

Karen S

United States District Court
Eastern District of Michigan
Detroit 48226

**COPY FOR YOUR
INFORMATION**

Julius Abele Cook, Jr.
Chief Judge

March 9, 1990

Honorable Robert F. Peckham
United States District Court
for the Northern District of California
P.O. Box 36060
450 Golden Gate Avenue
San Francisco, California 94102

RE: Proposed Civil Justice Reform Act of 1990
(S.2027)

Dear Judge Peckham:

Word has reached this Court that S.2027, the proposed Civil Justice Reform Act of 1990, may have sufficient support to move quickly through both Houses of Congress without substantial change. In the view of the judges and staff of this Court that event would do a great disservice to the people of the Eastern District of Michigan and to the residents of many other districts throughout the United States. The purpose of this letter, therefore, is to highlight those aspects of the Bill which throw in doubt the wisdom of enacting it at this time in such a hasty manner.

First, the Bill, as it stands, seems to be of greater benefit to corporations and the larger law firms than to individual litigants, often plaintiffs, and the smaller and less-specialized law firms. Fast-track legal procedures generally harm those who need to schedule their time and attendance around substantially competing business and personal interests.

Second, neither the task force report, Justice For All: Reducing Costs and Delay in Civil Litigation, nor the "Statement on the Introduction of the Civil Justice Reform Act of 1990" provide any statistical data to indicate whether the federal judiciary as a whole is in crisis or particular districts have serious delay problems. The broad assumption that civil disputes are going unattended everywhere simply is not true. In this district, one of the nation's ten largest, the backlog index for

each of the past four years, as defined in the proposed Bill, is:

1986	-	.92
1987	-	.81
1988	-	.75
1989	-	.89

This means, in effect, that the Eastern District of Michigan has steadily whittled away at its pending caseload in a consistent and effective manner. Would not it be better to determine how serious and how far spread the problems are before legislating substantial resources to solve unknown case management situations?

Third, the Bill underestimates the monetary costs to automate fully the civil dockets of all the federal courts. The Eastern District of Michigan is one of the most thoroughly automated courts in the country. It is clear from our experience that the \$10,000,000 falls far short of a reasonable nationwide projection. The cost of the hardware, software and training of line staff to produce a uniform motions report is staggering.

It is also easy to forget that the movement from manual to automated systems represents a fundamental change in the way court staff do their work. For example, on the motions report as required in the Bill, are petitions and applications to be considered a motions? If they are not, who is to decide - the attorneys or court personnel? If court personnel, what criteria are to be used and who is going to do the training? We have found that such required uniformity is difficult to achieve, but, without it, no motions report has much value.

Finally, the Bill would cause to be created significant, bureaucratic programs and procedures which may not, with respect to costs and delay, have any real effect. Track coordinators, mandatory conferences and neutral evaluation programs may actually impede the timely resolution of pending cases. Again by example, an increasing number of judges in this Court decline to use mediation, the form of alternative dispute resolution established by Michigan Court Rules, because it is perceived as slowing down the disposition of civil cases.

It seems to this Court that federal judges have the professional duty to reduce the costs and delays associated with the resolution of civil disputes for all litigants who rightfully are subject to federal jurisdiction. We also have the professional duty, however, to ascertain whether the perceived problems are real and can be addressed, to be responsible guardians of public expenditures and to avoid establishing

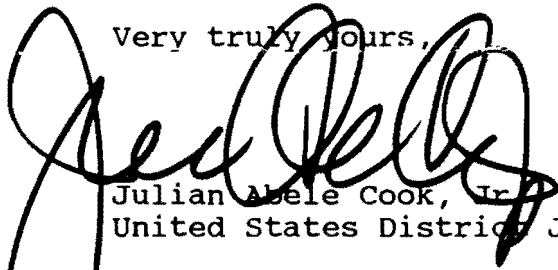
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bureaucratic policies and procedures where they may not be needed.

It is our view, in other words, that S.2027 appears to be a simplistic solution to a complex matter which may exist in some places, but which may not exist in other places. We urge the Judicial Conference to take whatever steps may be necessary to persuade the members of Congress to proceed with appropriate deliberation in this matter.

Very truly yours,



Julian Abele Cook, Jr. Chief
United States District Judge

cc: Judge Sarah Evans Barker
Chief Judge Levin H. Campbell
Chief Judge John F. Nangle
Chief Judge Aubrey E. Robinson, Jr.
~~L. Ralph Mecham~~