

**BREAKFAST WITH THE BENCH PROGRAM**  
**2009 Lawyer Representatives' Feedback Summary**

**I. DELAY**

FEEDBACK	SUGGESTION/SOLUTION
The delay. I'm sure everyone will note this, but the delay between notice of appeal and oral argument is absurd.	
Ninth Circuit COA: The usual - appeals take such a long time to resolve. I'm still waiting on 2 decisions in cases argued well over a year ago. Intake is fast and smooth, but results are slow in coming.	
	I don't know if I agree that we're too big. I think if the circuit was managed properly and had enough resources we could remain this big. I'd like to hear from judges what resources they think would help.
Delays in obtaining hearing dates (e.g., earliest hearing date 60 days away).	
One judge took over 3 months after briefing was complete to decide a dispositive motion, and then failed to decide a subsequent motion to amend/certify class before time to appeal expired (which was lengthy, because separate judgment was never entered under Rule 58). Another judge has sat on a habeas petition for an immigration detainee for over six weeks after briefing was complete, which is a particular concern because one of our claims is that the detention itself is unlawful, regardless of the merits of the immigration case.	

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<p>My biggest concern within the Ninth Circuit as a whole is the wide disparity in issuing timely decisions, I am aware of a case pending in one district where a major motion was taken under submission. The judge was in a very high profile trial, followed immediately by another high profile trial, yet managed to get out the ruling on our major motion less than two months after it was taken under submission - with an apology from the judge that it had taken so long. At the same time two other cases were pending in different districts where, one on a similar motion and the other on a less significant motion, it took an extremely long time - one four months, the other eight months - for the court to issue a ruling.</p>	<p>There are several solutions. One is a matter of reporting - if judges need to tell the Chief Judge or the clerk how many motions are pending and for how long so there is some sort of accountability, at least there can be a follow up request for an explanation that may help to get the process moving. And if it is habitual, then maybe the court is too busy with other matters and the case and/or motion needs to be reassigned. Another thought would be to assign the motion if it lags too long to the magistrate judge for a recommended ruling. Encouraging the scheduling of status conferences every 3 months - just a 5 minute telephonic check in call - may help. That way if something is pending the parties can then inquire of the status without calling the clerks for an update (which courts do not like) and the judge may recognize that the case will not advance without a particular ruling being issued. Or if there is a policy of encouraging tentative rulings, which many judges do, at least the parties can get a sense of where the judge is to report to their clients and maybe advance the case even if the tentative ruling sits for some time before becoming final (and which may have its own settlement value).</p>
<p>In many cases, there can be a single dispositive issue, but the parties wind up litigating for years on all issues in the case. We should study ways to accelerate and litigate core or central issues that can be dispositive.</p>	

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<p>After accepting a Rule 23(f) petition to review denial of class certification, the 9<sup>th</sup> Cir. has sat on the case for over 4 months since briefing was complete, without scheduling an argument date or giving any indication that it will decide the case without argument.</p>	
<p>I have been involved in matters where the court has accepted a matter for 1292(b) interlocutory appeal - which is supposed to be a relatively expedited procedure because it is by definition holding up a case in the middle of its prosecution. Yet it has been sitting, fully briefed, for at least 6 months with no scheduled hearing. The same goes for Rule 23(g) appeals. While I could not locate recent statistics on the numbers of these filings, anecdotally they are a small number in terms of acceptance. It would seem not a difficult process to identify those cases and put them on a separate track, schedule a hearing early on to simply set a firm briefing schedule and hearing, or at least in the clerk's office monitor them for periodic updates so that they do [sic] not get lost in the system. In my particular matter, the ruling being appealed from was issued in June 2007. An expedited ruling that comes down two years later defeats the purposes of having an expedited ruling procedure as the whole case gets put on hold - in this case for the second time.</p>	
<p>If delay is unavoidable, I would appreciate more information on what causes the delay, so that it does not appear as</p>	<p>For example, in the Ninth Circuit, it would be good to know if the court is going to hear argument, and if so, approximately</p>

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though my cases disappear into a black hole.	when; or has declined to do so and is working on an opinion.
It is important that the Ninth Circuit timely give notice of oral arguments so that parties can be prepared more than two weeks in advance.	
We may not be able to help the backlog at the Ninth Circuit on post-judgment appeals, but at least by then in most cases (save for granted motions to dismiss) the parties have been heard, the documents and testimony preserved, and the parties have a ruling by which they can make an informed assessment how to proceed. The delays I have experienced - in one case I just passed the six year mark and we are still on the pleadings due to these types of delays, with no end expected in 2009.	Just having someone in the process monitor and try to keep down those delays or create some mechanism for accountability could have a dramatic impact in shortening these delays.
Firmness of Trial Dates - A problem I see in the district courts in the Ninth Circuit is the need for more communication from the bench regarding civil trial dates and the firmness of trial dates. I have had several cases where we do not have any sense how secure a trial date is - and in the meantime we need to make substantial commitments to hotel space and other travel and logistics commitments. Clients have to make deposits on hotel space without knowing if they really need the space. I know that in some situations the district judges are juggling multiple cases with the same trial date - but it	A proposed solution is that lawyers have an opportunity to have a conference with the judge 90 days prior to the trial date to check in on the status of the trial date. Finding out the firmness of the trial date 3-4 weeks ahead of time at a pretrial conference is too late.

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<p>would be helpful to have more communication from the judges on this topic.</p>	
<p>Limiting Sentencing Time - The District Judges in this district spend a substantial amount of time in routine sentencings, such as in immigration cases. However, this is a fact of life because we are in a border district.</p>	<p>Further review of ways to streamline this process without sacrificing the rights of defendants may be useful.</p>
<p>This district has an ongoing problem with delay in appointment of counsel in habeas counsels. This district should follow the approaches of other districts in appointing the Federal Public Defender in those cases.</p>	
<p>This district has too many cases for the number of Judges. This means that it can take too long to get an initial case conference (which then tends to delay the time for the Rule 26 conference and the start of discovery) and subsequent hearing dates. There is a concern that this pressure may tip the balance in favor of dismissing claims.</p>	<p>The solution is more Judges, more pro se clerks (to deal with the ballooning pro se filings) and more resources generally, which does not seem likely in the short term.</p>

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<p>ENE Program - The ENE program in this district does get the parties before the court early and the court engaged with the parties, and does reduce the docket and should be considered for more widespread adoption. But setting it after the case is at issue is a problem, as the case can then lag behind the requirements for setting a Rule 16 conference as set forth in the FRCP. It also encourages the filings of motions to dismiss to avoid the ENE, since no discovery can take place before the ENE is held.</p>	<p>A couple thoughts are that magistrates ask the parties if the case is truly ready for an ENE before it happens (particularly in complex multi party cases) or if they need limited information beforehand, or set it within the FRCP timelines for Rule 16 conferences to discourage needless motion practice.</p>
<p>Delay in some Districts in getting routine motions addressed. It sometimes takes months to get a routine Rule 12(b) motion or Rule 15 motion resolved. Practitioners understand that speedy trial rules and other considerations will often mean that civil matters have to take a back seat to criminal matters. However, the delay in getting a go/no go ruling for routine motions will often disrupt proceedings and multiply costs. Difficulty (delay) in some Districts in getting oral argument or hearings scheduled. It sometimes takes months to get oral argument scheduled just scheduled not conducted), and then the argument date is set for another two or three months after that.</p>	<p>One practitioner suggested that some District Courts could perhaps consider scheduling a hearing or argument day once or twice a month for a morning or afternoon session allowing parties to schedule brief 15 minute status hearings. Parties could call in and book a ten or fifteen minute segment. If nothing else it would give parties a chance to ask the Court for a status report or to inquire as to when a matter might be heard. Some practitioners have asked if PACER will ever implement a user friendly search protocol to allow counsel to research decisions and rulings in specific fields more easily.</p>

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<p>The major problem is the length of time for decisions on motions to dismiss and for summary judgment. Particularly when immunity defenses are raised, the delay impacts discovery decisions. For instance, while my motion to dismiss on prosecutorial immunity grounds is pending, do I participate in the discovery process, such as attending depositions of other parties and witnesses or do I wait until my motion has been resolved? I had a motion pending for almost a year. I have experienced similar delays in receiving a decision after a trial (more than a year) and after oral argument in the Ninth Circuit (one year).</p>	<p>I am not sure what to suggest as a solution; however, perhaps defined timetables for either a decision or a status update (a court appearance to resolve any issues that are delaying the decision). Another issue is the awarding of attorneys fees against the government.</p>
<p>Amount of time it takes to obtain rulings on motions in District Court. Although it differs among judges, it generally seems to take a significant amount of time to obtain a ruling on a motion. This can have a dramatic affect on parties and practitioners. For instance, a motion for partial summary judgment or motion to dismiss might be filed early in the case to attempt to narrow the issues that need to be subject to discovery. However, the motion will not often be decided until the discovery period is completed or almost completed. Therefore, the parties sometimes have to undertake extensive and costly discovery which could be avoided by the Court's ruling on the motion. In other circumstances, motions for summary judgment may be filed at the end of the discovery period. However, they may not be decided upon for several months (up to nine months in this practitioner's experience,</p>	<p>This counsel understands that there are already reporting requirements with respect to submitted motions that affect the judges. However, counsel believes that the reporting requirements are still too liberal with respect to the decision on motions, Practitioners certainly understand the burden of the District Court Judges. Nonetheless, counsel would like to see tighter deadlines for a decision on a motion. Generally, absent unusual circumstances, it would appear to practitioners that 60 days would be sufficient to decide almost any motion submitted to the Court.</p>

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<p>after filing). This significantly prolongs the litigation process.</p>	
<p>This district uses a stacked calendar for trial settings. Often, trials in federal court include counsel, parties, and witnesses from outside of the jurisdiction. It is extremely difficult in those situations for counsel, parties, and witnesses (particularly expert witnesses) to block off significant chunks of time on a stacked calendar when the parties, counsel, and witnesses do not know when they will actually be going to trial.</p>	<p>Provide fixed trial dates to litigants so that they know exactly when they will have to appear in court. Even a fixed trial date with a backup alternative date in case the first date is not available would be better than the current system of a stacked calendar.</p>
<p>It takes too long between oral argument and the filing of briefs. As a result issues briefed may no longer be current. In addition, the citizens who need a ruling are left in limbo. In some cases, especially when the matter will determine the rise or fall of a business or the when the decision will profoundly affect the well being of an individual, the length of time for the wait is unconscionable.</p>	

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One of the concerns expressed to me is the excessive time matters are under submission in the district. One complaint had to do with difficulty in getting return calls from courtroom deputies. The website is good for answering questions, but sometimes you need to speak to a human being to get your problem resolved. Not all deputies return messages promptly.	Perhaps more emphasis could be placed on this job responsibility.
The 9th Circuit and district courts seem to be backlogged. To remedy this, all vacancies should be filled immediately. There is no reason to split the circuit, just fill vacancies and let the circuit work.	
Attorneys who have let an appeal drop in the bucket for a year or two --- dropped through the cracks or whatever- get a letter reminding them to do something within a reasonable time, while if one is late in filing a brief, by three days from the original time due, they get up-in-arms. Just doesn't seem consistent or fair for that matter.	Backlog; fill vacancies.
The lengthy period between the time appeals are filed and when they may be decided is quite a deterrent to litigants. I suspect many worthy appeals are not filed because of this.	

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<p>There is a perception that the resolution of a case can be dependent on which District Judge gets it, especially in the criminal context. The examples that were given involve sentencing after trial and the types of plea deals that will be accepted. Discretion is a good thing, but significant disparities in what punishment defendants get in similar situations detract from the perception that justice is evenhanded.</p>	<p>One thing I think is that the district is so big that it just takes for forever to get anything through/or done or find contact people that can help when problems or questions arise.</p>
<p>The difficulty getting extensions. I had a case where it was a bear to get an extension of time to file my brief. Working 20 hour days, I got the brief filed in August 2006 when the notice of appeal was filed in January 2006. The case is set for argument on March 2, 2009. I think giving me another couple weeks would not have hurt anyone.</p>	
<p>What is the prospect that new Article II judges and magistrates will be added to these two districts to deal with illegal aliens? Does anyone outside of these districts (namely in Washington DC) care? Are civil cases in these districts suffering delays due to the crushing criminal caseload? In districts where there is not such a large caseload, can judges be borrowed for long by those in busier districts?</p>	

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I saw an earlier comment about border and immigration issues. From what I understand from my friends at the US Atty's office, there's a bottleneck along the border due to lack of resources. Perhaps Janet will send some homeland security dollars our way ?	

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**II. JUDGE TEMPERAMENT AND Demeanor**

<b>FEEDBACK</b>	<b>SUGGESTION/SOLUTION</b>
<p>The demeanor of the judges. When I go to this district, I feel that I am a respected part of the process, and I am there to help the judges find the right answer. In the Ninth Circuit I often feel I'm an annoyance the judges must tolerate. I'd prefer that the court not have oral argument rather than act as if it's an imposition. I don't mind vigorous questioning, but too many ninth circuit judges are unprofessional.</p>	
<p>The court intrudes on counsel's conduct of the case, judges are acting the roll of drill Sergeant rather than neutral. They should get out of the way.</p>	
<p>Overall, my experiences have been very positive. The few negative experiences that I have had have been memorable. I have personally observed rude, condescending and frankly embarrassing behavior from Senior Judges.</p>	

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<p>This may sound extremely naive, but at the district court level practitioners I work with comment fairly frequently on the different quality, attitude, health and demeanor of certain district court judges. (Not big news, I'm sure.) Practitioners I know have sometimes resorted to dismissing and re-filing cases to avoid assignment to certain judges who have reputations for being arbitrary, cranky, ornery, dilatory, etc. I also know of practitioners who have approached the Chief Judge of the District and even the Ninth Circuit to express concern with some district judges, to no avail. I think that practitioners would like to know whether there is a specific go-to person to address these kinds of problems with district court judges. I don't mean, of course, any ex parte, case-specific issues. I mean when judges may appear to have health or other issues that seem to impair their ability to perform their jobs, etc. Some sort of ombudsman or the like might be helpful so that other judges don't have to confront their peers, perhaps.</p>	
<p>The way clients react to an adverse ruling can be significantly impacted in a negative way by their perception that the Judge did not show them respect and/or exhibit care and thoroughness in the analysis of the legal issues.</p>	

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<p>There are serious judicial temperament problems a USDC. The Court is abusive to counsel and debtors and creditors. A visit from a judge or commission is needed. This raises the greater issue of how judicial misconduct is addressed in the Ninth Circuit. The current system is not working and shields sitting judges too much.</p>	<p>It should be less difficult to complain and more open. Knowing that there can be scrutiny will curb some of the abuses seen.</p>
<p>I am concerned about the lack of management oversight for judges who become mentally incapacitated while still serving on the bench. I have personally witnessed judges who appear to be suffering from dementia and Alzheimer disease who continue to sit and hear cases. In one instance, the judge spent years and years hearing but never deciding cases. Practicing lawyers are fearful of coming forward and Chief Judges appear reluctant to act. I think there needs to be a system whereby federal practitioners may make their concerns known to the Chief Judge without fear of reprisal, and then I think Chief Judges need to take a more proactive role in managing caseloads. Second, the biggest complaint I have about both our district court and the Ninth Circuit is the delay in receiving decisions. I am well aware of the workloads facing district and appellate courts, yet some judges manage to get just about every single ruling out within 30 days or less while others take months, and sometimes even years. As Tom Petty would say, "the waiting is the hardest part." The fact that some judges are, in fact, well able to keep on top of their case loads tells me that the problem lies with particular judges</p>	<p>A judge who becomes unable to perform his or her duties should not continue to receive cases, and the cases pending should be re-assigned to other judges. A solution? Again, I think it is incumbent upon the Chief Judge to act as a manager and to encourage, compel, enforce judges to get their work done. As a practitioner, it was absolutely maddening to me to file a single, 30-day extension request on an appeal and receive a terse, reluctant grant with a caution that no further extension requests would be granted - only to have the court then take 18 months from the date of argument to decide the appeal. So what exactly was the rush?</p>

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and not with the work load.	
My complaint relates to civility from the bench during oral arguments.	
After being on the bench for a few years, District Judges seem to lose touch with the call to service that presumably motivated them to apply for appointment in the first place. They often act like lawyers are "bothering them" with the "petty problems" of their clients. They shut down argument, gripe when discovery motions or other problems are brought to their attention and make the lawyers go through a gauntlet just to get a hearing. They treat some cases, especially employment cases, like they are unworthy of real consideration and make comments that denigrate the value of our civil rights laws. They have lost touch with working families and the working lawyers who are not part of the power establishment.	

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<p>District Judges often fail in their responsibility to model professional behavior. When lawyers complain about their opponents' conduct, judges take the "now children, I want you to behave and work it out approach" instead of giving the parties the opportunity to voice their grievances and resolving them. Unfortunately, many lawyers will engage in the behavior they think is to their advantage and that they can get away with. If District Judges are not willing to "get their hands dirty" and get to the bottom of a dispute, if they are not willing to model professional behavior, if they are not willing to require those who appear before them to extend courtesies, act professionally, avoid sharp practice and maneuvering designed to make cases more expensive and more difficult, then behavior within the bar will not change. District Judges set the tone in litigation. If they demonstrate that they don't care about certain types of cases or certain issues, that they don't want to be "bothered" then that sends an important message to the lawyers that they can get away with just about anything and furthers the mind set that the goal is to win at all costs. This, in turn, further divorces lawyers from their oath to act as officers of the court to recognize that their obligations are to a fair and just judicial system as well as to their individual clients.</p>	

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**II. JUDGE TEMPERAMENT AND DEMEANOR**

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<p>Manners, manners, manners. Judicial arrogance and impatience are persistent issues for some (a minority) of judges. Professionalism among court staff is generally very high in this District, and I hope those responsible receive affirmative feedback. One persistent exception may be in the clerk's office, whose professionalism (courtesy and patience) appears to lag other court house staff. I suggest that the importance and significance of treating others with respect and courtesy be emphasized at all opportunities, by judges and those in leadership positions in all divisions of the court house. Training programs, and performance criteria, may also be appropriate avenues for improvement in this area.</p>	
<p>Judges need to try to refrain from interrupting each-other and giving attorneys more than one question at a time, then getting angry if his or her question was not answered.</p>	<p>It would be helpful for new practitioners to get feedback from judges about what worked and what didn't (after their case was decided). This way the Judges would get what they wanted, and practitioners would be able to hone their arguments to be most effective.</p>

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<p>There is really no effective procedure to make an anonymous complaint about mistreatment by a sitting federal judge. I have noted over the years that some times even federal judges will overstep their bounds and treat lawyers or litigants in a way that does not bring great credit to the bench. However, it is impossible under the present system to make any complaint about that treatment anonymously.</p>	
<p>The district court's 120-day deadline to complete discovery and file dispositive motions is too short in some cases, especially for lawyers who represent late-joined defendants. And the judges are inconsistent in their willingness to grant extensions. Some judges are lax, but others are "inflexible," which imposes a real burden on the lawyers and the parties. The court should be willing to extend deadlines when the parties agree to it -- after all, it's their lawsuit. The court should intercede only when the case is exceptionally old or there is a dispute to be resolved, as when one party does not agree to the extension.</p>	

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<p>The Court of Appeals seems inflexible on extensions of time, at least for briefs. The lawyers who practice there wonder why the court insists that the parties file briefs by the prescribed deadlines when it takes so long after the briefing to get an argument date. The court seems to want the parties to hurry up --and then wait. It's not just a matter of the burden on the lawyers to finish the briefing, Sometimes the briefs are stale by the time of the argument.</p>	
<p>In my experience, and that of my staff, the personnel in that clerk's office are often rude, to say the least. The employees who answer the phone are very pleasant, but when you get transferred to the person chosen to answer your question, the caller is belittled. This should be corrected. I have not experienced this problem with the Ninth Circuit staff in this office.</p>	<p>Have someone who is not known to the clerk's office make a few calls to the clerk's office with questions about what is required as to the form of a brief or motion, or some other procedure on a particular case and then take note of the tone of the response.</p>
<p>I've had limited experience with the federal court system, but the one thing that stands out to me as a legal assistant is the lack of service. I often call clerks to gather information at the request of my attorney, such as clarifying a due date. When I call, I am told that the only person allowed to answer my question is the Clerk assigned to our case. So I leave numerous messages without any return calls. I usually only get to speak with the Clerk if I continued to call until she/he answers his/her phone. This is a problem when we are up against a deadline which is more often than not.</p>	<p>I would suggest that any clerk be able to answer simple questions if the information is readily available. This is the practice in most state courts that we find to be very successful.</p>

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<p>There seems to be a real kind response from the 9th Circuit in this office but not so in the other office. This office is always nice. These personnel are not as well-trained in social skills and make one feel stupid when asking a question that is not OBVIOUSLY clear to some of us dumber attorneys for CJA.</p>	
<p>The clerk's office. It is unfriendly and unwieldy.</p>	<p>A more comprehensive list of phone numbers and who to call for what would be helpful.</p>
	<p>For the most part, the courts of this Circuit provide user-friendly services. Dealing with the Clerk's Office for this district, in particular, is almost uniformly a pleasure. Staff and people in the Clerk's Office are patient and informative.</p>
<p>The only concern I raise has to do with courtroom clerks at the trial court level. This would include bankruptcy courts and district courts. Too often, the court clerk is impatient, unfriendly and at worst, rude to counsel and/or litigants. This is regrettable because many times people have to conduct business through the clerk and may never get an audience with the judge.</p>	<p>Ideally, the clerk should reflect the patience and courtesy that are benchmarks of model judicial temperament. Perhaps this can be addressed in training or periodic memos. On a day-to-day basis, however, it is the judge's responsibility to make sure that clerks are treating the public with at least as much attentiveness extended by the judge.</p>
<p>Professionalism. Lack of civility and professionalism runs up costs and denies access to the court.</p>	<p>Courts need to take a stronger role in ensuring professionalism. Judges should be more active in getting to the bottom of a problem, which is often created by a lack of professionalism.</p>

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In criminal cases: there is a widespread view amongst the defense bar that many if not most Probation Officers harbor biases against defendants, I believe the sources of the problem are complex, and suggest consideration be given to constituting a committee to evaluate the issue.	
The Ninth Circuit mediators can be overly assertive and even downright pushy in attempting to force settlement of civil cases in which the U.S. Attorney's office is involved.	

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**III. INCONSISTENCY IN COURTROOM RULES**

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<p>This isn't so much a ninth circuit problem as a federal appellate court problem-the number of circuit rules. Can't the circuits get together and be consistent? There are too many exceptions to the FRAP. I like some of the ninth circuit's exceptions, but it's as if the 9th circuit is a court separate from the other courts of appeal.</p>	
<p>I think that the practice in this district that does not allow the parties to agree to a particular magistrate judge for settlement conferences causes a great many litigants to opt out of any court ADR services.</p>	<p>I understand that in this office the parties can request particular magistrates. I think that would make the use of magistrates for settlement conferences a far more attractive option and greatly advance the efficiency and cost-saving goals of ADR. Conducting settlement conferences is a skill and not everyone is equally effective. I think that by recognizing that some magistrates are better at mediation (or at least recognizing that for whatever reason the parties believe that to be the case) and allowing the parties to agree to a magistrate judge for mediation, the court would see a significant increase in the number of parties who opt into court conducted settlement conferences.</p>

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<b>FEEDBACK</b>	<b>SUGGESTION/SOLUTION</b>
	<p>Eliminate the local rules. Eliminate the chamber by chamber special rules issued by each district judge. Reduce to a minimum number all of the hearings and requirements that are now imposed by the local rules and the chamber rules. Adopt the procedures implemented by this judge. He held one status conference at the commencement of the case. He asked the lawyers when they would be prepared for trial. That trial date, whatever it was, was accepted by the judge and was entered in his calendar. The trial then started on that date. At the conclusion of the status conference, The judge said "I don't want to see you again until the trial date." If the above would be implemented, it would cost trial lawyers a tremendous amount of money which they are now receiving from their clients. On the other hand, it would give Federal Judges considerably more free time and would dramatically reduce the money now being paid by clients to litigate in the federal system. It has always been my opinion that the Federal Courts were in existence to accommodate the clients, not the lawyers or the judges.</p>
<p>Separate Judgment Requirement - Another concern is imperfect understanding among District Court Judges of the separate judgment requirement of FRCP 58. Some get it, but some don't. When they don't, it causes unnecessary complication and confusion on when the time to appeal runs; I would appreciate consistency among the judges in its application.</p>	<p>Perhaps a memo from the Chief Judge, or some other form of training, would be in order.</p>

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**III. INCONSISTENCY IN COURTROOM RULES**

<b>FEEDBACK</b>	<b>SUGGESTION/SOLUTION</b>
<p>Mediation - I have had a couple matters placed in the mediation program. It was done automatically. Neither has been successful. But setting the matter for mediation took the briefing schedule off calendar, it was automatically set for a hearing two months out, and after 15 minutes the mediator said it wouldn't settle. It was a class action case with 18 defendants. If they had asked at the beginning, we would have said don't select it. The case thus lost three months for no real reason. We thus took off calendar a case that might settle.</p>	<p>A questionnaire that says your case has been provisionally selected but will only go forward if both parties agree they believe there is a good faith belief a mediation would be a value, would be helpful and not used as a delay tactic.</p>
<p>Not allowing oral argument - This hurts the clients' sense of having their day in court on dispositive or otherwise important motions. The outcome may not change, but the perception of justice does.</p>	
<p>Postconviction/prisoner case load in this district remains an ongoing problem. Both parties should have the opportunity to decide whether to consent to magistrate dispositions in cases in which the assigned judge and magistrate are disclosed.</p>	<p>The court should continue to experiment with mediation as an alternative to in court litigation in prisoner cases. The division of the this district should consider an arrangement similar to the another division in which post conviction capital cases are heard directly by the judges and most other non-capital cases are heard by the magistrate.</p>

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**III. INCONSISTENCY IN COURTROOM RULES**

<b>FEEDBACK</b>	<b>SUGGESTION/SOLUTION</b>
<p>District Court Judges have a practice of hearing ex parte funding requests by the defense in their criminal and habeas cases. The district courts should consider the practice of another district in referring those requests to a CJA attorney.</p>	<p>The courts should also consider the state court practice of referring these requests to other judges. The courts should also consider means of advising opposing counsel of the general substance of all so-called "sealed events" and other ex parte proceedings, especially since the burden is on the defendant to show the need for confidentiality. Input from the opposing party could provide the court with information that will assist in focusing [sic] and disposing of funding requests.</p>
<p>The court should adopt internal guidelines for disposing of opinions and petitions for rehearing similar to the rules applicable to state courts.</p>	<p>As a cost savings and time savings measure, the court should consider adopting a procedure for telephonic oral arguments in routine cases.</p>
<p>There should be more consistency between Judges in terms of how they process cases. Many Judges' Standing Orders have become a new set of local rules. How does that benefit the fair and efficient administration of justice?</p>	
<p>There is a perception that in some cases there is unwarranted delay in setting oral argument after the briefing on appeal is complete. This causes parties and counsel to wonder if their case has fallen through the cracks. Is there some way for counsel to get the Court's attention to set an argument date?</p>	

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<b>FEEDBACK</b>	<b>SUGGESTION/SOLUTION</b>
<p>It seems as if en banc hearings are exceedingly difficult to secure even where a rule-based reason for review exists. Oral argument is vacated too easily and too often. A given panel may conclude that oral argument would not be helpful in a case. However, many practitioners respectfully submit that a part of due process is process; that is, is affording litigants an opportunity to present their case. There are too many inconsistent decisions or decisions that can be read as providing inconsistent guidance. Practitioners understand that the Court cannot accept en banc review in every case. However, many believe that there are far too many obviously important cases that are by-passed for no clear reason.</p>	<p>Perhaps the Court could consider adopting some sort of administrative guidelines as a tool for guiding exercise of the Court's discretion; for example, if six (6) Circuit Judges vote to grant a petition for review (over 20% of the Active regular Judges), there should be a presumption that en banc review should be granted. Perhaps the Court could consider appointing a panel of senior (emeritus) counsel to act as special masters to advise in a non-binding capacity as to whether or not review is merited. This would not be done in every case but only when a sufficient number of Circuit Judges voted in favor of review. The special master panel would then review and offer non-binding recommendations before a final decision was made. These are only working concepts and do not represent all options that might be considered. The perception is that the Court exercises extreme reluctance to accept cases for en banc review. Many practitioners believe that oral argument should not be vacated without at least notifying parties of the panel's intent and giving them a chance to object to vacating oral argument or a chance to explain why oral argument is necessary or would be helpful. A few practitioners wondered if the Court's overall efficiency might not be enhanced by organizing criminal, civil, and administrative oriented panels. The Court has considered and rejected similar proposals in the past. However, some practitioners believe that some kind of rotating system might be adopted by which Judges would serve in a given field for a certain period of time (18 to 24 months) before rotating to a new field.</p>

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**III. INCONSISTENCY IN COURTROOM RULES**

<b>FEEDBACK</b>	<b>SUGGESTION/SOLUTION</b>
<p>The District Court should require just one form, submitted by all parties, indicating consent to jurisdiction by a magistrate, instead of the current practice of having each party submit its own form, because, depending on the timing of the submissions, the assigned magistrate or judge could learn who doesn't consent (i.e., the party that hasn't yet turned in the form). Many clients, especially those from out of state, are reluctant to use a magistrate, perhaps because they don't know them. And no matter how careful the court might be about keeping that information private, there is a definite sense that the magistrates and judges usually find out who won't give consent.</p>	<p>There is a joint report (see form 12) for use of alternative means of dispute resolution, perhaps to ensure that the court doesn't learn which party is reluctant to settle or to use ADR. There should also be a joint form for consenting to a magistrate.</p>
<p>It seems that more and more judges are electing to decide contested matters without oral argument. That often leaves the parties feeling as if they did not get a full consideration of their motion. In addition, unless the Judge never gives oral argument, you may be surprised to find the matter decided. If the reply memorandum contains new or inaccurate material, oral argument gave the opposing party an opportunity to respond and correct the inaccurate or incomplete briefing. If you don't get argument, you may feel compelled to file a sur reply, even those are not technically contemplated by the Rules. Absent that, you may see an increase in motions for reconsideration--again not technically in compliance with the Rules, unless it can be described as a clear error of law.</p>	

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<b>FEEDBACK</b>	<b>SUGGESTION/SOLUTION</b>
<p>Another concern (which is happening to me real time as we speak), is that many judges have requirements that courtesy copies must be delivered to Chambers the same day as the filing date. A particular judge even has a 3 pm same day filing rule, which defeats one of the benefits of ECF filing.</p>	
<p>Common calendar times. It is very costly for parties, and inefficient for lawyers, that the same calendar time is scheduled for matters that necessarily must be heard sequentially. In district court, there may be a half dozen matters set simultaneously, which can lead to dozens of lawyers (and their clients) waiting a long time for their matters to be heard. I suggest calendar times be staggered to the extent possible.</p>	
<p>I suggest judges consider discontinuing the practice of adopting local-local rules (and that the Local Rules be revised to include any essential and missing protocols). It is costly for parties and inefficient for lawyers and their staffs to be required to learn and conform practices to accommodate dozens of individual District Judges' protocols.</p>	

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<b>FEEDBACK</b>	<b>SUGGESTION/SOLUTION</b>
<p>In one district, it is incumbent on a party to motion the court clerk within 60 days of final conclusion of the case (including any appeal) to return sealed docs. Otherwise the clerk will automatically unseal the documents and ship them to the Federal records Center where they will become public records. LR 3.11. In another district, if there has been no trial the records will be eligible for destruction no sooner than 23 years from entry of final disposition of the case. At that time they will be unsealed and destroyed. LR 79.1. If there has been a trial, sealed docs will be automatically unsealed 23 years from final disposition and will be permanently retained as a public record. <u>Id.</u> In one district, a party must motion the court to file docs under seal. Docs under seal must be filed electronically. Electronic access to sealed docs “may be restricted by the court.” It would appear that the movant should also request that electronic access be restricted when making the motion to seal. There doesn’t appear to be any rule governing how long a sealed document filed electronically remains sealed. See generally, <u>Electronic Filing Procedures For Civil And Criminal Cases</u> at the court’s website or at the end of the court’s local rules in Thompson-West. In another district, sealed docs automatically unsealed after 10 years. Party can motion to extend beyond 10 years. Judge’s paper copy is not shredded but rather is recycled. LR 79-5(f). How are the judges’ paper copies of sealed documents handled in other courts? It is not clear in any court how long sealed docs filed electronically remain sealed, whether forever or some</p>	

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**III. INCONSISTENCY IN COURTROOM RULES**

<b>FEEDBACK</b>	<b>SUGGESTION/SOLUTION</b>
other period of time.	
<p>Ninth Circuit court system problems: the Circuit is too large and this has resulted in too many inconsistencies in decisions within the Circuit. An en banc panel should consist of the entire panel of Circuit judges, as it does in other Circuits. Because of its size, this is not possible in the Ninth Circuit.</p>	<p>Solution: split the Circuit and create at least one additional Federal Circuit. Additionally, the appellate advocacy credentials of those arguing cases on behalf of criminal defendants should be highly scrutinized (e.g. review of writing samples, references, training and experience, and peer review, prior to admission to the CJA panel). Criminal defendants should have excellent legal representation at both the trial and appellate levels.</p>
<p>Some courts allow parties to request oral argument after receiving the Court's tentative ruling.</p>	<p>In order to avoid requests for argument in every matter, there could even be a request to argue that specifies the matter on which argument is sought. That would give the Court an opportunity to reconsider whether oral argument or further briefing would give the parties a chance for a fairer resolution of their motion.</p>

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**III. INCONSISTENCY IN COURTROOM RULES**

<b>FEEDBACK</b>	<b>SUGGESTION/SOLUTION</b>
<p>Summary judgment is being used as docket management device rather than an honest examination for disputed facts. Many judges are becoming increasingly candid about the fact that summary judgment is a way to avoid a trial in a case he or she deems to be weak. This approach certainly has benefits, but it ignores rule 56 and under cuts the jury system. I think it is a mistake to abandon the principles that are time tested. The aggressive use of summary judgment hurts both plaintiffs and defendants and it focuses more and more power in the District Court Judge assigned to the case.</p>	
<p>Federal Judges are normally extremely well-prepared and courteous to litigants. They seem unwilling, though, to enforce their local rules. As a plaintiff's attorney, I routinely see judges bend over backwards to allow defense counsel to repeatedly blow off deadlines imposed by local rules with impunity. When we file motions to strike pleadings or, in severe cases, seek case dispositive sanctions the judges refuse to act. My obvious solution is to either enforce the rules that are on the books or remove them.</p>	

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**III. INCONSISTENCY IN COURTROOM RULES**

<b>FEEDBACK</b>	<b>SUGGESTION/SOLUTION</b>
<p>Circuit Rule 36-3: Rule 36-3(c)(iii) permits citation of unpublished decisions from before 1/1/07 "in a petition for panel rehearing or rehearing en banc, in order to demonstrate the existence of a conflict among opinions, dispositions, or orders." That's a good thing, so far as it goes. But a litigant is still barred from pointing out to a panel, at any time prior to a rehearing petition, that a pre-1/1/07 unpublished decision on point exists. What can therefore happen (and what has happened, in at least one Ninth Circuit appeal in my recent experience) is that the panel opinion creates an internal conflict of which the panel was unaware, and of which the panel learns only once a rehearing petition is filed.</p>	
<p>If internal conflicts with pre-1/1/07 unpublished decisions do matter (as Rule 36-3(c)(iii) suggests they sometimes may), then in the interests of judicial economy, the litigants should be permitted to warn a panel, <i>before</i> issuance of the panel's initial opinion, that the panel risks creating one.</p>	<p>This could be accomplished, I think, by revisions short of allowing the wholesale citation of pre-1/1/07 unpublished decisions for any and all purposes (though personally, I wouldn't see the harm in allowing that too -- it's odd that pretty much the only persuasive authority a litigant is barred from citing should be decisions of the Ninth Circuit's own authorship).</p>
<p>There needs to be some continuity in the people answering questions on a given case.</p>	<p>There needs to be one person assigned to each case and that person is responsible for both answering filing questions and docketing. If there is more than one person assigned to docket and answer questions, they need to coordinate so that each attorney is given the same answer. I have had a terrible experience in the 9th circuit with consistency in the</p>

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FEEDBACK	SUGGESTION/SOLUTION
	civil docketing clerk's answers for how to address matters with each clerk providing a different answer and doing "their own thing."
	It would be great if there was one number to call for docketing and substantive issues and as I said, each case was assigned a person.
	If I ruled the world the federal district courts would all have the same procedural rules.
The requirement for constantly filing ex parte motions to expedite a hearing seem cumbersome. I know that another district has eliminated that need with a more informal procedure.	
The electronic filing in the 9 <sup>th</sup> Circuit is a disaster and needs massive work. The set up failed to understand the nature and complexity of the case I was working on, dropped off parties so they were not carried up as parties on the appeal of cases they participated in, then added me in as an attorney for a party that I did not represent. An attorney who tried to file an interlocutory appeal, was not given a method to get a new case number, then had her appeal stricken when she failed to file under a new case number. In short, it is in complete	I would suggest that the 9th circuit without telling anyone attempt to open new cases and file motions on their own docket so they get an opportunity to test the kinks in the system and send out a questionnaire regarding filing issues and fix them!

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<b>FEEDBACK</b>	<b>SUGGESTION/SOLUTION</b>
disarray. The electronic filing in another district is much better organized and the people seem to talk to each other regarding what decisions were made on the case.	
Electronic filing takes longer than it should. Too many steps, too much complication, too easy to mess up. Does it really need to be that complicated? If I used to be able to just toss a pile of papers in the box, why do I have to do so much more now? Can't we do an electronic equivalent of tossing papers in the box? Seems like I ought to be able to just select the case number, select all of the scanned documents at once, and file it all.	

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<b>FEEDBACK</b>	<b>SUGGESTION/SOLUTION</b>
<p>My office of 7 attorneys and 2 support staff litigates throughout the district courts and bankruptcy courts in the Ninth Circuit, and has to spend some of our limited resources keeping track of all of the different formatting and filing requirements, and peculiar differences in practice regarding CM/ECF (eg. whether to upload proposed orders as attachments or e-mail them separately; where to e-mail them, etc.). One district is particularly difficult, in that they continue to require paper "courtesy copies" of all filings in addition to CM/ECF filings, effectively doubling the filing workload. They provide no single clear set of rules or online place to look for a comprehensive list of filing requirements. (The best resource on practice in the district is an "unofficial guide" published online by a solo practitioner in the area.) Add to those individual judges' standing orders that may modify the local rules and general orders. The job of an attorney is hard enough without adding secret handshakes and layers of complexity to ministerial tasks. Furthermore, the courts themselves are government agencies, ultimately responsible for serving the public. If the purpose of the FRCP's is to secure the just, speedy, and inexpensive determination of every action, the courts' own rules and procedures should follow the same principles. The courts and their judges should do their best to standardize and compile in one place all of these requirements.</p>	

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**III. INCONSISTENCY IN COURTROOM RULES**

<b>FEEDBACK</b>	<b>SUGGESTION/SOLUTION</b>
<p>The ECF system presents a problem for local counsel. The primary out of district attorney is required to have local counsel, and that local counsel is required to review and approve all pleadings before said pleadings are filed. Both the primary and the local counsel attorney are given ECF access to file documents so either attorney can file documents. This allows out of district counsel to file pleadings without the local counsel's review and approval.</p>	
<p>For purposes of Electronic Filing in the district court AND the 9th Circuit, where we frequently go, we need more training.</p>	
<p>The ECF system presents a problem for local counsel. The primary out of district attorney is required to have local counsel, and that local counsel is required to review and approve all pleadings before said pleadings are filed. Both the primary and the local counsel attorney are given ECF access to file documents so either attorney can file documents. This allows out of district counsel to file pleadings without the local counsel's review and approval. There should be a procedure where out-of-district attorneys are not given ECF access, or if given ECF access, that on each pleading filed they are required to certify that the local counsel has a) reviewed, b) approved the pleading being filed. The alternative, would be for the courts within the 9<sup>th</sup> Circuit do like is done in the 10<sup>th</sup> and 5<sup>th</sup> Circuits, where an out of district attorney can join the bar of the particular court, and be fully</p>	

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**III. INCONSISTENCY IN COURTROOM RULES**

<b>FEEDBACK</b>	<b>SUGGESTION/SOLUTION</b>
<p>responsible for proper filings on their own.</p>	
<p>Discovery - It has gotten out of hand. It can cost millions of dollars to cull through hundreds of data tapes and to screen millions of pages looking for a small number of potentially relevant documents. While the defendant must comply with discovery obligations, it seems to me that searching millions of pages of data for a small number of potentially relevant emails or documents is intrusive, inefficient and unwarranted, I have seen cases where the total damages may be under a million dollars but the eDiscovery costs alone can be several million dollars.</p>	<p>We should explore moving to a system where there is a presumption against data reconstruction in the absence of a strong showing, with uniform protocols allowing narrowly focused search terms, and other measures to reduce the current nightmare caused by eDiscovery.</p>
<p>The electronic filing system should eliminate the necessity of a separate certificate of service in cases in which all counsel are registered on the electronic system.</p>	

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**III. INCONSISTENCY IN COURTROOM RULES**

<b>FEEDBACK</b>	<b>SUGGESTION/SOLUTION</b>
<p>Cost of access to court is high: federal court in one district generally costs twice as much as state court because of expert discovery in federal court; cost is also high because many firms (often those whose economic model is based on the billable hour) often engage in costly discovery and motion practice that does not further preparation for trial on the core issues of the dispute.</p>	<p>Solutions to cost: (1) more court intervention (status conferences) to efficiently manage the case; (2) enforce ADR rules to ensure that (a) cases that ought to settle are settled before high costs are incurred and (b) cases that need to go to a jury can efficiently proceed in that direction.</p>
<p>In criminal cases: all defendants must appear for arraignment before a magistrate in the morning. Some judges (a minority) require that counsel and clients in the cases assigned to them report to their court room in the afternoon for arraignment. The result is that a non-substantive procedure requires counsel and parties to spend an entire day at the courthouse. The expense to parties is substantial, and the practice wastes tremendous resources of the FPD and DSAO. I suggest those district judges who follow this practice consider discontinuing it.</p>	
<p>Hard "courtesy" copies. Having graduated to ECF, it's time for everyone to save the trees, and save parties the expense, of delivering hard courtesy copies to chambers. I understand the complexities of moving to electronics after so many years of doing things "the way we have always done them," but suggest that judges be encouraged to discontinue the practice of requiring courtesy copies.</p>	

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**IV. MISCELLANEOUS**

<b>FEEDBACK</b>	<b>SUGGESTION/SOLUTION</b>
<p>The new BK laws were designed to cut down on fraud by putting the onus on lawyers to ensure the petitions were based in fact. Now that there are ballooning amounts of bankruptcies, has the spirit of the law died due to administrative overload? Is fraud now as rampant in petitions as it was before the new law went into effect? What can stop the slide back to shoddy petitions being filed of which a large percentage are outright fraud?</p>	
<p>District Courts in General - Are you seeing an increase in Removal Actions from state court? What percentage of cases are Removals granted? Is this a trend that is good for the system as a whole or is the general tendency to federalize traditionally state cases something that the federal courts should try to avoid?</p>	
<p>Circuit Court - How is the electronic filing working in the Court of Appeals? Are anticipated federal budget cuts going to affect the circuit and district court as a whole?</p>	
<p>I think the BK courts operate pretty smoothly, in my experience. I don't know what to suggest, but would be interested to know what the judges think about the giant free-for-all that results in many instances in only the lawyers getting paid by the debtors, with creditors getting only the leftovers... .</p>	

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**IV. MISCELLANEOUS**

<b>FEEDBACK</b>	<b>SUGGESTION/SOLUTION</b>
<p>Pay disparity - The pay disparity between federal judges and private practitioners has grown to an alarming degree. In the long term, this disparity could harm the independence of the judiciary, and it should be addressed.</p> <p>Some of the judges seem to be reluctant to reduce the fees requested by opposing counsel. In addition, attorney fees are being awarded against the county as the enforcer of state law even in situations where the county has not actually been faced with a request.</p>	
<p>The USDC in this district is greatly overworked and additional judicial resources are urgently needed.</p>	<p>Perhaps a single judge for the District could be assigned all the prisoner cases and handle them on a district wide basis.</p>
<p>The Ninth Circuits' practice of issuing opinions that can not be cited as authority is extremely unhelpful. If the opinion is written, lawyers ought to be able to cite it, Too often lawyers have a relevant, even determinative case and can not cite is as authority. If the problem is that there are too many opinions being written that conflict with each other, then perhaps that speaks to the size of the circuit or some internal communication difficulty that should be corrected.</p>	

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**IV. MISCELLANEOUS**

<b>FEEDBACK</b>	<b>SUGGESTION/SOLUTION</b>
<p>Insufficient representation of woman and minorities on the federal bench. Solutions: (1) solicit, nominate and empanel more qualified women and minorities to serve as Article III judges. I understand that nominations are political and that the federal bar may have limited input in this process. However, another solution in which the district judges themselves can have a direct impact in diminishing the “old boys’ club” impression is to: (2) include more women in the Lawyer Representative selections they make. [Author identifies herself as an experienced federal practitioner who was not been selected as a Lawyer Rep] While it appears that the recent appointees to the two open Lawyer Representative seats were qualified to serve in their roles, their appointment perpetuated the “old boys club” impression. Also, the work and accomplishments of the existing lawyer representatives could be better communicated to the members of the federal bar through a periodic (perhaps monthly) on-line newsletter. Finally, I would like to see our jurors treated better. To start, they should be paid more for their service and provided regular breaks, meals and healthy snacks and refreshments.</p>	

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**IV. MISCELLANEOUS**

<b>FEEDBACK</b>	<b>SUGGESTION/SOLUTION</b>
<p><u>Bright Line Tests vs. Balancing Tests</u>: The proliferation of complex “balancing tests” in many areas of the law has subverted the goal of obtaining justice in every case by increasing the costs of litigation to the point where many people simply cannot afford to litigate legitimate disputes. We need to fall back to more bright line tests, understanding that they will result in some unfairness in individual, hard cases, in order to achieve the greater goal of affordable fairness in the vast majority of cases.</p>	
	<p>Suggestions for the Ninth Circuit. First, regarding your new website opinions page, I would suggest you add back the letter codes for the different types of cases, like you had on the prior website. This makes it easier to know if a case is one you should read; i.e., if it has the a more detailed reference than just “criminal” or “civil”.</p>
<p>All the new tech has deprived the pro se litigant of access to the court. We lawyers like that but it is not what the court should do. Also it is a further manifestation of the form over substance attitude we now see.</p>	
<p>Related to the oral argument issue, I don't like 10-minute oral arguments. Either make it worth being there, or don't hold argument. Spending hours and hours preparing for a 10-minute argument seems wasteful to the client.</p>	

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**IV. MISCELLANEOUS**

<b>FEEDBACK</b>	<b>SUGGESTION/SOLUTION</b>
<p>I will say that I would like to suggest those state court practitioners who are new to the federal court filing system restrain themselves for filing Motions to Dismiss based on their inability to read the federal court rules which clearly state that documents can be filed after 5:00 p.m. and before midnight are still valid filings. With the CM/ECF system, nobody is running up the courthouse steps at 4:59 p.m. anymore.</p>	
<p>The only "problem" expressed would be calendaring of one district's cases before the 9<sup>th</sup> Circuit. It is not known exactly how the 9<sup>th</sup> Circuit calendars these cases, although all our cases are typically heard in two other districts.</p>	<p>The suggestion was that the 9th Circuit attempt to coordinate these cases to be heard in the same session (primarily to save on resources of sending lawyers to argue the cases, especially the US Attorney's Office). I think this is traditionally done as you review the calendars, it appears several of this district's cases all appear on the same sessions. But perhaps more effort should be made to ensure these cases are heard in Honolulu, primarily to save on travel. Otherwise, particularly since this district has its own District Court Judge now, the "problems" with the 9th Circuit are no longer an issue.</p>
<p>Concerned about time-lines on billing if one is a CJA appointed counsel, as by the time it's over, it's a year or two later, and it takes time to put together the billing. (Probably lack of recording hours at the time, but at the time the last thing on one's mind is HOURS - as opposed to getting the briefs done).</p>	

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**IV. MISCELLANEOUS**

<b>FEEDBACK</b>	<b>SUGGESTION/SOLUTION</b>
	<p>I would expand upon the judicial compensation. I think that in order to generate public support for increased compensation, the judges may want to consider an outreach program to educate the public concerning the work of the court. One of the keys to generating public support for increased compensation is for the public to better and understand and therefore appreciate the value of the judges to the functioning of our society.</p>
<p>Members of CJA panels are called upon to take appointed cases in 28 United States Code Section 2254 (state habeas appeals) to the Ninth Circuit. The process forces these attorneys to make long term interest free loans to the Federal Government in advancing costs for the briefs and the excerpt of the record. Furthermore, since neither the State nor the District Court appoints counsel in post conviction cases, it's usually pointless to appoint counsel by the time that the case gets to the Circuit because in most cases colorable post conviction claims have been defaulted.</p>	<p>I have solutions to these problems but in these times of budgetary constraints they are unlikely to be well received. One solution would be to make all the civil lawyers in big firms take appointed habeas appeals whether they want to or not.</p>

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**IV. MISCELLANEOUS**

FEEDBACK	SUGGESTION/SOLUTION
<b>NINTH CIRCUIT: Social Security Administrative Disability Transcript Litigation Workload</b>	
1. Excerpts of record/supplemental excerpts of record	Require Appellant to file entire Social Security transcript as an excerpt of record. The excerpt of record should be identical to the administrative record filed in district court.
2. Unnecessary copies	When documents have been filed electronically, eliminate requirement to file paper copies.
3. Delay in ruling on motions (e.g. to strike, to file on overlength brief, etc.)	Motions should be filed at least 5 days before the brief is due and the briefing schedule should be suspended until the motion is ruled on. This would require a rule change as C.R. 32-2 requires a copy of the proposed overlength brief be filed with the motion. Further, although C.R. 32-2 implies a suspension, the Court should send out a clarifying notice.
4. Briefing schedule is unreasonable	Extend briefing schedule to 60 days for each party, especially since cases often take a year or more to be resolved.
5. Delayed notice when oral arguments are canceled (case submitted on the briefs)	The 9 <sup>th</sup> Circuit should give the parties a minimum two-week notification if the case is going to be submitted on the briefs. Although General Order 3.4 already requires 12-day advance notice, this requirement is often not followed, with notice occasionally received only 7 days in advance.
6. Purpose of oral arguments	The 9 <sup>th</sup> Circuit should notify the parties if there is a particular issue on which the parties should focus.

**BREAKFAST WITH THE BENCH PROGRAM**  
**2009 Lawyer Representatives' Feedback Summary**

**IV. MISCELLANEOUS**

FEEDBACK	SUGGESTION/SOLUTION
<b>DISTRICT COURT: Social Security Administrative Disability Transcript Litigation Workload</b>	
1. Unnecessary copies	When documents have been filed electronically, eliminate requirement to file paper copies.
2. Inconsistent nomenclature (e.g., in Idaho, the claimant is a Petitioner, in the other jurisdictions, the claimant is a Plaintiff; in some jurisdictions, parties file a Memorandum in Support of a Motion for Summary Judgment and in other jurisdictions, parties file an Opening Brief.).	Standardize nomenclature.
3. Inconsistent local rules regarding Social Security cases (e.g., answer due dates vary from 60 days to 90 days to 120 days).	Standardize local rules on Social Security cases.
4. Inconsistent briefing schedules (e.g., following an answer, Plaintiff must file an opening brief in 4 weeks to 30 days to 60 days to a schedule agreed to by the parties – depending on the district.)	Standardize briefing schedules, preferably granting the parties 60 days to submit their briefs.
5. Purpose of oral arguments	The district court judge should notify the parties if there is a particular issue on which the parties should focus.

**BREAKFAST WITH THE BENCH PROGRAM**  
**2009 Lawyer Representatives' Feedback Summary**

**V. POSITIVE FEEDBACK**

FEEDBACK	SUGGESTION/SOLUTION
Actually, there are many great judges who I love to appear before. So my critical comments certainly do not pertain to all. Just "many."	
I think that in general we are a progressive circuit, and I appreciate that.	
Bankruptcy ECF System works really well.	
Our system is successful because it is flexible and user-friendly. When a discovery problem arises, we can just pick up the phone and call the Magistrate and have it resolved real-time. This is a tremendous innovation and we should encourage and expand the practice.	
The ENE system in this district is very effective in enhancing case resolution and focused case management. Other districts would be well-served in adopting this model.	
The Court Executive and the Court Clerk did an excellent job of publicizing the electronic filing system and providing training during the trial period. The staff also did an exemplary job of updating the users guide for the filing system. The court and court staff are responsive to counsels' scheduling problems with oral argument.	
Overall the Courts work really well.	

**BREAKFAST WITH THE BENCH PROGRAM**  
**2009 Lawyer Representatives' Feedback Summary**

**V. POSITIVE FEEDBACK**

<b>FEEDBACK</b>	<b>SUGGESTION/SOLUTION</b>
Recently, the court has done a commendable job of expeditiously filing opinions in routine cases.	
On balance, the quality of the Benches in the Ninth Circuit is very good.	
The Court does not receive adequate credit. The Judges, Law Clerks, Clerk's Office, Staff Attorneys, and Administrative Personnel work long hours.	
Practitioners in this district are generally of the opinion that the court is efficient and runs well. There is a strong belief that we have some of the best District Judges in the Ninth Circuit.	
Practitioners report that the Clerk's Office in this district is outstanding.	
Practitioners report that their experiences with the 9th Circuit have been favorable-that the court has been fair and reasonable. Arguments were scheduled promptly, attorneys were treated with professionalism and courtesy, and decisions were issued within a reasonable time considering the complexity of the issues.	

**BREAKFAST WITH THE BENCH PROGRAM**  
**2009 Lawyer Representatives' Feedback Summary**

**V. POSITIVE FEEDBACK**

FEEDBACK	SUGGESTION/SOLUTION
<p>With respect to this district, the judges enjoy an outstanding reputation of being excellent judges. All are respected for their knowledge, experience, wisdom, and impartiality. With respect to the Ninth Circuit settlement program, the settlement program is generally regarded as useful and effective. Counsel's experience with the program representatives has been invariably positive. I believe that the bar generally considers the program as a success.</p>	
<p>Overall, this district has extremely competent and dedicated jurists who serve the public well.</p>	
<p>The judges who I know in the Ninth Circuit are highly talented and committed public servants.</p>	
<p>Many of the judges are wonderful- they are intelligent, professional, well-prepared and courteous on the bench and a pleasure to appear before, and I say this regardless of the outcome because I have both won and lost cases before the following people that I consider to be the very best of the best: Judges XXXXXXXX. Many of these judges are extremely generous with their time and contribute significantly to legal education.</p>	

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**2009 Lawyer Representatives' Feedback Summary**

**V. POSITIVE FEEDBACK**

FEEDBACK	SUGGESTION/SOLUTION
There are judges who keep themselves involved in the community, who shun the adoration that comes with power and who remain focused on serving the justice system with humility, discipline and who realize that while they are on the bench, they are a servant to the system and the people not the other way around. These judges are courteous, patient and kind.	
Even though I have not had a case resolve through the mediation office, I think the mediators are excellent and the process worthwhile.	
In addition, I would like to comment that the staff is usually very helpful when I do get a person on the phone. They are often generous with their time and are willing to help.	
Generally more left-leaning than many other circuits. Left-leaning is desperately needed in the judiciary of the USA right now. The judges I've watched in action are smart, thorough and well-reasoned. Getting more like them would be great (Senators).	
The staff is great.	

**BREAKFAST WITH THE BENCH PROGRAM**  
**2009 Lawyer Representatives' Feedback Summary**

**V. POSITIVE FEEDBACK**

FEEDBACK	SUGGESTION/SOLUTION
I believe the implementation of the CM/ECF document filing system, with its attendant, frequent training classes has been a tremendous success and saved more trees than can be calculated. It is also a much more efficient way of doing things. So much so, that I desperately hope the state courts, particularly in this state where we all live and work will follow suit with their own electronic version that mirrors the federal system. I'm also glad the 9 <sup>th</sup> Circuit Court of Appeals has gone live with their system too. The federal court should be commended both for its vision and implementation process. I know they worked very hard to get this system right and make it as painless as possible.	
Overall the system is great.	
On the whole I believe that the 9th Circuit trial courts, which I am mostly familiar with, do a great job.	
I find the judges approachable, accommodating and smart.	
I've been practicing law since 1988 and have practiced in this district since 1996, primarily in federal court . I've pursued/defended several appeals before the Court of Appeals. I write to respond to your letter by saying I do not see any problems that need correcting. My experience may be singular, but I feel the federal court system functions very	

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**2009 Lawyer Representatives' Feedback Summary**

**V. POSITIVE FEEDBACK**

<b>FEEDBACK</b>	<b>SUGGESTION/SOLUTION</b>
well, and I especially embrace electronic filing.	
Electronic filing seems to work fine and is easier than having to run to court.	
The personnel are unfailingly polite and instructive, as well. I haven't enjoyed every ruling I've received, but I have no complaints about the system.	
One enormous positive within the past year has been the Ninth Circuit's move to an electronic filing and docketing system. The Ninth Circuit's move to this system, similar to the one we've been using in the district courts for years, makes the practice of law much more efficient. This system also makes the administration of justice more open and accountable.	
Also, the Ninth Circuit deserves kudos for posting audio files of oral arguments. This is particularly helpful for lawyers, clients, and the public.	