



**ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS**

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January 16, 1991

**MEMORANDUM TO ALL: CHIEF JUDGES, UNITED STATES
COURTS OF APPEALS
JUDGES, UNITED STATES DISTRICT COURTS
UNITED STATES MAGISTRATE JUDGES
CIRCUIT EXECUTIVES
DISTRICT COURT EXECUTIVES
CLERKS, UNITED STATES DISTRICT COURTS**

**SUBJECT: Recommendations of the Judicial Conference Committee on Court
Administration and Case Management regarding the implementation of the
Civil Justice Reform Act of 1990**

In a memorandum dated December 20, 1990, I provided you with an overview of the requirements of the Civil Justice Reform Act of 1990 (the "Act") (Public Law No. 101-650, title I), along with the early recommendations of the Case Management Subcommittee of the Judicial Conference's Committee on Court Administration and Case Management relating to the selection of advisory groups pursuant to the Act. At that time I indicated that additional information and guidance on implementation of the Act would be forthcoming after the meeting of the full Committee on Court Administration and Case Management.

As indicated in the earlier memorandum, each court must appoint an advisory panel by March 1, 1991. The primary task of this advisory panel is to develop a case management plan. The work of the panel will be time-consuming. Plans are to be submitted and implemented by courts by December 1, 1993, with the exception of the ten designated pilot courts whose plans are to be implemented by December 31, 1991.

The Congress has yet to appropriate funds for the purpose of meeting the requirements of the Act. A supplemental appropriations request for the fiscal year 1991 to meet these needs will be submitted to the Congress shortly. However, it is unlikely that any additional funds will be made available before mid-summer.

The full committee met on January 3-4, 1991, and after considerable discussion made several policy recommendations regarding the selection of advisory groups. The following recommendations are intended to establish suggested parameters and to provide guidance to the district courts regarding selection of advisory groups.

Advisory Groups

Size of Advisory Groups

While the Act is silent as to the size of advisory groups, the committee points out that the Senate and House have made it clear that, while size is left to the appointing authority, "it is anticipated that the group will be sufficiently large to accommodate the major categories of litigants in the district". *S. Rep. No. 101-416, 101st Cong., 2d Sess. 62 (1990); H.R. Rep. No. 101-732, 101st Cong., 2d Sess. 19 (1990).*

The committee advises, however, that districts guard against the appointment of advisory groups too large to be effective. It believes that a group of fewer than 10 members would not meet the intent of the Act and suggests that a group of 10 to 15 members would be optimum in most districts. The largest districts may need to consider a group of 15 to 20 members.

Composition of Advisory Groups

As I indicated in my earlier memorandum on this subject, Section 478(b) of Title 28 requires that an advisory group "be balanced and include attorneys and other persons who are representative of major categories of litigants. . . as determined by the chief judge. . . ." The committee suggests that one or more non-attorney members should be appointed to the advisory group. This person could be a member of a local advocacy group, such as a consumer or prisoner rights organization, or a representative from the business community such as the officer of a corporation or a representative of a business group such as the Chamber of Commerce. It is the further belief of the committee that it is critical that the advisory group be representative in order to ensure input from the community and that appointments accurately reflect the profile of litigation in the district and the major categories of litigation to the extent feasible.

Appointment of a Reporter

The Act allows the chief judge to designate a reporter for the group, who may be compensated according to guidelines established by the Judicial Conference if implementation funds become available. The committee believes that the use of a reporter will be of critical importance to the work of the advisory groups. The committee envisions two potential functions for the reporter. The first is that of secretary, providing primarily administrative support to the advisory group. The second is that of an expert in case management to assist in the assessment and analysis of the court's dockets and the development of specific recommendations for the district's plan.

The committee has identified two options for the appointment of an advisory group reporter. The first is to utilize the clerk of court to perform these functions. The committee believes that this role is within the normal functions of the clerk and that the clerk's intimate understanding of court operations will contribute greatly to the advisory group's effectiveness. The committee strongly believes that the clerk, if not utilized as the reporter, should in any case, serve as an ex officio non-voting member of the group.

The second option is to enlist the services of a local law professor, court administrator, or other person with the appropriate expertise in civil litigation. The committee notes, however, that the Congress has not yet provided the funds to compensate a reporter. Until funds are appropriated and the Judicial Conference issues the approved guidelines, the use of any outside expert would be on a pro bono basis.

Role of Judicial Officers on Advisory Groups

The committee considered whether judges and magistrate judges should be appointed to advisory groups. Although the Act is silent on the appointment of judicial officers and clerks to the advisory groups, the committee believes that their involvement in the work and deliberations of the group would be beneficial in order to provide insight into the operation and case management practices of the court. However, the committee believes that the involvement of judicial officers should be limited to one or two members in a non-voting capacity.

The Use of Multiple Advisory Groups Within Districts

The committee considered whether the use of more than one advisory group in districts with large or remote divisional offices would be advantageous. It was determined that a single assessment of the district would be necessary to develop an effective plan.

Manner of Adopting Plans

The committee considered the manner in which a district could adopt the expense and delay reduction plan proposed by its advisory group. It concluded that the preferable method would be through the court's existing voting practice used to adopt general orders or local rules of court.

Selection of Pilot Courts

The committee will recommend to the Judicial Conference that 10 courts serve as pilots pursuant to Section 105 of the Act under the following criteria:

1. At least five of the courts must be from large metropolitan areas pursuant to Section 105(b) of the Act.
2. The other five should include small and medium size courts.
3. Each pilot court selected should have one or more "comparable courts" to be used for comparison and evaluation purposes by the "independent organization" selected to evaluate the effects of the Act pursuant to Section 105(c).
4. To the extent possible, each geographical area of the country should be represented.
5. No more than two courts should be from the same circuit.
6. Whether a particular court desires to participate should not be a determining factor in the selection process.

7. Factors tending to skew results should be avoided.
8. Courts heavily impacted with criminal cases should be represented.
9. Courts that have problems occasioned by the district being spread over a large geographical area should be included.
10. Some statewide districts should be included.
11. The 10 pilot courts should be made up of districts that from a statistical standpoint can be perceived as having maximum, medium and minimal success in disposing of their civil cases expeditiously.

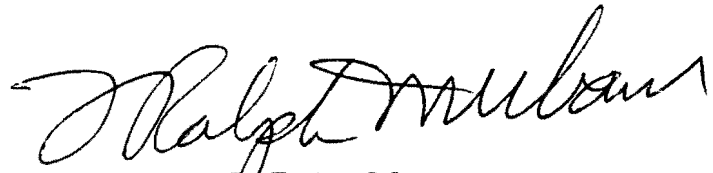
The committee made every effort to ensure that the 10 pilot courts to be recommended for consideration by the Judicial Conference represent a statistical cross section of all districts in order to ensure a valid test of the mandatory provisions of the Act. The recommended pilot courts are:

New York Southern
Georgia Northern
Pennsylvania Eastern
Texas Southern
California Southern
Delaware
Tennessee Western
Oklahoma Western
Wisconsin Eastern
Utah

Conclusion

The committee and its subcommittee will continue to provide courts with the necessary guidance in this area. The Administrative Office and Federal Judicial Center will provide materials and guidance for advisory groups to assist in their assessment of courts' dockets as well as training material for pilot courts and early implementation courts.

Any questions regarding these matters may be directed to Abel Mattos of the Court Administration Division at FTS 633-6221.

A handwritten signature in black ink, appearing to read "L. Ralph Mecham". The signature is fluid and cursive, with the first letter of each word being capitalized and prominent.

L. Ralph Mecham