Bill Gives Districts the Leverage

ıe Civil Justice Reform Act of 1991 — Biden Bill — sticks in the craws of y in the judiciary and the bar who it as congressional micromanaging worst.

ıt it's not. Things could have been se, and nearly were. The federal judi- y very nearly had more specific statu- rules and guidelines jammed down ıroat. Now at least, in the final version ıe statute, each federal district in the ntry has a Biden Bill advisory group ointed by the chief judge to design t-and-delay reform tailor-made to the rict.

n the eyes of many, the Biden Bill sim- forces courts — for the most part lazy, dstrong or recalcitrant judges — to and emphasize many of the local rules l Rules of Civil Procedure already in ce. New rules and amendments geared ost and delay reduction are being con- ered by the Judicial Conference of the United States.

Of four Biden Bill categories of districts for implementing home-grown plans at reform, the federal Northern and Southern districts of California are in the two that are fast-track. The ranges run from implementation by Dec. 31, 1991, for the fastest, and by Dec. 31, 1993, at the latest.

A 'Pilot District'

The Southern District of California is one of 10 "pilot districts" that must be ready by the end of this year, and those districts also are the only ones required to devise their plans according to six specific guidelines set out in the legislation.

The Biden Bill states that the pilot district plans must:

- Implement differential case management geared to case complexity and time reasonably needed to prepare for trial. The judge should make an early assessment of how best to manage the case and keep it event-oriented, with certain pretrial stages used to gauge its progress.
- Have "early and ongoing control of the pretrial process through involvement of a judicial officer in assessing and planning the progress of a case." The statute goes into considerable detail about judges identifying and clarifying issues of fact and law in dispute; scheduling cutoff dates for amendment of pleadings; and setting cutoff dates for other pretrial stages.
- Set "early, firm trial dates" within 18 months of the filing of the complaint unless the judge finds compelling reason, such as case complexity. Tipping its hat to the reality of today's dockets, Congress added another reason: The case can be scheduled for later than 18 months because of "the complexity of pending criminal cases."
- Control "the extent of discovery and the time for completion of discovery." Congress also recommended, rather than required, that the court encourage voluntary exchange of information during discovery.
- Consider exploring the litigants' receptivity to settlement or alternative dispute resolution.

The Southern District of California already has sent its plan to the Administrative Office of the U.S. Courts and is ready to go with it Dec. 31.

The Northern District, which is one of five "demonstration districts," has until Dec. 31, 1992, to put a cost and delay reduction plan into use. But the district elected to be an "early implementation district" as well, and its plan will go into effect Dec. 31. Early implementation districts may get some funding to help carry out their experiments.

The demonstration districts do not have to adhere to the six guidelines set out in the Biden Bill.

— Terry Carter

Local Plans Form

Southern: A Thumbs-Down to Voluntary Disclosure

While the Northern District is considering a system of voluntary disclosure in lieu of the cat-and-mouse method of discovery, the Biden Bill advisory group for the U.S. Southern District of California, one of 10 "pilot districts" taking the lead in the nationwide experiment, gave a thumbs-down to the concept.

"Forcing the defendant to come forward with a lot of information would drive counsel right off the page," says Robert G. Steiner, chairman of the district's advisory group and a partner in San Diego's Luce, Forward, Hamilton & Scripps.

And the group rejected limits on numbers of depositions and interrogatories, preferring to encourage judges to practice strong case management and push for stipulated solutions monitored through regular status conferences.

Steiner's group had to move quickly as a "pilot district" to have a plan ready for implementation by Jan. 1.

First, they brought in a consultant, the Philadelphia-based Judicial Research Institute, to study the conditions of the civil and criminal dockets. The plans are to be tailor-made, district by district, and the most significant aspect of the Southern District is its criminal docket.

Most Criminal Cases Filed

The consultant reported back that "the district has probably the highest per judge criminal case filing in the nation and the largest percentage nationally of drug-related cases." The result was that the advisory group looking into civil justice reform went straight at the problems of the criminal docket.

Some of the more interesting findings: Civil docket filings have fallen from 3,125 in 1984 to 1,868 cases in 1990; during the same period the felony docket grew from 1,694 to 2,536. In just the past year, the median time for disposition of civil cases has increased by three months, from 18 to 21.

The biggest culprit, Steiner says, is the mandatory sentencing guidelines, which have greatly curtailed plea bargaining and added to the similar impact of the Speedy Trial Act in displacing civil cases.

Thus the cost and delay reduction plan includes a rotation system to pull each judge from the criminal docket draw for two months a year, hopefully creating an open space on the judges' conveyor belts to move civil matters along.

'One Big Breakthrough'

"The one big breakthrough we had was on the criminal side," Steiner says. "We went outside the committee and initiated conversations with the U.S. attorney and the Defenders Corporation and some criminal defense lawyers. We've taken the first step in a dialogue we hope will address and resolve our criminal cases, and keep them from taking up time from civil matters."

The most controversial issue within the committee concerned what eventually became an overwhelmingly majority vote to recommend, as part of the plan, that Congress repeal mandatory minimum sentences and sentencing guidelines.

"Criminal cases are now basically non-negotiable, and they're breaking our back by going to trial," Steiner says.

Among other aspects of the plan:

- Encourage judges from other districts to visit San Diego and try criminal cases. The civil cases should be handled by local judges so lawyers can have the certainty and predictability needed in evaluating cases and reaching settlements.
- Set prompt trial dates in certain cases. Social Security matters, enforcement of judgments, prisoner petitions and forfeiture and penalty cases would be set to come to trial within a year; Federal Tort Claims Act cases would be tried within 15 months; and a quarter of all other civil cases that aren't "complex" should be set for trial within 18 months.

— Terry Carter

Northern Sets Sights On Pretrial

Melvin R. Goldman seems only half-facetious when he immediately shoots back a question to a reporter, turning things around when asked about his Biden Bill advisory group's work on a plan to reduce costs and delays in civil litigation in the federal Northern District of California.

"Do you have any ideas?" Goldman wants to know at the outset. His delivery is deadpan, and it's difficult to tell whether he's emphasizing what will be his first point or whether he's still contemplating square one.

After all, the group in San Francisco did begin at the beginning, surveying the literature on the issue and then looking to see what various state and federal courts have tried.

"And when it came right down to it, there weren't a lot of specifics about reforms," says Goldman. What they came up with at the beginning was a unanimous perception of abuses and inefficiencies.

One of the key thumbnail observations by Goldman on his subcommittee's findings: The fundamental problem is that discovery is adversarial, and thus the issue is one of structure.

"So if at trial you're going to be fighting over admission of evidence," Goldman says, "you'll be fighting at an early stage in discovery over it. Lawyers are highly skilled and vocal, and bring it in at that point."

Thus the subcommittee is advocating voluntary disclosure and exchange of most information before trial, under the watchful eye and approval of a judge strongly involved in case management. "I would be somewhat along the lines of Judge [William W.] Schwarzer's ideas," Goldman says.

The proposals have not yet been considered by the full advisory group.

Central Sends Questionnaires, Going to 'Customer' on Reforms

With all the angst and breast-beating about civil justice reform, there's this from Los Angeles:

"Our docket, among all the federal districts, is in relatively good shape," says Donald C. Smaltz, chairman of the U.S. Central District of California's Biden Bill advisory group, and himself no fan of the legislation that set him about his task.

"The Legislature is really exacerbating the problem, and my sense is the so-called Biden Bill was passed without a lot of support from the judiciary," he says.

Nonetheless, the former federal prosecutor and current partner in the Los Angeles office of Philadelphia's Morgan, Lewis & Bockius and his committee have begun an extensive survey of judges, litigants and their lawyers. And their district purposely avoided being one of the "early implementation districts," preferring to come up with their own plan for curtailing costs and delays toward the end of the statutory requirement, with the latest time for implementation being Jan. 1, 1994.

"I think it's more important to get a big response from the customer, rather than trying to get out a report in double-quick time," says Smaltz.

The advisory group is sending out about 2,000 questionnaires in the survey, with all of them expected to be mailed by mid-November. They are going to judges, lawyers and litigants involved in 300 cases disposed of in the past four years, selected at random.

For now, Smaltz points the finger back at Washington.

"One of the first things we could do is ensure an adequate number of judges and promptly fill vacancies," he says.

— Terry Carter