

PROPOSED REVISION
March 13, 1990

SEC. 3. AMENDMENT TO TITLE 28, UNITED STATES CODE.

(a) Civil Justice Expense and Delay Reduction Plans and Case Management Training.--Title 28, United State Code, is amended by adding at the end of part I the following new chapter:

**"CHAPTER 23--CIVIL JUSTICE EXPENSE
AND DELAY REDUCTION**

"SUBCHAPTER I--CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLANS

"Sec.

- "471. Model civil justice expense and delay reduction plans.
- "472. Requirement for a district court civil justice expense and delay reduction plan.
- "473. Determinations regarding civil case backlog.
- "474. Development and implementation of a civil justice expense and delay reduction plan
- "475. Content of civil justice expense and delay reduction plans.
- "476. Judicial Conference continuing review of civil case management.
- "477. District court periodic review of civil case management
- "478. Automated semiannual report on caseload processing.
- "479. Manual for litigation management.

"SUBCHAPTER II--CASE MANAGEMENT TRAINING

"Sec.

- "481. Judicial case management training programs.

**"SUBCHAPTER I--CIVIL JUSTICE EXPENSE AND DELAY
REDUCTION PLANS**

"§ 471. Model civil justice expense and delay reduction plans

"The Judicial Conference of the United States shall develop one or more model civil justice expense and delay reduction plans. Each such plan shall provide for facilitating deliberate adjudication of civil cases on the merits, streamlining

discovery, improving judicial case management, and ensuring just, speedy, and inexpensive resolutions of civil actions.

"§ 472. Requirement for a district court civil justice expense and delay reduction plan

"(a) There shall be in effect for a United States district court, in accordance with this subchapter, a civil justice expense and delay reduction plan whenever there is a significant backlog of civil cases pending in such court. The plan shall be in effect during the period beginning 180 days after the date on which the court receives a notification of the existence of a significant civil case backlog under subsection (a) of section 473 of this title and ending on the date on which the court receives a notification under subsection (b) of such section.

"(b) The Judicial Conference of the United States may waive the requirement under subsection (a) of this section in the case of any district court if the Judicial Conference finds that the ability of the court to process civil and criminal cases has been substantially reduced as a result of the existence of a vacancy in one or more judgeships on such court for an extended period, a substantial increase in the number or complexity of criminal cases filed in such court in relation to the judicial and other resources of such court, or any other temporary condition considered material by the Judicial Conference. The Judicial Conference may delegate the authority to make findings and grant waivers under this subsection but shall prescribe specific guidelines for the exercise of any authority so delegated.

"§ 473. Determinations regarding civil case backlog

"(a) Not later than October 1 of each year, the Director of the Administrative Office of the United States Courts shall--

"(1) with respect to each United States district court, determine whether there was a significant backlog of civil cases pending in such court on June 30 of such year; and

"(2) transmit to each district court for which the Director finds that there is such a backlog a notification of the Director's finding.

"(b) Not later than October 1 of each year, the Director of the Administrative Office of the United States Courts shall--

"(1) with respect to each United States district court in which there is in effect a civil justice expense and delay reduction plan pursuant to section 472 of this title, determine whether there was a significant backlog of civil cases pending in such court on June 30 of such year; and

"(2) transmit to each district court for which the Director finds that there was not such a backlog on that date a notification of the Director's finding.

"(c) For the purposes of this subchapter, a significant civil case backlog exists in a United States district court on the date for which a determination is made under this section if--

"(1) more than 50 percent of the civil cases pending in such court were commenced more than one year before such date; or

"(2) more than 15 percent of the civil cases pending in such court were commenced more than two years before such date.

[NOTE: This is a working standard for a finding of "backlog" and is expected to be subject to extensive debate and revision by those reviewing this draft. It should not be considered the final word on the subject, nor even a recommended standard. It is recommended, however, that every effort be made to limit the definition of backlog to a standard that is simple to express and measure.]

"§ 474. Development and implementation of a civil justice expense and delay reduction plan

"(a) A United States district court required to have in effect for any period a civil justice expense and delay reduction plan pursuant to section 472 of this title shall implement such a plan by local rule in accordance with the provisions of section 2071 of this title. The plan may be a model plan developed by the Judicial Conference of the United States or a plan developed by such court.

"(b)(1) The civil justice expense and delay reduction plan for a district court shall be selected or developed, as the case

may be, after consideration of the recommendations of an advisory committee appointed by the chief judge of the court.

"(2) The advisory committee shall include the chief district court judge, a magistrate of the district court, the district court clerk, representatives of the public, and such attorneys as may be necessary to ensure that major categories of litigants in the district are represented on the advisory committee. The chief judge shall designate a reporter for the advisory committee.

"(c) The judicial council of the circuit in which a district court is located shall review and evaluate and may modify or abrogate a civil justice expense and delay reduction plan of such court in accordance with section 2071(c)(1) of this title.

"(d) The Judicial Conference of the United States may review and evaluate any determination of a circuit judicial council under subsection (c) of this section.

"§ 475. Content of civil justice expense and delay reduction plans

"(a) A model civil justice expense and delay reduction plan developed pursuant to section 471 of this title and a civil justice expense and delay reduction plan in effect pursuant to section 472 of this title may include any or all of the following features:

"(1) A system of differentiated case management that provides for the following:

"(A) An early court assessment of each case filed in such court, considering such criteria as--

"(i) case complexity determined on the basis of the number of parties involved, the number of claims and defenses raised, the legal difficulty of the issues presented, the factual difficulty of the subject matter, and any other appropriate factors;

"(ii) the amount of time reasonably needed to prepare the case;

"(iii) the anticipated trial length; and

"(iv) the judicial resources and other resources necessary for the preparation and disposition of the case.

"(B) Allocation of the level of court supervision and resources necessary for each case consistent with the circumstances of the case.

"(C) Establishment of appropriate procedures for monitoring case progress and for ensuring compliance with deadlines established for the completion of case events.

"(D) Expeditious processing of each case by counsel and judicial system officials consistent with the necessary tasks.

"(2) A requirement that a discovery-case management conference be held in each complex case, and in each case in any other category of cases subject to such requirement as

specified in the plan, within 120 days after the date on which the issues are joined.

"(3) Requirements that the judicial officer presiding at a discovery-case management conference--

"(A) explore the parties' receptivity to, and the propriety of, settlement or proceeding with the litigation;

"(B) attempt to identify or formulate the principal issues in contention and, in appropriate cases, provide for the staged resolution or bifurcation of issues consistent with Rule 20(b) of the Federal Rules of Civil Procedure;

"(C) prepare a discovery schedule and plan consistent with the complexity of the case, the amount in controversy, and the resources of the parties;

"(D) establish at the conference--

"(i) the dates or deadlines for the filing, hearing, and deciding of motions;

"(ii) the date or dates of additional pretrial conferences, including the final pretrial conference; and

"(iii) the date for trial or, in a complex case, a deadline for the commencement of the trial specified in terms of a period after completion of discovery;

"(E) in each complex case, establish a series of monitoring conferences for the purposes of establishing the focus and pace of discovery, refining issues, and developing stipulations; and

"(F) address any other appropriate matters.

"(4) A requirement that, in each complex case, each party be represented at each pretrial conference by an attorney who has the authority to bind that party regarding all matters previously identified by the court for discussion at the conference and all reasonably related matters.

"(5) Authority to permit some or all participants in a case to participate in any conference by telephone if the case is not a complex case.

"(6) Procedures for waiving any otherwise mandatory discovery case management conference in any case--

"(A) which is not complex or is otherwise suitable for expedited disposition; and

"(B) in which the court can issue, within the period specified in the plan, a standard order scheduling--

"(i) a trial date;

"(ii) discovery, including discovery deadlines; and

"(iii) dates for filing and deciding substantive and discovery motions.

"(7) Procedures for providing, on the basis of the complexity of the case, for--

"(A) identifying and limiting the volume of discovery available to avoid unnecessary or unduly burdensome or expensive discovery;

"(B) phased use of depositions upon oral examination, depositions upon written questions, interrogatories to parties, production of documents and things and entry upon land for inspection and other purposes, and requests for admissions;

"(C) voluntary exchange of information; and

"(D) new and more cooperative discovery devices.

"(8) Provisions that--

"(A) each discovery motion, except a motion brought by a person appearing pro se or brought pursuant to Rule 26(c) of the Federal Rules of Civil Procedure by a person who is not a party, must be accompanied by a statement that counsel for the movant has made a reasonable, good faith effort to reach agreement with opposing counsel on the matters set forth in the motion; and

"(B) attorneys fees may be awarded against a party if the party's counsel has not made such an effort.

"(9) Procedures for resolving motions necessary to meet established trial dates and discovery deadlines, including

the adoption of time guidelines for the filing and disposition of substantive and discovery motions.

"(10) Procedures for ensuring that the parties to a civil case have the opportunity to consent to trial of the case by a United States magistrate.

"(11) An alternative dispute resolution program for use in appropriate cases.

"(12) A neutral evaluation program for the presentation of the legal and factual bases of a case to a neutral court representative at a non-binding conference conducted early in the litigation.

"(13) A requirement that, upon notice by the court, representatives of the parties with authority to bind them in settlement decisions be present or available by telephone during any settlement conference.

"(14) Procedures for enhancing the accountability of each judge in a district court through--

"(A) regular reports of the judge's pending undecided motions and caseload progress to the other judges in the judicial circuit in which such district court is located; and

"(B) to the extent provided for by the judicial council of such circuit in the discretion of the council, public disclosure of any such report.

[NOTE: Paragraph (14) and section 477 are essentially redundant. One or the other of these provisions should be deleted.]

"(15) Procedures for identifying, and reviewing from time to time, functions performed in a district by magistrates with a view to determining which functions within constitutional and statutory limits can best be performed by judges or by magistrates.

"(16) Procedures for judges to exchange information about their roles in adjudicating contested motions and other matters.

"(17) Such other features as the district court considers appropriate after considering the recommendations of the advisory committee referred to in section 474(b) of this title.

"(b) A United States district court may waive the requirements of sections 3161(c) and 3164(b) of title 18 for cases filed in such court during any period in which the court is required under section 472 of this title to have in effect a civil justice expense and delay reduction plan. Any such waiver shall be clearly stated in the plan.

"(c) In the order implementing a civil justice expense and delay reduction plan, a United States district court may state findings regarding the extent to which the court's civil case backlog results from (1) any judicial vacancy in such court, (2) the magnitude and complexity of the criminal caseload of such court, and (3) any deficiency in the number of judges authorized for such court.

"§ 476. Judicial Conference continuing review of civil case management

"The Judicial Conference of the United States shall review, on a continuing basis, civil case management by the United States district courts and shall develop such additional case management procedures as the Judicial Conference determines, on the basis of its review, are appropriate. The Judicial Conference may require any district court to implement any such additional case management procedure that the Judicial Conference considers necessary in the interest of effective civil case management.)

"§ 477. District court periodic review of civil case management

"Each district court shall review periodically the civil management procedures for such court and revise the rules of such court as appropriate to improve court management of civil cases. The court shall perform the review in accordance with guidelines prescribed by the Judicial Conference of the United States and shall transmit to the Judicial Conference a report on each review.

"§ 478. Automated semiannual report on caseload processing

"(a)(1) On January 15 and July 15 of each year each United States district court shall make available to each judge in the judicial circuit of such court a report on caseload processing by each judge of that court. The judicial council of that circuit may, in the discretion of the council, direct that any such report be made available to the public.

"(2) The report shall contain, for each judge, the following information as of the first day of the month of the report:

"(A) The motions that have been under advisement for more than 90 days, stated as a total number for each 90-day period.

"(B) Data indicating the aging of the judge's caseload in each category provided for by the district court.

"(C) The number of written opinions issued by the judge during the 6-month period ending on the date of the report.

"(D) The number of bench trials completed during such period.

"(E) The number of jury trials completed during such period.

"(b) The Director of the Administrative Office of the United States Courts shall ensure that the United States district courts' automated dockets have the program capability readily to retrieve the information necessary for the semiannual report required by subsection (a) of this section.

"(c) In order to facilitate the reporting required under subsection (a), the Director shall standardize court procedures for categorizing or characterizing judicial actions, including defining what constitutes a dismissal and how long a motion has been pending.

§ 479. Manual for litigation management

"The Director of the Administrative Office of the United States Courts, under the direction of the Judicial Conference of

the United States shall prepare a manual for litigation management. The manual shall contain the following:

"(1) A discussion of civil justice expense and delay reduction plans, including the rationale for using such plans, the effectiveness of the use of such plans for increasing the availability of time for trials and deliberate adjudication of cases on the merits, and the advantages of using such plans.

"(2) Basic case management procedures, a discussion of the effectiveness of such procedures, and model local rules for case management.

"(3) Other litigation management matters considered appropriate by the Judicial Conference.

"SUBCHAPTER II--CASE MANAGEMENT TRAINING

"§ 481. Judicial case management training programs

"The Director of the Federal Judicial Center shall take such action as may be necessary to expand current judicial training programs to include a new curriculum and emphasis on case management so that the accumulated learning on management and adjudicatory techniques is communicated on a regular and formal basis to all district court judges, magistrates, clerks of the district courts, and other court personnel the Director considers appropriate."

(b) Table of Contents.--Part I of the table of contents of title 28, United States Code, is amended by adding at the end thereof the following:

"23. Civil Justice Expense and Delay Reduction.....471".

SEC. 4. DEMONSTRATION PROGRAM.

(a) In General.--Except as provided in subsection (d), the Judicial Conference of the United States shall implement subchapter I of chapter 23 of title 28, United States Code (as added by section 3), as a demonstration program.

(b) Period of Demonstration Program.--The demonstration program shall be conducted during the 3-year period beginning on January 1, 1991.

(c) Participating Courts.--Under the demonstration program, the Judicial Conference of the United States shall limit the applicability of subchapter I of chapter 23 of title 28, United States Code (as added by section 3), to such United States District Courts as the Judicial Conference determines appropriate to ensure meaningful results.

(d) Periodic Reviews by District Courts.--Section 477 of title 28, United States Code (as added by section 3), shall be implemented according to the provisions of such section and not as a feature of the demonstration program and shall apply to all United States district courts.

SEC. 5. REPORTS.

(a) Report Requirements.--The Judicial Conference of the United States shall submit to the Committees on the Judiciary of the Senate and the House of Representatives an interim report and a final report on the demonstration program under section 4.

(b) Interim Report.--The interim report shall be submitted not later than January 1, 1992. The interim report shall contain a plan for the conduct of the demonstration program, each model civil justice expense and delay reduction plan developed by the Judicial Conference, and the district courts covered by the demonstration program.

(c) Final Report.--(1) The final report shall be submitted not later than 90 days after the completion of the demonstration program.

(2) The final report shall contain the following:

(A) The number of United States district courts that have implemented civil justice expense and delay reduction plans.

(B) The content of such plans.

(C) The number of courts implementing a model civil justice expense and delay reduction plan developed by the Judicial Conference of the United States.

(D) For each plan a discussion of how the plan addressed each of the following matters:

(i) The acquisition of initial case information.

(ii) Development of a case disposition plan and timetable.

(iii) Trial scheduling.

(iv) Use of alternative dispute resolution techniques.

(v) Notification and communication among the court and attorneys, including means by which judges and administrators within and outside the court consult concerning management and administrative issues affecting the court.

(vi) Management and monitoring of case progress.

(vii) The means for data input and case recordkeeping.

(viii) Procedures for evaluating system performance.

(E) For each plan providing for case tracking, a discussion of how the plan addressed each of the following matters (in addition to a discussion of how the plan addressed each of the matters referred to in subparagraph (D)):

(i) The creation of a case tracking record.

(ii) The number of case processing tracks.

(iii) The criteria for differentiating among cases and assigning cases to one of the tracks.

(F) An analysis of the impact of the plans on the time available to judges to address complex, novel, or difficult issues of law or fact.

SEC. 6. FIRST PERIODIC DISTRICT COURT REVIEW.

The first periodic review by United States district court pursuant to section 477 of title 28, United States Code (as added

by section 3), shall be completed not later than 1 year after the date of the enactment of this Act.

SEC. 7. AUTHORIZATION.

(a) Civil Justice Expense and Delay Reduction.--There is authorized to be appropriated not more than \$_____ for the implementation of subchapter I of chapter 23 of title 28, United States Code (as added by section 3), and sections 4 and 5 of this Act.

(b) Judicial Case Management Training.--There is authorized to be appropriated for the Federal Judicial Center not more than \$1,000,000 for implementation of section 481 of title 28, United States Code (as added by section 3).