

FEDERAL COURT WATCH

BY ANN PELHAM

Biden, Judges Negotiate Civil Reform

The simmering conflict between the Senate Judiciary Committee and the nation's federal judges over civil litigation reform may be cooled as early as this week.

The Senate Judiciary Committee is close to releasing a revised draft of the controversial measure proposed last January by Chairman Joseph Biden Jr. (D-Del.).

Committee staff members, led by General Counsel Jeff Peck and Minority Counsel Kevin McMahon, have been negotiating with federal judges, magistrates, and their representatives over possible changes in the measure, which would require District Courts to set and follow strict timetables for processing civil cases.

The Judicial Conference, the judiciary's official governing body, voted in March to oppose the bill as drafted. A principal complaint was that it imposed



Sen. Joseph Biden Jr.

detailed procedures on judges, leaving them little flexibility in handling diverse caseloads. Many judges said the bill was an attempt by the legislative branch to micromanage the judiciary.

In recent weeks, several bar groups have lined up with the judges against the bill. The American Bar Association's Board of Governors, the Federal Bar Association, and four New

York bar groups are among those that have come out against the bill.

But their opposition, like that of the Judicial Conference, has never had much chance of totally derailing the measure, which has bipartisan support in the Senate and is a top priority for Biden. And the goal of the bill—speeding civil cases through the federal courts—enjoys widespread support.

Aware of that reality, the judges and their allies have been willing and eager to work out a compromise with Biden and his aides on the Senate panel. Robert Feidler, director of legislation for the Administrative Office of the U.S. Courts, says he is optimistic about the revised bill.

"If the draft lives up to its billing, it will have substantially addressed many of the concerns raised by the judiciary," says Feidler, who has been a key negotiator. "We will give it to the judges again to look at, and then we'll see what the official judicial-branch reaction is."

The judges have done more than just talk since Biden launched his legislative push. In a tactical move, apparently designed to show its willingness to reform, the Judicial Conference voted April 27 to impose new case-management rules on district judges. Rather than wait for its next formal meeting, the usually slow-moving conference drafted its measure in record time and used a special ballot to approve the new plans for monitoring the progress of civil cases through the courts.

While the conference adopted some elements of the Biden bill, such as an advisory panel of lawyers and clients in each district, the judges avoided words like deadline, tracking, and time limits—all central elements in Biden's plan and all objectionable to many judges.

The conference calls for each district's advisory panel to assess criminal and civil caseloads, identify the chief causes of cost and delay in civil litigation, and propose solutions. Then each District Court will decide which of the proposals to adopt. Monitoring this process will be the Judicial Conference, which, if not satisfied by a district's progress, "may request the court to take further action."

Although Feidler, Peck, and others were reluctant to say exactly how Biden's original proposal may be revised, one option is to give judges time to implement—and assess—these voluntary measures before tight rules are imposed. A sweetener in the legislative package for the judiciary is likely to be a chunk of the 76 new judgeships long sought by the Judicial Conference to handle the burgeoning caseload.

A sticking point may be how much of the process—from assessment to corrective procedures—is made public. Judges are traditionally reluctant to reveal which judges are slow at moving cases. While the Biden

plan would put such information on the public record, the conference's alternative would not.

One advocate for public disclosure is Alan Morrison of the Public Citizen Litigation Group, who opposes the Biden bill as overly intrusive on the judicial branch.

Morrison, who says the "most serious problem is getting judges to decide pending matters," says the courts should make public the now-secret reports kept on each judge's pending caseload.

"Making these sheets public would do wonders," he says, noting it is a "non-bureaucratic solution that requires no additional paperwork."

In addition to learning who is delaying cases, Morrison says, "people could be sure every case is on the list and hasn't fallen between the cracks." Under current procedures, he contends, cases involving attorney fees and Rule 11 sanctions do not show up on those lists—a slight he would like to change.