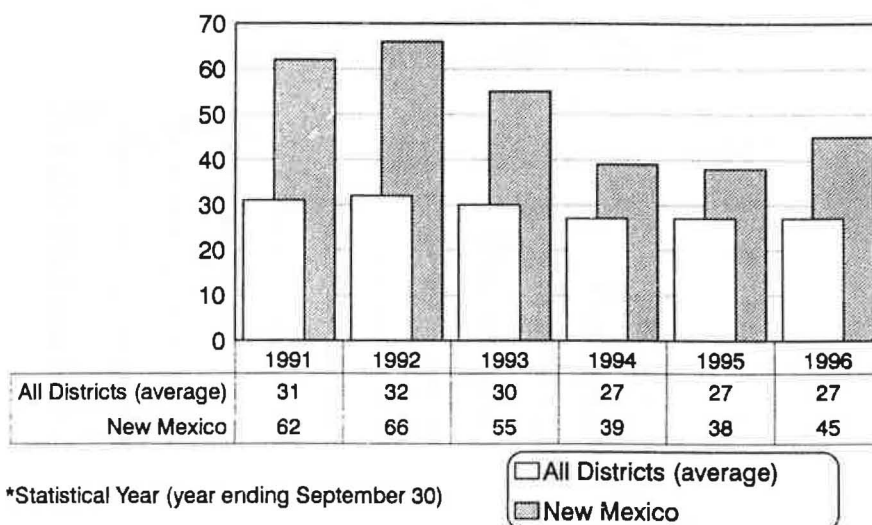
Graph 1
National and District Comparisons
Weighted Filings Per Active Judgeship*



2. Trials Completed

Graph 2 compares New Mexico with the national averages of trials completed per active judgeship for years 1991-1996. These statistics reflect that New Mexico has consistently been above the national average in the number of trials completed per active judgeship. In 1996, New Mexico's 45 trials per judgeship were 1.6 times greater than the national average of 27 trials. New Mexico ranked first in the Circuit and seventh in the nation as to trials completed per judgeship.

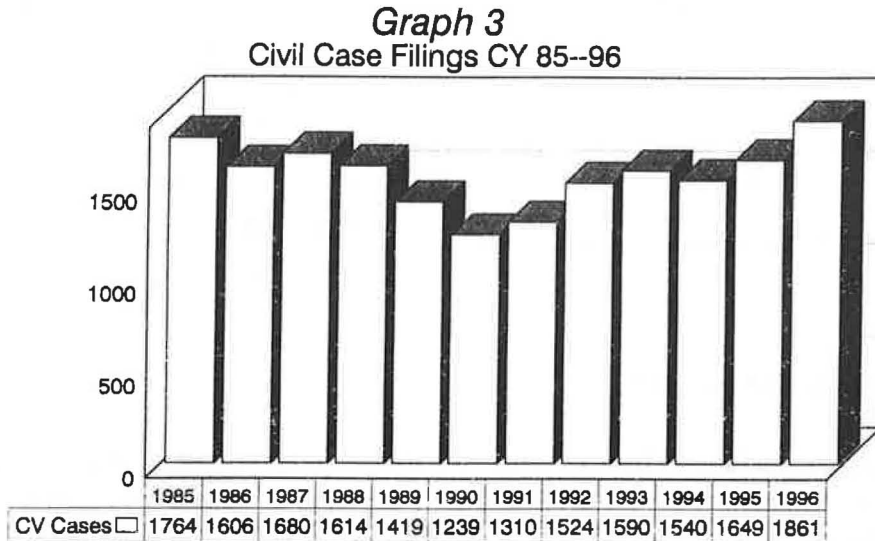
Graph 2
National and District Comparisons
Trials Completed Per Active Judgeship*



C. District Civil and Criminal Docket Data

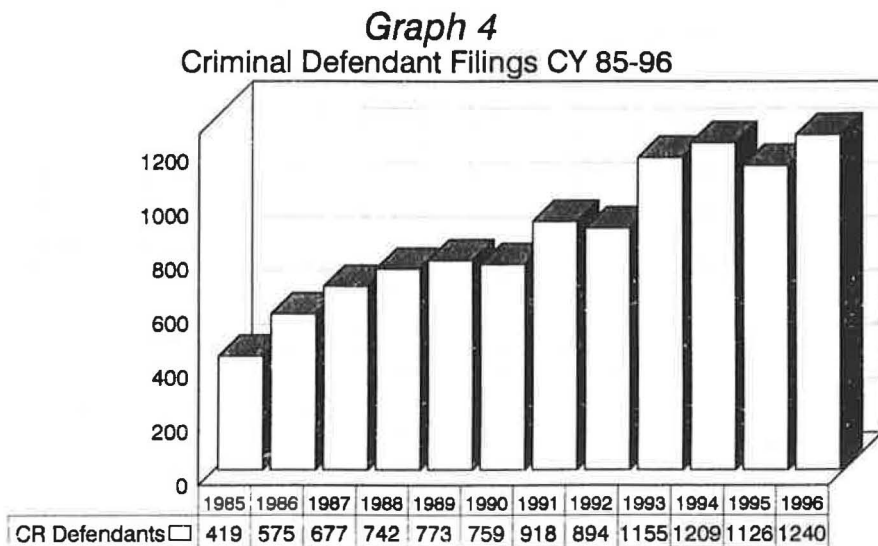
1. Civil Case Filings

Graph 3 shows the total civil case filings for New Mexico during Calendar Years (CY) 1985 through 1996. The 1,861 filings for 1996 reflect a 5.5% increase over the filings for 1985, and an increase of 12.9% over 1995.



2. Criminal Defendant Filings

Graph 4 depicts the total criminal defendant filings for New Mexico from CY 1985 through CY 1996. The graph vividly illustrates a steady increase in the total number of criminal defendant filings, tripling from 419 defendants in 1985, to 1,240 in 1996. Criminal defendant filings in 1996 increased 10% over 1995.



3. Ages of Civil Cases

Table 2 presents the median age of terminated civil cases and the number and percentage of civil cases pending over 3 years. The data further reflect that the median age for disposition of civil cases during 1996 in the District continued at nine months while the percent of cases pending over three years has consistently decreased.

Table 2
Ages of Civil Cases

Year Ending September 30	Median Age of Terminated Cases	# of Cases Pending Over 3 Years	% of Cases Pending Over 3 Years
1991	13 months	163	8.7%
1992	12 months	172	9.8%
1993	9 months	129	8.1%
1994	9 months	98	6.2%
1995	9 months	90	5.2%
1996	9 months	75	4.8%

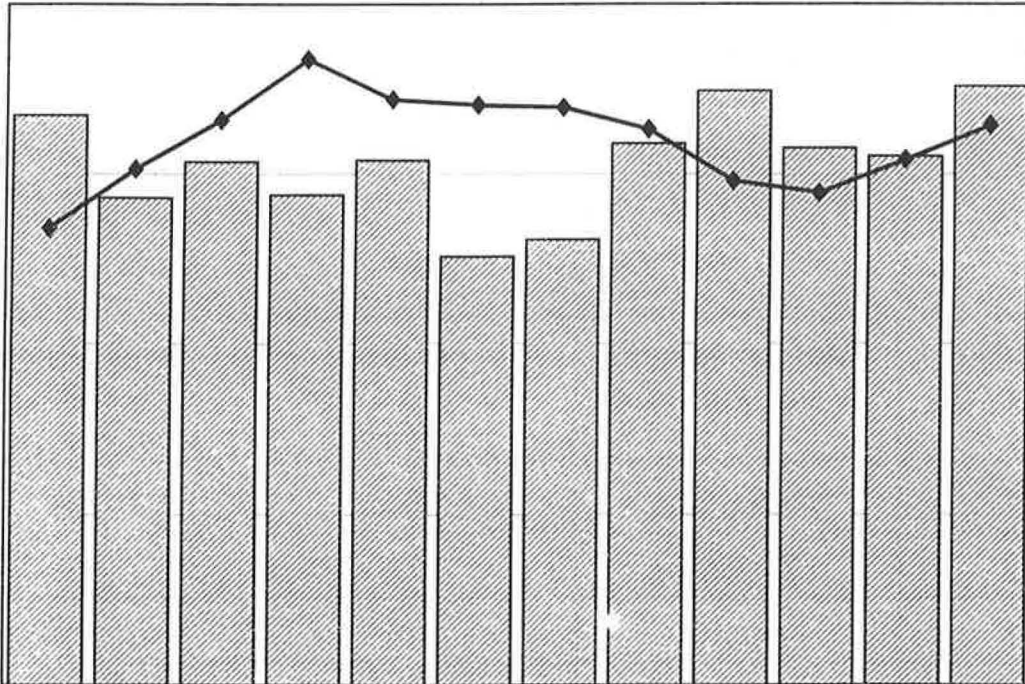
4. Pending and Closed Civil Cases

Graph 5 represents the total number of pending and closed civil cases for 1985 through 1996. The District's pending cases have fluctuated over the past 12 years, with a high of 1,839 in 1988 and a low of 1,339 in 1985.

Graph 5 also sets forth the ratio of pending to terminated civil cases which is a better measure of a court's ability to dispose of its cases. When the ratio is one, the court is disposing of more cases than are pending. Likewise, when the ratio is over one, it is an indication that the court is "falling behind." New Mexico has experienced a favorable ratio for the past five years.

Graph 5

Pending and Closed Civil Cases 1985 to 1996



	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996
Pending	1339	1515	1659	1839	1719	1703	1696	1631	1479	1443	1542	1644
Closed	1673	1429	1536	1438	1540	1256	1306	1589	1745	1576	1552	1759
Ratio	0.8	1.1	1.1	1.3	1.1	1.4	1.3	1.0	0.8	0.9	1.0	0.9

◆ Pending
 ▨ Closed

D. Motion Filings

Table 3 compares total motions filed with the total dispositive motions filed in 1995 and those filed in 1996. The table reflects that approximately 32% of the total motions filed in 1995 were dispositive motions and that the percentage of dispositive motions decreased to approximately 29% of all motions filed in 1996. The 2,026 dispositive motions filed in 1996 represent a decrease of 19% from the 2,497 filed in 1995. The number of dispositive motions not ruled on and pending over six months in 1996 decreased 33% from those pending over six months in 1995.

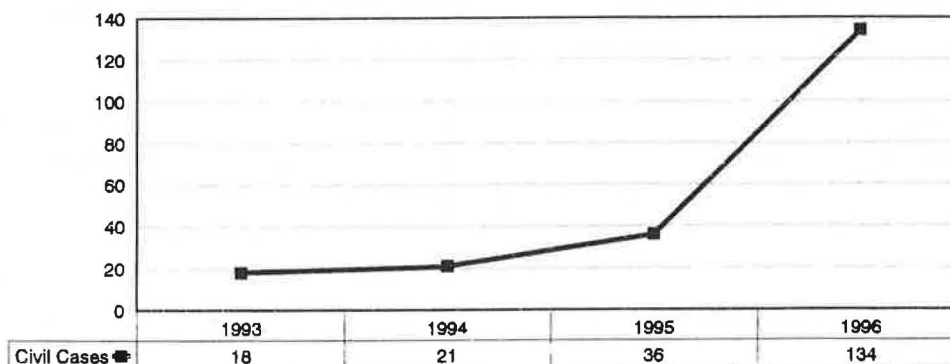
Table 3
Motions Filed 1995 and 1996

	1995	1996	% change
Total number dispositive motions filed	2,497	2,026	-19%
Total number dispositive motions filed and terminated within same year	2,008	1,660	-17%
Average number of days to rule on dispositive motions filed and terminated same year	66	46	-30%
Median number of days to rule on dispositive motions filed and terminated same year	38	26	-32%
Dispositive motions not yet ruled on, pending over 6 months	140	94	-33%
Dispositive motions not yet ruled on, pending under 6 months	349	272	-22%
Total motions filed	7820	6,989	-11%
Percent filed dispositive	31.93%	28.98%	-2.95%

E. Consents to Proceed Before a Magistrate Judge

Graph 6 illustrates that parties in the District of New Mexico are consenting to have more civil cases tried by magistrate judges under the "Opt In" provisions of Federal Rule 73(b) of the Federal Rules of Civil Procedures and District of New Mexico Administrative Order No. Misc. 96-137. The graph reflects there has been an increase from 18 consent cases in 1993 to 134 in 1996. The 1996 consent cases represent 7.2% of all civil cases filed that year.

Graph 6
Consents to Proceed Before a Magistrate Judge



III. REVIEW OF PREVIOUS ASSESSMENT RECOMMENDATIONS

A. Increase the Number of Article III and Magistrate Judges

The increasing caseloads, especially the criminal cases, continue to be of great concern to the judges and litigants of the District. The criminal defendant filings for 1996, for example, increased 83% over those in 1987. Without question, the increases in criminal filings, which have continued consistently over the past decade, significantly influence the Court's ability to dispose of its civil cases on a more timely basis since the Speedy Trial Act mandates that the Court give priority to criminal cases. Because of these dramatic increases in criminal felony filings, it was recommended by the judges and lawyers that a necessary solution would be to increase the number of Article III and magistrate judge positions.

The Court in its biennial judgeship survey submitted on October 5, 1995, requested that two permanent judgeship positions be approved for the District. The Judicial Circuit of the Tenth Circuit U.S. Court of Appeals on February 22, 1996, approved the preliminary recommendation of the Subcommittee on Judicial Statistics of the Judicial Conference that the District of New Mexico be allocated one additional permanent and one temporary judgeship. On September 17, 1996, the Judicial Conference approved recommending legislation to the Congress to increase New Mexico's Article III judgeships by one permanent and one temporary judgeship.

It should be pointed out that legislation for the new district judgeships has not yet been submitted to Congress. The Administrative Office advised that the Judicial Conference will meet on March 11-12, 1997, to consider requests for additional circuit judgeships. After they decide these, legislation will be submitted to Congress requesting approval for the circuit and district judgeships in a one-package proposal.

The senior district judges for New Mexico continue to contribute commendable judicial service to the District. The senior judges conducted 18 civil and 40 criminal trials during calendar year 1996, and these constituted 19.4% of the total civil trials and 22.5% of the criminal trials. Visiting judges, including a Tenth Circuit appeals judge, have also been of great assistance to the District. In 1996, they conducted 24 civil trials or 25.8% of all civil trials, and 5 criminal trials or approximately 2.8% of the criminal trials for the District.

Regarding the additional magistrate judge positions, the 6th full-time magistrate judge for New Mexico was appointed on June 21, 1996. A retired magistrate judge was recalled on May 5, 1995, for service in New Mexico and has been on duty since that date. His last appointment for another one year term began on January 22, 1997. The District of New Mexico continues to be one of the courts with the highest magistrate-to-district judge ratio with 7 full-time and 2 part-time magistrate judges.

B. The District Should Plan for a Sufficient Number of Courtrooms as Article III and Magistrate Judges Are Added

The ground breaking ceremony for the new courthouse in Albuquerque was held on September 14, 1996, and final construction is currently contemplated for October 1998. The new courthouse will have 10 district judge courtrooms. The jury assembly room in Santa Fe has been expanded for use as a large hearing room. In addition, an additional non-jury courtroom has been planned for Santa Fe and it should be available for judicial proceedings before the end of 1997. Construction of an annex to the Las Cruces courthouse has been deferred by the Administrative Office. It is currently estimated that this addition will not commence until the year 2001 and the construction will take approximately one year. The annex will have from four to six additional district judge courtrooms.

C. Application of Case Management Procedures Should Be Flexible and More Individualized

It was suggested during the last CJRA assessment that judges should avoid "*shoehorning*" cases into set categories, i.e., expedited, standard, complex, and administrative, which might not fit a particular case. Current procedures permit discretionary flexibility by the magistrate judges who take into consideration the individual circumstances of each case as they set discovery and scheduling deadlines.

D. The District Judges Should Be Apprised of the Bar's Perception of Delay in Ruling on Dispositive Motions

Some attorneys believe that there are excessive delays in ruling on dispositive motions. However, during 1996 there was a dramatic decrease in the time within which judges ruled on dispositive motions. On average, the rulings in 1996 were made within 30% less days than the rulings during 1995, and within the 60 days recommended by the Court's Expense and Delay Reduction Plan. Ninety-four dispositive motions were pending over 6 months in 1996 compared to 140 pending over six months in 1995.

E. Magistrate Judges Review Discovery Plans to Curb Discovery Abuse

Current procedures by which counsel have significant input into discovery deadlines through their "meet-and-confer" sessions and resultant provisional discovery plans have significantly reduced discovery abuses. Magistrate judges have indicated

that there is compliance in the majority of cases and the relatively few abuse situations generally involve the same attorneys. The magistrate judges have applied sanctions where appropriate.

F. Use of Early, Firm Trial Settings, to the Extent Practicable

The District's judicial officers are aware that early, firm trial settings are conducive to expediting the disposition of cases. However, there are indications that occasionally when trial dates are set, extensions of these dates are liberally given. Although valid reasons may exist for extensions, such as the press of criminal cases or conflicting trial schedules, the judges should be sensitive to the problems associated with late or changing trial dates.

G. To Maximize Effectiveness, the Status Conference With a District Judge Should Not Be Scheduled Too Soon After the Rule 16 Case Management Conference

Some district judges prefer to hold early status conferences. Others are holding status conferences at an appropriate interval to acquaint them with the case, narrow issues, reduce disputes and spur settlement. Some judges do not hold status conferences except in complex cases.

H. Use Magistrate Judges to Preside Over Trials

The Court on August 22, 1996, adopted Administrative Order No. Misc. 96-137 which sets forth procedures for random assignment of one case out of every seven civil cases filed to a Magistrate Judge pool. From the pool, each magistrate judge is assigned cases on an even and random rotation basis. The Clerk sends a consent to proceed before a magistrate judge to each party who has 20 days after service to return the completed consent form. The parties have timely consented to assignment to the Magistrate Judge in most of the cases assigned under this plan.

I. Monitor the Effect on Magistrate Judge Workloads of Increases in Magistrate Judge Civil Consent Cases

The Chief Judge and other District Judges are keeping abreast of the magistrate judges' workloads through periodic judges' meetings and statistical reports.

J. Magistrate Judges Should Each Have Two Law Clerks

Magistrate Judges are normally allocated a secretary and one law clerk. Article III judges, on the other hand, are assigned two law clerks, and in instances where special work requirements justify additional assistance, a judge may be assigned the temporary assistance of a third law clerk.

Indicative of the need to have more law clerks is the fact that several Magistrate Judges in the district have given up one half-time secretarial slot, or, in instances, a full-time secretarial slot and have received, in turn, either a half-time law clerk or a full-time law clerk.

The Advisory Panel and the district strongly recommend that the Administrative Office of the Court, the Tenth Circuit Judicial Council, and the Judicial Resources Committee of the Judicial Conference consider increasing personnel allocations so that each Magistrate Judge is entitled to two full-time law clerks.

K. Acceptance of Binding Plea Bargains and Stipulations

There is a general consensus that binding plea agreements and binding stipulations are being accepted as deemed appropriate.

L. Open File Policy

The District uses a standing discovery order in criminal cases which has substantially reduced the number of motions filed and motions hearings. The judges encourage the office of the U.S. Attorney to permit open file discovery in all but exceptional cases.

M. Improvement of the Management of the Criminal Caseload in Las Cruces

During 1996, there were 61 criminal trials held in Las Cruces. Of these, 27 or 44% were conducted by the Senior District Judge in residence at that location. In addition, both magistrate judges in Las Cruces are now taking felony pleas, with the parties' consent, for the district's Article III judges. Courtroom scheduling has been automated, which has resulted in a more effective and quicker means of allocating the courtrooms. Furthermore, all pleadings filed in Las Cruces are now docketed there.

N. The Chief Judge Should Address the Members of the Bar at the Annual Bar Convention

The Chief Judge delivered a *State of the Judiciary Message* to the New Mexico Bar Association membership during the annual State Bar convention which was held in September 1996 in Albuquerque.

IV. GENERAL CONCLUSIONS

A. Actual and Weighted Case Filings

The District of New Mexico is one of the busiest courts in the country. Its percentage increase in total filings for 1996 compared to 1995 placed New Mexico 1st in the Circuit and 19th in the nation. Its criminal felony filings per active judgeship ranked New Mexico first in the Circuit and 4th in the nation. The 1996 weighted case filings per active judgeship, which represent a more realistic picture of a court's actual workload, reflected that New Mexico was first in the Circuit and 9th in the nation in overall workload.

B. Court Productivity

The District has obviously responded productively to its workload demands as reflected in its average trials completed for active judgeship and other factors. In 1996, New Mexico conducted almost twice the national average of trials per judgeship. Furthermore, during the past five years, New Mexico has decreased its median time for terminating civil cases from 13 to 9 months. This has had the resultant effect of New Mexico experiencing a favorable ratio of pending to closed cases for the past five years which shows that the Court is controlling its civil case backlog.

C. Magistrate Judge Consent Cases

There is a definite increasing trend in the number of civil cases in which litigants are consenting to trial by Magistrate Judges.

D. Overall Case Management

The data definitely show that the Court is functioning effectively under sound case management principles. This is particularly evident in view of the tremendous increase in workload. Since 1991, there has been a 35% increase in criminal defendant filings, and a 42% increase in civil case filings. Despite the increasing caseload, New Mexico's total pending civil and criminal cases have decreased 5% since 1991. The median length of time from filing to disposition of civil cases has decreased from 13 months in 1991 to 9 months in 1996. The District, therefore, is disposing of more cases in less time than five years ago.

E. Procedure for Opposed Motions under Local Civil Rule 7.3

The "packet" filing procedures for opposed motions have created unanticipated problems. The judges have met with attorneys to discuss various problems and concerns. The district has a standing Rules Revision Committee which continuously considers rule changes; the Committee has under consideration amendments which address the concerns expressed about Local Civil Rule 7.3.

F. Pro Bono Panel

A Civil Pro Bono Plan was adopted by court Order, Misc.No. 95-189, filed October 18, 1995. The Order created the Pro Bono Selection Committee and delegated to it the tasks of approving and training attorneys willing to accept appointment to represent pro se parties in federal civil actions when parties lack the resources to retain counsel. The Committee has approved 23 attorneys to serve on the Pro Bono Panel and four of them have been appointed to cases. The first was appointed on February 6, 1997. The Order also authorized payment of selected litigation expenses for these cases, with a \$2,500 cap, from the Bench and Bar Fund. Training began in December 1996, at a full-day Continuing Legal Education seminar entitled, "Representing Prisoners" which was very well-attended.

G. District's Bar Association

The Bar Association of the United States District Court for the District of New Mexico was established by Misc. Order No. 95-182 entered on October 4, 1995. The Association held a meeting of its Management Committee on April 4, 1996, during which the following committees were established: Oversight and Support Committee, Continuing Legal Education Committee, Bench and Bar Relations Committee, and a Mentorship Committee. A full membership meeting was held in September 17, 1996.

The Association plans to have its first swearing-in ceremony in May 1997 to include newly admitted attorneys who passed the New Mexico Bar exam in February 1997. The Management Committee is also planning to meet with the Chief Judge concerning its mentorship program which is designed to assist inexperienced attorneys in various facets of federal court practice.

V. RECOMMENDATIONS

A. Reevaluation of Case Tracks

It is recommended that the Court establish stage or event deadlines for Social Security cases, which are currently handled under the Administrative Track which has no specific deadlines. It is also recommended that the Court add a "Special Management Tract" for cases which reach the pending over three years status and for urgent or high profile cases so that they will have monitoring, handling and sheparding for expeditious disposition.

B. Alternative Dispute Resolutions

This District's magistrate judges and the recalled magistrate judge have been very effective in disposing of cases during settlement conferences, the main form of ADR used in this District. The District Judges and Magistrate Judges are encouraged to discuss other ADR alternatives.

C. Setting Firm Trial Dates

It is recommended that firm trial dates be set for civil cases as soon as practicable by all judges.