Judicial Adjuncts in Disability Rights Litigation

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Increasingly since the 2003 amendment of Rule 53 of the Federal Rules of Civil Procedure, courts turn to special masters in constitutional, commercial, disabilities, mass tort ,and other litigation for assistance at all stages in the adjudication process. Masters may be appointed for a variety of purposes, including pretrial discovery and settlement, to preside over trials, and in the posttrial monitoring and compliance phases of a suit.[1] The use of masters has been constructive and beneficial to litigants and to the courts.

This article first offers a general discussion of masters and judicial adjuncts. Next, it turns to their use in disability rights litigation. Finally, it concludes with suggestions for effectively using adjuncts in such cases.

The volume, breadth, and complexity of today's litigation, combined with the limited resources of the courts, practically demands the use of special masters and other adjuncts in appropriate cases. As Judge Shira Scheindlin explains, revised Rule 53 "was undoubtedly intended to expand the use of masters in new directions to help courts cope with ever-increasing caseloads and address difficult issues that require disproportionate and often unavailable judicial attention and expertise."[2] Judge Scheindlin concludes, "If the court refuses to get the help it needs, it will not be able to effectively deal with its docket."[3]

Before 2003, appointment of a master was reserved to the "exceptional case," and there was significant dispute in particular instances over whether a case was sufficiently exceptional to warrant a master. The 2003 rule effectively abandoned the notion that appointment of a master is disfavored;[4] the rule now facilitates the expanded use of masters.

More familiar, perhaps, in realms such as patent law and products liability, judicial adjuncts—whether called special masters or technical advisors or carrying another title—have proven to be a vital element in public law litigation involving institutional and systemic reform of school systems, prisons, and services for people with disabilities. These cases often conclude with complex injunctive relief, requiring changes in the administration and delivery of services to vulnerable populations, sometimes isolated and sometimes dispersed over a large geographic area.

In public law litigation, the impetus is not individual wrongdoing but rather remedying the social condition and the governmental dynamics from which originate the violation of constitutional or statutory rights. Such suits are often, but not necessarily, class actions. Given the breadth of such cases, and the need for attention to typically comprehensive requirements and fluid implementation challenges, it is no wonder that a judge observed that this role in "monitoring compliance with long-term injunctions or consent decrees

... can be a full-time job for the court."[5]

As the Court of Appeals for the First Circuit stated in a systemic education case, "the monitoring process is a basic responsibility of the court. To the extent that the myriad of minor problems which will arise can be resolved without the necessity of resorting to the district judge, the process of implementation will be facilitated."[6]

At least as important, if not more so, than the problem-solving desideratum is that the court live up to its word in adopting such orders. In appointing a monitor in a disabilities class action, U.S. District Judge Donovan W. Frank stated, "the credibility and reliability of the judicial process is at stake when an order such as this is entered."[7]

In addition to the federal court's Rule 53 and inherent power to appoint special masters,[8] it is well established that courts may appoint other judicial adjuncts.[9] Most often cited is the 1920 Supreme Court decision in *Ex parte Peterson*.[10] That seminal decision expressed the necessity—or perhaps the preference—for a master, monitor or technical advisor. A cogent rationale for judicial adjuncts rises in relief from the narrative in that case and Justice Brandeis' analysis.[11]

Walter Peterson, who had been appointed receiver of a coal company, sued Arthur Davison to recover $21,014 allegedly due for coal sold and delivered, covered in 298 ledger items. Davison admitted that he had owed that money, but he counter-claimed that if the bills and payments were all considered, Peterson actually owed him $9,999, on another account including 298 items. U.S. District Judge Augustus N. Hand of the Southern District of New York appointed an auditor to review the accounts, to hear testimony, and to form a judgment which would aid the court and jury in making its decision.

The Supreme Court applauded the use of the auditor as a mechanism to permit a "more intelligent conversation" about the controversy, with this outsider to the controversy sifting and drawing conclusions on the facts:

> This full hearing, while obviously necessary to enable the auditor to form a trustworthy judgment on the disputed items, would serve also to narrow the field of controversy. For such a tentative trial acts as a sifting process by which misunderstandings and misconceptions as to facts are frequently removed. In the course of it many contentions or assumptions made by one party or the other are abandoned. Agreement is thus reached as to some of the facts out of which liability is alleged to arise, even when the items to which they relate remain in dispute.[12]

After concluding that the appointment did not violate a party's right to a jury trial, the Supreme Court concluded that federal courts have the discretionary power "to appoint persons unconnected with the court to aid judges in the performance of specific judicial duties, as they may arise in the progress of a cause," a power exercised "[f]rom the commencement of our Government."[13] In complex cases, referral to the "outsider," a special master, is preferred:

> Whether such aid shall be sought is ordinarily within the discretion of the trial judge; but this court has indicated that where accounts are complex and intricate, or the documents and other evidence voluminous, or where extensive computations are to be made, it is the better practice to refer the matter to a special master or commissioner than for the judge to undertake to perform the task himself.[14]

The lessons of *Peterson* are that a judicial adjunct enables the court to benefit from a "more intelligent conversation"; and that in a complex case, it is not only acceptable, but it is "the better practice" for the judge to call on a special master or other judicial adjunct to perform the needed tasks.

Peterson and its progeny support the long-accepted practice of use of technical advisors as judicial adjuncts. A technical advisor may be appointed under the court's inherent powers, under Federal Rule of Evidence 706, or apart from Rule 706.[15] The advisor may assist the court in understanding the technical evidence under consideration.[16] In addition to assisting in understanding a case, a technical advisor may be appointed to craft a remedial plan or to conduct what might become a dispositive analysis of complex data.[17]

Tens of millions of Americans have disabilities. There are 76 million members of the Baby Boomer generation and they are an increasing proportion of the United States population. Many people with disabilities are currently, or soon will be, receiving services in governmental, congregate, community or institutional settings. In addition to constitutional protections for some individuals, statutes such as the Americans with Disabilities Act and Section 504 of the Rehabilitation Act prohibit discrimination against people with disabilities. We have come a long way from Aristotle's ancient dictum that no person with disabilities shall live.

In the disabilities field, there are sensitive and complex relationships among governmental agencies that provide or regulate service delivery, private provider agencies, clients with disabilities and their advocates and families. Local rules as well as state statutes often impact compliance. Judicial decrees in this field often require adjustment or creation of regulations, development of new services and expansion of existing services, and innumerable instances of decision-making regarding individuals who benefit from the decrees.

Complex systems transformation under public law judicial decrees necessitates careful planning and a judicial adjunct is often key to that effort. Typically, planning will include analysis, development of a mission, goals and objectives, expected outcomes, tasks and timelines, deadlines, identification of persons responsible, quality assurance and accountability mechanisms, and evaluation. When done well, the court can confidently end its jurisdiction, leaving a self-adjusting system in place, with sufficient feedback and flexibility to adapt to changing conditions. An unimplemented or vague plan, however, is insufficient to satisfy parties or courts that the court's involvement will someday end.

Where a systemic order is in place, whether by consent or after litigation, the parties typically have a common interest in implementation. Absent an aggressive appellate stance, defendants wish to expedite compliance to end the court's oversight. Plaintiffs, having obtained relief, want to achieve their desired outcomes. Thus, unlike the prejudgment phase, at which the research shows parties prefer an adversarial procedure, a cooperative effort is possible in the implementation phase.[18] For example, where a court appointed an independent consultant to monitor system-wide relief, the court expected a "nonadversarial" approach, despite the noncompliance findings which were part of the basis for the monitor's appointment.[19]

In disability rights cases, courts have used various rubrics in addition to special master: technical advisor, monitor, consultant, independent consultant, and the like. A recent order appointed "an independent advisor to the Court to assess and monitor the implementation of the Settlement Agreement."[20] In a District of Columbia case that had proceeded

for decades, the masters, after "serious noncompliance" with the court's remedial orders in a case involving services to formerly institutionalized people with developmental disabilities, recommended the appointment of an "Independent Compliance Administrator" to ensure that defendants achieve compliance.[21] In a nine-year-old case in which the court found that Guam's failure to provide community-based living services to the mentally ill violated the federal Constitution and the Americans with Disabilities Act, the court had utilized a special master and court monitors without success in moving defendants to compliance. Finally, it established what it called the "Federal Management Team" under Rule 70 and the court's inherent equitable powers with the authority to take whatever action was needed to achieve compliance. The court monitors were named the members of the Federal Management Team.[22]

Courts are certainly limited in ability and resources to shepherd all the details of compliance,[23] but they are competent to ensure compliance, even in the most complex situations.[24] A case in point is *United States v. State of Connecticut*, in which Senior U.S. District Judge Ellen Bree Burns found the state in contempt of a consent decree intended to reform an institution for people with developmental disabilities, Southbury Training School (STS).[25] The court found deficiencies in areas such as medical care, psychiatric services, psychological programs, physical therapy, injuries, and protection from harm, concluding that "STS's systemic flaws have caused many residents to suffer grave harm, and, in several instances, death." The court appointed me her special master to review STS's care, determine the changes needed, "formulate specific methods to implement the required changes," and help "effectuate those changes."[26] I actively oversaw a detailed remedial plan, holding hearings where necessary, and after nine years, the state achieved compliance at the institution and was purged of contempt.[27] Such special masterships work well in securing compliance.

My views with regard to the effectiveness of the use of judicial adjuncts have developed in acknowledgement of the law in this field, as a litigator on behalf of both plaintiffs and governmental defendants in disability rights class actions, and my service to several federal courts in disability rights cases.

Courts administering consent decrees or systemic relief in disability rights cases—and parties in such cases as well—might take the following considerations in mind when appointing a special master, technical advisor, or other judicial adjunct:

- It is imperative that the adjunct rely on first-hand information, review of source documents, and site visits. Verification of defendants' compliance recommendations should be the normal course.
- Periodic reports from the defendants and the adjunct should be required, with the frequency dependent on the time horizon for the decree as a whole, or specific elements of the decree.
- A "no surprises" understanding enhances trust. If the adjunct and the parties agree that no action will be taken without a "heads up" to the others, the implementation will be more effective than a "gotcha" approach.
- The adjunct should meet often with the parties, on agendas shared in advance. Independent discussion with the parties before and after joint meetings can be very useful.
- An early priority for the adjunct is to establish a reporting format for the defendants, with the format developed from the decree's requirements.
- Specific "evaluation criteria" will assist the defendants in reporting on and achieving compliance. It will also permit the court to incrementally discharge defendants from oversight over particular requirements.
- Attention to reporting and evaluation criteria assist in identifying decree requirements which are vague or subject to dispute. The adjunct can assist the parties and the court in resolving disputes over such threshold concerns.
- Ex parte access to the court is essential to a smooth process. Such contact can be maintained with propriety, and it facilitates cooperative efforts between the parties.[28]
- Typically, the adjunct will require assistance. Consultants may be retained with regard to particular administrative or clinical or other professional judgment questions.
- The adjunct would do well to recognize and applaud compliance early and often, and, with equal attention, to note noncompliance. The supervising court, where there is a basis for doing so, should act on the adjunct's recommendations promptly. Delay creates uncertainty and may slow progress.

Needless to say, it is essential that justice be rendered in systemic disability rights litigation to enforce constitutional and statutory rights. Most often, such litigation results in consent decrees, and another article might well be written entitled, "It Is Time to Write the Inevitable Consent Decree." Whether by consent or judicial fiat, the orders in such cases are generally complex: they require attention to the intricacies of relationships among a variety of actors, and attention to the intimacy of professional treatment and habilitation interactions.

Except in an unusual case, courts cannot effectively and efficiently oversee implementation without assistance from a special master, monitor, technical advisor or other judicial adjunct. As Judge Scheindlin observed, "monitoring compliance with long-term injunctions or consent decrees ... can be a full-time job for the court."[29] That need not be the case. Both the court and the parties benefit from the judicious use of judicial adjuncts in such litigation. **TFL**

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Endnotes

[1]Even before the Rule 53 amendment, special master functions were defined expansively. Jack B. Weinstein, Individual Justice in Mass Tort Litigation: The Effect of Class Actions, Consolidations, and Other Multiparty Devices 145 (1995) (ex-

pansiveness based on courts' traditional equitable authority).

[2]Hon. Shira Scheindlin, *We Need Help: The Increasing Use of Special Masters in Federal Court*, 58 DePaul L. Rev. 479, 479 (2009); *see* Hon. Shira A. Scheindlin and Jonathan M. Redgrave, *The Evolution and Impact of the New Federal Rule Governing Special Masters*, Federal Lawyer 34, 34-39 (Feb. 2004); David Ferleger, Special Master Rules: Federal Rule of Civil Procedure 53, The Role of Special Masters in the Judicial System, *2004 Special Masters Conference: Transcript of Proceedings*, 31 Wm. Mitchell L. Rev. 1193 (2005); David Ferleger, *Special Masters Under Rule 53: A Welcome Evolution*, American Law Institute-American Bar Association Continuing Legal Education (Nov. 2007).

[3]Scheindlin, *supra* note 2, at 486.

[4]*See La Buy v. Howes Leather Co.,* 352 U.S. 249, 257-258 (1957).

[5]Scheindlin, *supra* note 2, at 482.

[6]*Morgan v. Kerrigan*, 530 F.2d 401, 429 (1st Cir. 1976).

[7]*Jensen v. Minn. Dep't of Human Servs.*, No. 09-1775 (DWF/FLN), 2012 U.S. Dist. LEXIS 98703, at *4 (D. Minn. July 17, 2012).

[8]*E.g., Ruiz v. Estelle*, 679 F.2d 1115, 1161 (5th Cir. 1982) (power to appoint master to supervise implementation has long been established); *Satyam Computer Servs., Ltd. v. Venture Global Eng'g, LLC*, No. 06-CV-50351-DT, 2007 U.S. Dist. LEXIS 44934, at *2 n.1 (E.D. Mich. June 21, 2007) ("Beyond the provisions of Rule 53, court has inherent power to appoint master."); Irving R. Kaufman, *Masters in the Federal Courts: Rule 53,* 58 Colum. L. Rev. 452, 462 (1958) ("[T]here has always existed in the federal courts an inherent authority to appoint masters.").

[9]*In re World Trade Center Disaster Site*, No. 21MC100 (AKH), 2006 U.S. Dist. LEXIS 93639, at *1 (S.D.N.Y., Dec. 12, 2006) ("[I]nherent power to seek assistance in order to administer the cases before me efficiently, economically, and in the interests of justice.").

[10]*In re Peterson*, 253 U.S. 300, 364-65 (1920).

[11]The Supreme Court had earlier accepted that a judicial adjunct did not supplant the court's authority. *Field v. Holland*, 6 Cranch 8 (U.S.) (1810) ("They do not decree, but prepare materials on which a decree may be made.").

[12]*Peterson,* 253 U.S. at 307.

[13]*Id.* at 312.

[14]*Id.* at 313.

[15]*E.g., Monolithic Power Sys. v. O2 Micro Int'l Ltd.,* 558 F.3d 1341, 1346-1347 (Fed. Cir. 2009); *TechSearch L.L.C. v. Intel Corp.*, 286 F.3d 1360, 1376-77 (Fed. Cir. 2002) (appointment of a non-Rule 706 technical advisor); *Walker v. Am. Home Shield Long Term Disability Plan*, 180 F.3d 1065, 1071 (9th Cir. 1999) (Rule 706); *United States v. Green*, 544 F.2d 138, 145 (3d Cir. 1976) (inherent power) ("[T]he inherent power of a trial judge to appoint an expert of his own choosing is clear."); Fed. R. Evid. 706 advisory committee's note ("The inherent power of a trial judge to appoint an expert of his own choosing is virtually unquestioned."); *see also Daubert v. Merrell Dow Pharms. Inc.*, 509 U.S. 579, 595 (1993) (stating in *dicta* "Rule 706 allows the court at its discretion to procure the assistance of an expert of its own choosing").

[16]*Reilly v. United States*, 863 F.2d 149, 156 (1st Cir. 1988); *TechSearch*, 286 F.3d at 1376-77; *Nat'l Wildlife Fed'n v. Nat'l Marine Fisheries Serv.*, No. 01-640-RE, 2005 U.S. Dist. LEXIS 16658, at *17-18 (D. Or. Mar. 2, 2005); *Pecover v. Elec. Arts, Inc.,* No. C08-2820, 2012 U.S. Dist. LEXIS 40187, at *4 (N.D. Cal. Mar. 23, 2012) ("When outside technical expertise can be helpful to a district court, the court may appoint a technical advisor."); *Brown v. Am. Home Prods. Corp.*, No. 99-20593, 2011 U.S. Dist. LEXIS 90718, at *21 n.6 (E.D. Pa. Aug. 15, 2011) ("[Technical] [A]dvisor's role is to act as a sounding board for the judge helping the jurist to educate himself in the jargon and theory disclosed by the testimony and to think through the critical technical problems."); *Reed v. Cleveland Bd. of Educ.*, 607 F.2d 737 (6th Cir. 1979) (technical advisor to assist special master); *Danville Tobacco Ass'n v. Bryant-Buckner Assoc., Inc.*, 333 F.2d 202, 208 (4th Cir. 1964) (appointee did not serve as a master; rather, the "Court chose him as an expert for its guidance"). Note, *Improving Judicial Gatekeeping: Technical Advisors and Scientific Evidence,* 110 Harv. L. Rev. 941, 949-50 (1997); Shira A. Scheindlin & Jonathan M. Redgrave, *Revisions in Federal Rule 53 Provide New Options for Using Special Masters in Litigation,* N.Y. State Bar J. (Jan. 2004); *see also Gen. Elec. Co. v. Joiner*, 522 U.S. 136, 149 (1997) (Breyer, J., concurring) (endorsing appointment of specialists to assist trial courts in understanding scientific or technical evidence).

[17]*Adamson v. Clayton Cnty Elections & Registration Bd.*, No. 1:12-CV-1665-CAP, 2012 U.S. Dist. LEXIS 97592, at *12-13 (N.D. Ga. July 13, 2012) (appointment of state office as independent technical advisor to draw a reapportionment map as a remedial plan); *Bennett v. Mollis*, 590 F. Supp. 2d 273, 280 (D.R.I. 2008) (appointment of researcher on election data showed a "compelling statistical improbability" that a name on a ballot cost someone an election).

[18]John Thibault & Laurens Walker, Procedural Justice: A Psychological Analysis 104 (1975) (subjects under various conditions prefer an adversary procedure); Pauline Houlden, *et al., Preference for Modes of Dispute Resolution as a Function of Process and Decision Control,* 14 J. Exp. Soc. Psychol. 13, 29 (1978) (adversary procedure is believed to permit a "full presentation of all issues").

[19]*Jensen*, 2012 U.S. Dist. LEXIS 98703, at *16 ("The expectation of the Court is that the reporting and monitoring under this order will facilitate a non-adversarial implementation process.").

[20]*Id.* at *7.

[21]*Evans v. Fenty*, 714 F. Supp. 2d 116, 119 (D.D.C. 2010).

[22]*J.C. v. Camacho,* No. CV 01-0041 CBM, 2010 U.S. Dist. LEXIS 18512, at *2 (D. Guam 2010).

[23]*See* Samuel R. Bagenstos, *Justice Ginsburg and the Judicial Role in Expanding "We the People": The Disability Rights Cases*, 104 Colum. L. Rev. 49, 58 (2004).

[24]*See* David Ferleger, *The Role of Special Masters in the Judicial System, 2004 Special Masters Conference: Transcript of Proceedings*, 31 Wm. Mitchell L. Rev. 1193 (2005); David Ferleger, *Special Masters Under Rule 53: A Welcome Evolution*, *supra* note 2.

[25]*United States v. State of Conn.*, 931 F. Supp. 974, 983 (D. Conn. 1996).

ADJUNCTS *continued on page 53*

279, 307 (E.D. Pa. 1972)

[8]Education of All Handicapped Children Act, Public Law 94-142 (1975), now codified as Individuals with Disabilities Education Act, 20 U.S.C. § 1400 (2004).

[9]U.S. Dep't of Education, NCES 2011-015, DIGEST OF EDUCATION STATISTICS: 2010 (2011).

[10]U.S. Gov't Accountability Office, GAO-12-672, K-12 EDUCATION: SELECTED STATES AND SCHOOL DISTRICTS CITED NUMEROUS FEDERAL REQUIREMENTS AS BURDENSOME, WHILE RECOGNIZING SOME BENEFITS (2012).

[11]*Wyatt v. Stickney*, 325 F. Supp. 781 (M.D. Ala. 1971) (right to treatment), 334 F. Supp. 1341 (M.D. Ala. 1971) (finding defendants' remedial plans insufficient), 344 F. Supp. 373 (M.D. Ala. 1972), aff'd, 503 F.2d 1305 (5th Cir. 1974).

[12]*Wyatt v. Stickney*, 503 F.2d 1305 (5th Cir. 1974).

[13]Exec. Order No. 11,776, 39 Fed. Reg. 11865 (Mar. 28, 1974).

[14]86 Stat. 1465, 42 U.S.C. § 1381 *et seq.*

[15]S. Rep. No. 92-1230, p. 4 (1972)

[16]29 U.S.C. § 794.

[17]*Halderman v. Pennhurst*, 612 F.2d 84 (3d Cir. 1979) (en banc).

[18]*Halderman v. Pennhurst*, 451 U.S. 1 (1981).

[19]Letter from Centers for Medicare & Medicaid Services (January 14, 2000). Available at www.acf.hhs.gov/programs/add/otherpublications/olmstead.html#letter.

[20]*See* David Ferlenger, *Disabilities and the Law: The Evolution of Independence*, FEDERAL LAWYER, Sept. 2010, at 29.

ADJUNCTS *continued from page 47*

[26]*Id.* at 985.

[27]*Messier v. Southbury Training School*, 562 F. Supp. 2d 294, 299-300 (D. Conn. 2008) (describing the success of this judicial oversight in a parallel case involving the same institution).

[28]*Jensen*, 2012 U.S. Dist. LEXIS 98703, at *14. ("He shall have *ex parte* access to the parties, their counsel and to the Court. However, in the event there is any information provided to the Court by David Ferleger which is utilized or otherwise relied upon by the Court for any reason relating to compliance with the Settlement Agreement, the Court will provide such information to counsel for the parties.").

[29]Scheindlin, *supra* note 3, at 482.

RULE 12 *continued from page 27*

to answer claims or counterclaims not subject to the motion under Rule 12(a)(4)); *Kent v. Green*, 2008 WL 150060 (D. Colo. Jan. 11, 2008) (filing a Rule 12(b) motion alters the deadline to respond to a complaint); *Beaulieu v. Board of Trustees of University of West Florida*, 2007 WL 2020161 (N.D. Fla. Jul. 9, 2007) (holding that a partial motion to dismiss extends the time to file a responsive pleading on unchallenged claims pursuant to Rule 12(a)(4)); *Shah v. KIK Intern. LLC*, 2007 WL 1876449 (N.D. Ind. June 26, 2007) (Rule 12(a)(4) applies to claims not challenged in a partial motion to dismiss); *Ideal Instruments Inc. v. Rivard Instruments Inc.*, 434 F. Supp. 2d 598 (N.D. Iowa 2006) (same); *Bertaut v. Parish of Jefferson*, 2002 WL 31528468 (E.D. La. Nov. 8, 2002) (same); *Finnegan v. Univ. of Rochester Medical Ctr.*, 180 F.R.D. 247 (W.D.N.Y. 1998) (same); *Oil Express Nat'l Inc. v. D'Alessandro*, 173 F.R.D. 219 (N.D. Ill. 1997) (same); *Brocksopp Engineering Inc. v. Bach-Simpson Ltd.*, 136 F.R.D. 485 (E.D. Wis. 1991) (same).

[23]*Brocksopp*, 136 F.R.D. at 486.

[24]Lisenbee & Moberly, *supra* note 6, at 61-62.

[25]*Gortat*, 257 F.R.D. at 366; *see also Ideal Instruments*, 434 F. Supp. 2d at 639 ("[T]his court also rejects the "piecemeal answer" rule proposed in *Gerlach* and holds that a motion pursuant to Rule 12(b), even one that challenges less than all of the claims asserted in the complaint or other pleading, extends the time to answer as to all claims in the pleading.")

[26]Lisenbee & Moberly, *supra* note 6, at 58-59.

[27]5A FEDERAL PRACTICE & PROCEDURE § 1346. (2d ed.).

[28]Lisenbee & Moberly, *supra* note 6, at 71 ("Indeed, the Gerlach court itself concluded that default is too harsh a penalty for a defendant's failure to submit an answer ...")

[29]To avoid default, a defendant can: (1) seek dismissal of only some of the plaintiff's claims by filing a motion for partial judgment on the pleadings under Rule 12(c); (2) file a partial answer simultaneously with its partial motion to dismiss; or (3) move to dismiss the entire complaint. For further explanation of these options. *See* Lisenbee & Moberly, *supra* note 6, at 72-80. *See also* Belinfante, *supra* note 6, at 21 (detailing several practice suggestions when filing a partial motion to dismiss, such as avoiding attaching affidavits and other forms of evidence and "carefully and precisely" informing the court of a party's intentions when filing the motion).

[30]*Talbot v. Sentinel Ins. Co.*, 2012 WL 1068763 (D. Nev. Mar. 29, 2012).

[31]*Id.* at *2 (requesting that the Court follow the "majority approach" and enlarge the time to respond until 14 days after a decision on the partial motion to dismiss).

[32]*Id.*

[33]*See, e.g., Shkrobut v. City of Chicago*, 2005 WL 2787277, at **2, 4 (N.D. Ill. Oct. 24, 2005) (Defendants moved to continue the time to answer counts of a complaint until the court had ruled on their motion to dismiss); *Fairley v. Andrews*, 300 F. Supp. 2d 660 (N.D. Ill. 2004) (same); *In re Cendant Corp. Sec. Litig.*, 190 F.R.D. 331 (D.N.J. 1999) (same); *Sidis v. F-R Publ'g Corp.*, 113 F.2d 806 (2d Cir. 1940) (same).