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REPORT FORM

CIRCUIT COMMITTEE REVIEW OF CJRA REPORTS AND PLANS

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This form is for use by the circuit review committees established by the Civil Justice Reform Act of 1990. Please use this form to review the advisory group report and court plan adopted pursuant to 28 U.S.C. §§ 471-473. Please use one form for each district court. If you have any questions about the use of this form, call Donna Stienstra at the Federal Judicial Center (FTS/202 633-6341) or Abel Mattos at the Administrative Office (FTS/202 633-6341). Upon completion, please send this form to:

The district court under review

and

Committee on Court Administration and Case Management  
% Robert Lowney  
Administrative Office of the U.S. Courts  
Mail Code OCP-CAD  
Washington, DC 20544

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Name of district court  
being reviewed:

Southern District of West Virginia

Date of this review:

\_\_\_\_\_

Circuit committee  
contact person:

Name:

\_\_\_\_\_

Address:

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\_\_\_\_\_

Telephone:

\_\_\_\_\_

### Review of the Advisory Group's Report

After examination of the advisory group report prepared pursuant to 28 U.S.C. § 472, please answer the questions below. For each question, answer either yes, no, or not clear. It would be helpful if the circuit committee could provide the report's page or section number on which each answer is based. If the committee finds it appropriate or necessary, it may provide a page or section citation when answering no or unclear, as well as when answering yes.

If you wish, please provide written comments on additional sheets of paper and attach them to this form. Please key the written comments to the relevant question numbers.

1. Does the advisory group report include, as required by 28 U.S.C. §§ 472(b)(1) and (c)(1), each of the following items?

	Yes	No	Not Clear	Page or Section
1.a. a determination of the condition of the civil and criminal dockets	(1)	2	3	<u>2-3</u>
1.b. identification of trends in case filings and demands on court resources	(1)	2	3	<u>3-6</u>
1.c. identification of the causes of cost and delay due to court procedures	(1)	2	3	<u>8, 15, 17, 18</u>
1.d. identification of the causes of cost and delay due to the way litigants and their attorneys conduct litigation	(1)	2	3	<u>11, 13</u>
1.e. examination of the extent to which cost and delay could be reduced by better assessment of the impact of legislation	(1)	2	3	<u>21-24</u>

2. Does the advisory group report include, as required by 28 U.S.C. § 472(b)(2), the basis for its recommendation that the court develop its own plan or select a model plan?

1  Yes  
 2  No  
 3  Not clear

Page or Section 7

3. Does the advisory group report include, as required by 28 U.S.C. § 472(b)(3), recommended measures, rules, and programs?

- ① Yes
- 2 No
- 3 Not clear

Page or Section 8-33

4. Does the advisory group report include, as required by 28 U.S.C. § 472(b)(4), an explanation of the manner in which the advisory group's recommended plan, or its recommendations in whatever other form, complies with the requirements of 28 U.S.C. § 473?

- 1  Yes
- 2  No
- 3  Not clear

Page or Section 36-41

5. In developing its recommendations, did the advisory group take into account, as required by 28 U.S.C. § 472(c)(2), the particular needs and circumstances of each of the following?

	Yes	No	Not Clear	Page or Section
5.a. the district court	1	②	3	
5.b. the litigants	1	②	3	
5.c. the litigants' attorneys	1	②	3	

6. Do the recommendations of the advisory group ensure, in accordance with 28 U.S.C. § 472(c)(3), that significant contributions will be made by each of the following?

	Yes	No	Not Clear	Page or Section
6.a. the district court	①	2	3	<u>9</u>
6.b. the litigants	①	2	3	<u>8</u>
6.c. the litigants' attorneys	①	2	3	<u>27</u>

The Committee asks the circuit committees to consider the following additional question regarding the advisory group report.

7. Does the advisory group report adequately recognize and address any special conditions in the district, such as those listed below?

	Yes	No	Not Clear	Page or Section
7.a. disparate civil or criminal caseloads or filings among places of holding court in the district	1	②	3	_____
7.b. the necessity of travel over substantial distances by litigants and attorneys	1	②	3	_____
7.c. judicial vacancies or inadequate judicial power	①	2	3	<u>4</u>
7.d. the impact of a high volume of complex cases, repetitive mass tort cases, or prisoner civil rights cases	①	2	3	<u>5-6</u>
7.e. procedures, rules, or programs that meet the requirements of 28 U.S.C. § 473 and pre-dated the effective date of the Act	1	②	3	_____

8. If you have any other comments about the advisory group report, please write them on a separate sheet of paper and attach it to this form.

### Review of the Court's Plan

After examination of the court's expense and delay reduction plan prepared pursuant to 28 U.S.C. §§ 472-473, please answer the questions below. For questions 9-15, answer either yes, no, or not clear. Questions 16-19 require a more substantive response. It would be helpful if the circuit committee could provide the plan's page or section number on which each answer is based. If the committee finds it appropriate or necessary, it may provide a page or section citation when answering no or unclear, as well as when answering yes.

**If you wish, please provide written comments on additional sheets of paper and attach them to this form. Please key the written comments to the relevant question numbers.**

9. Has the court, in accordance with 28 U.S.C. § 471, implemented a cost and delay reduction plan?

- ① Yes
- 2 No
- 3 Not clear

Page or Section

Order dated 12/30/91

10. Does the plan meet its statutory purpose, stated in 28 U.S.C. § 471, which is to "facilitate [the court's] deliberate adjudication of civil cases on the merits, monitor discovery, improve litigation management, and ensure just, speedy, and inexpensive resolutions of civil disputes"?

- ① Yes
- 2 No
- 3 Not clear

Page or Section

73-94

11. Was the plan developed, as required by 28 U.S.C. § 472(a), after consideration of the recommendations of the court's CJRA advisory group? Note that "consideration of" does not necessarily mean "acceptance of."

- ① Yes
- 2 No
- 3 Not clear

Page or Section

73

12. Does the plan reflect that the court, in consultation with its advisory group, considered the six principles and guidelines of litigation management and cost and delay reduction set out in 28 U.S.C. § 473(a) and listed below?

If the court is a pilot court, does the plan reflect that the court, as required by Sec. 105(b), Pub. L. 101-650, included the six principles and guidelines of litigation management and cost and delay reduction set out in 28 U.S.C. 473(a) and listed below?

	Yes	No	Not Clear	Page or Section
12.a. systematic, differential treatment of civil cases	①	2	3	<u>75-77</u>
12.b. early and ongoing judicial control of the pretrial process, including:				
b.1. case planning	①	2	3	<u>75-77</u>
b.2. early and firm trial dates	①	2	3	<u>75,92</u>
b.3. control of discovery	①	2	3	<u>77-80</u>
b.4. deadlines for motions	①	2	3	<u>76</u>
12.c. discovery/case management conference(s), at which the judicial officer and the parties explore the possibility of settlement; identify the principal issues in contention; provide, if appropriate, for staged resolution of the case; prepare a discovery plan and schedule; and set deadlines for motions	①	2	3	<u>75-77</u>
12.d. encouragement of voluntary exchange of information among litigants and other cooperative discovery devices	①	2	3	<u>80-81</u>
12.e. prohibition of discovery motions unless accompanied by certification by the moving party that a good faith effort was made to reach agreement with opposing counsel	①	2	3	<u>81</u>
12.f. authorization to refer appropriate cases to alternative dispute resolution programs	①	2	3	<u>81-89</u>

13. Does the plan reflect that the court, in consultation with its advisory group, considered the following litigation management and cost and delay reduction techniques set out in 28 U.S.C. § 473(b)?

	Yes	No	Not Clear	Page or Section
13.a. a requirement that counsel for each party present a joint discovery/case management plan at the initial pretrial conference	①	2	3	<u>73</u> <i>re Adv. Group Rpt., 11</i>
13.b. a requirement that each party be represented at each pretrial conference by an attorney with authority to bind that party to all matters previously identified by the court for discussion at the conference	①	2	3	<u>90</u>
13.c. a requirement that all requests for extension of discovery deadlines or for postponement of trial be signed by the attorney and party	①	2	3	<u>91</u>
13.d. a neutral evaluation program for presentation of the legal and factual basis of a case to a neutral court representative at an early nonbinding conference	①	2	3	<u>91</u>
13.e. a requirement that, upon notice by the court, representatives of the parties with authority to bind them in settlement discussions be present or available by telephone during settlement conferences	①	2	3	<u>91</u>
13.f. other features the district court thinks appropriate after considering the advisory group's recommendations	①	2	3	<u>92</u>

14. Does the plan indicate, as required by 28 U.S.C. § 474, that the court has a plan for taking such action as is necessary to reduce cost and delay in civil litigation?

- ① Yes
- 2 No
- 3 Not clear

Page or Section 73 et seq

15. If the court is a pilot court or is seeking designation as an early implementation district, does its plan comply with the following Judicial Conference requirements?

	Yes	No	Not Clear	Page or Section
15.a. An advisory group report was filed by December 31, 1991.	①	2	3	<u>73</u>
15.b. The court reviewed the advisory group report and adopted an expense and delay reduction plan by December 31, 1991.	①	2	3	<u>72</u>
15.c. The plan contains a schedule for effectuating the various components of the plan that evidences a good-faith effort to make the plan fully operational as promptly as feasible.	①	2	3	<u>74, 87</u>

The Court Administration and Case Management Committee suggests that the following four additional questions may be helpful to the circuit committees in determining whether implementation of the plan under review is likely to achieve the goals of the Civil Justice Reform Act.

16. Does the plan require the court (judges, magistrate judges, and/or staff) to make significant contributions to reducing cost and delay in civil litigation?

- ① Yes  
2 No  
3 Not clear

Page or Section 75-77, 78, 92

If yes, what significant contributions are required?

1. All cases will receive initial analysis by a judicial officer to issue a time frame order.
2. Court will give priority to motions to dismiss.
3. Judges will work out trial scheduling conflicts.



17. Does the plan require litigants to make significant contributions to reducing cost and delay in civil litigation?

- ① Yes
- 2 No
- 3 Not clear

Page or Section 80-81, 90

If yes, what significant contributions are required?

1. Parties must meet early-on to discuss settlement
2. Voluntary exchange of discovery materials encouraged

18. Does the plan require attorneys to make significant contributions to reducing cost and delay in civil litigation?

- ① Yes
- 2 No
- 3 Not clear

Page or Section 80-81

If yes, what significant contributions are required? Please describe the contributions required of the various categories of attorneys, such as those who practice in the district and those from outside the district; in-house counsel and outside counsel; hourly fee and contingent fee attorneys, attorneys whose fees are set by statute or the fact finder, and attorneys paid on some other basis.

1. Voluntary exchange of discovery materials encouraged.
2. Attorneys will conduct the mediation program.

*No differentiation between specific types of attorneys*

19. Are the principal components of litigation costs - such as attorneys' fees incurred during discovery, during motion practice, and for trial time; expert witness expenses; travel time; court reporting; and video expense - likely to be reduced under the court's plan?

① Yes  
② No  
3 Not clear

Page or Section 75-92

20. Has the circuit review committee made suggestions to the court regarding such "additional actions or modified actions of that district court as the committee considers appropriate for reducing cost and delay" (28 U.S.C. § 474(a)(1)(B))?

① Yes  
② No *as of 4/2/92, the Fourth Circuit had not reviewed the plan*

If yes, please attach a copy of the circuit committee's communication to the court.

21. If you have any additional comments about the court's plan, please write them on a separate sheet of paper and attach it to this form.

*Gary C. Petty*  
*4/3/92*

THANK YOU