

# MEMORANDUM

U.S. District Court  
Western District of New York  
282 U.S. Courthouse ■ Rochester, New York 14614 ■ 716-263-6719

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**TO: Members of the CJRA Advisory Group**

**FROM: Rachel Brody Bandyck, CJRA Attorney** *RBB*

**DATE: February 17, 1993**

**RE: Draft Report and Recommendations of the CJRA Advisory Group**

For your review and comments I enclose a copy of the draft "Report and Recommendations of the Civil Justice Reform Act Advisory Group for the Western District of New York" dated February 16, 1993. I am also enclosing a copy of the "Model Civil Justice Expense and Delay Reduction Plan" prepared by the Judicial Conference of the United States pursuant to Section 103(a) of the Civil Justice Reform Act of 1990, 28 U.S.C. § 477. The Model Plan will provide you with both a reference for your review of the enclosed draft Advisory Group Report, and some specific details of the CJRA plans adopted by the 34 courts designated as early implementation districts.

The draft Advisory Group Report has been reviewed by the members of the Executive Committee and discussed by them during a conference call on Thursday, February 11, 1993. It was agreed that the current draft would be distributed to all members of the Advisory Group for comments, together with this memorandum that summarizes the issues discussed by the Executive Committee during the February 11, 1993 conference call. Further, it was agreed that a copy of the draft would be sent to Abel Mattos, Chief of the Court Programs Branch, Court Administration Division, Administrative Office of the United States Courts, for his preliminary review. The Executive Committee welcomes your thoughts and suggestions on the enclosed draft as well as the issues raised during the conference call.

The Executive Committee members first discussed the recommended revisions to Local Rule 15 governing class actions (Recommendation 7 on page 34). The complexity of most class actions warrants a rule requiring the Court to actively manage these types of actions in order to dispose of them in a timely fashion. As you will see in your review of the recommendation, the proposed revisions to Local Rule 15 are broad and will require the Court and counsel to adopt a proactive approach with respect to managing class action litigation. There was some concern noted as to the need for the recommended bifurcated discovery (requiring discovery relevant to class certification to be conducted prior to discovery relevant to the merits). However, because the recommended bifurcated discovery is not mandatory, but may be imposed by way of the

scheduling order in appropriate cases, all members of the Executive Committee were satisfied with the terms of the recommendation.

The Executive Committee members also discussed whether the Advisory Group Report should call for some form of differentiated case management whereby incoming cases would be assigned to different tracks depending on the complexity of the issues involved. The draft Advisory Group Report currently provides (at Recommendation 6(a) on page 31) that the trial date in all actions shall be within one year of the discovery deadline absent good cause shown noted in writing. While the majority of cases before the Court can adequately be prepared for trial within one year of the discovery cutoff date, it was noted that certain less complicated types of cases can readily be disposed of within six months. By comparison, it was also noted that the complexity inherent in other types of actions would not permit trial within one year of completing of discovery. Several districts have implemented or plan to implement some system of differentiated case management. Perhaps a system of track assignment would be an appropriate means of ensuring a reasonable lifespan for civil cases filed in this District.

Another matter covered by the Executive Committee was whether, in addition to the Court-Annexed arbitration program detailed in the draft Advisory Group Report, the Court should offer other mechanisms of alternative dispute resolution. It was suggested that the Advisory Group Report and the Court's CJRA Expense and Delay Reduction Plan could enumerate some ADR options including: appointment of a special master pursuant to Fed. R. Civ. P. 53, summary jury trial, early neutral evaluation, holding a settlement conference before a judge or magistrate judge, or consenting to trial before a magistrate judge. It was also suggested that the Advisory Group Report and the Court's Plan could specifically invite and encourage litigants to contact the Clerk of Court or the CJRA Attorney about any ADR mechanisms or any other type of intervention that might advance their particular case. It was suggested that these considerations could be included in Recommendation 13(e) at page 39 so as to more specifically describe the role of the CJRA Attorney as ombudsman.

The scope of Local Rule 16, "Mandatory Procedure for all Discovery Motions", was also a topic of discussion by the Executive Committee. While currently there is no recommendation in the draft Advisory Group Report regarding Local Rule 16, it was suggested that the provisions of Local Rule 16 only apply to discovery disputes between the parties and that challenges to burdensome production requests directed by subpoena to third party witnesses are not expressly subject to its requirements. It was suggested that Local Rule 16 be revised to broaden its scope so as to expressly encompass such circumstances.

The final item discussed was the need to encourage uniformity within the Court. Initially proposed by Judge Telesca, it was the consensus of the Executive Committee that the Advisory Group Report should clearly state that the ultimate goal of the Advisory Group Report, the Court's Expense and Delay Reduction Plan, and the Civil Justice Reform Act is to ensure procedural uniformity and uniform application of the court's rules. A statement to this effect appears as the preamble of Section IV of the draft Advisory Group Report.

As this memorandum illustrates, the enclosed draft is a working draft and numerous matters require the contributions of the Advisory Group members before the Report can be finalized and before the Court can adopt its expense and delay reduction plan. Once you have had an opportunity to review the enclosed materials, please send your comments to me at 2820 U.S. Courthouse, 100 State Street, Rochester, NY 14614. The Executive Committee would like to receive all comments by no later than March 19, 1993. If you have any questions, please feel free to call me at 263-6719.

Thank you for your prompt attention to this matter.