

UNITED STATES COURT OF APPEALS  
FIFTH JUDICIAL CIRCUIT  
500 FANNIN STREET, RM. 2B04  
SHREVEPORT, LOUISIANA 71101-3074

*Matto*  
*file?*

*Chambers of*  
HENRY A. POLITZ  
*Chief Judge*

(318) 676-3472

28 April 1993

Committee on Court Administration  
and Case Management  
Administrative Office of the  
United States Courts  
Washington, DC 20544

Re: Report of Circuit Review Committee on  
Northern District of Texas

Please substitute the enclosed page of the report of the Fifth  
Circuit Review Committee forwarded on April 22, 1993. This page  
includes questions 17 and 18 and has a corrected response to  
question 18.

Very truly yours,

*Henry A. Politz*

Enclosure

Copy to Circuit Review Committee Members  
(w/copy of revised page)



***United States District Court  
Northern District of Texas***

**Dallas, HQ  
Abilene  
Amarillo  
Fort Worth  
Lubbock  
San Angelo  
Wichita Falls**



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**Date:** May 28, 1993

**To:** Abel J. Mattos  
Court Administration Division

**FAX Number:** 202-273-1555  
**PHONE Number:**

**From:** Nancy Doherty  
Clerk of Court  
U.S. District Court  
ND/Texas at Dallas  
Phone Number: 214/767-9511  
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FAX Number: 214-767-5574  
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**Message or Special  
Instructions:**

Cover plus (11) pages.

## UNITED STATES COURT OF APPEALS

## FIFTH JUDICIAL CIRCUIT

500 FANNIN STREET, RM. 2B04  
SHREVEPORT, LOUISIANA 71101-3074*file?*Chambers of  
HENRY A. POLITZ  
Chief Judge

22 April 1993

(318) 676-3472

Hon. Barefoot Sanders  
Chief U.S. District Judge  
Northern District of Texas  
1100 Commerce St., Rm. 15D28A  
Dallas, TX 75242Re: CJRA Report & Plan  
Northern District of Texas

Dear Barefoot:

I enclose a copy of the report on the Northern District of Texas by the Fifth Circuit Committee to Review CJRA Reports and Plans. This reflects the findings, conclusions, and suggestions of the committee as voiced in our telephone conference call of Wednesday, April 21, 1993.

Warmest personal regards.

Sincerely,

*Hank*Copy to All Chief District Judges  
for the Fifth Circuit (w/copy of report)

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**REPORT FORM**

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**CIRCUIT COMMITTEE REVIEW OF CJRA REPORTS AND PLANS**

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The attached questionnaire is designed to assist the reviewing Circuit Committee in determining whether your Report and Plan have met the mandates of 28 U.S.C. §§ 471-473.

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.

District:

Northern District of Texas

Date of this review:

April 21, 1993

CIRCUIT COMMITTEE

William H. Barbour, Jr., Chief Judge  
Southern District of Mississippi

Barefoot Sanders, Chief Judge  
Northern District of Texas

Norman W. Black, Chief Judge  
Southern District of Texas

Morey L. Sear, Chief Judge  
Eastern District of Louisiana

Harry Lee Hudspeth, Chief Judge  
Western District of Texas

L. T. Senter, Jr., Chief Judge  
Northern District of Mississippi

John V. Parker, Chief Judge  
Middle District of Louisiana

John M. Shaw, Chief Judge  
Western District of Louisiana

Robert M. Parker, Chief Judge  
Eastern District of Texas

Henry A. Politz, Chief Judge  
Fifth Circuit

### Review of the Advisory Group's Report

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	_____
1.b. identification of trends in case filings and demands on court resources	①	2	3	_____
1.c. identification of the causes of cost and delay due to court procedures	①	2	3	_____
1.d. identification of the causes of cost and delay due to the way litigants and their attorneys conduct litigation	①	2	3	_____
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	_____

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 59

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 53-59

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 56-59

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	<u>55-56</u>
5.b. the litigants	①	2	3	<u>"</u>
5.c. the litigants' attorneys	①	2	3	<u>"</u>

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>55</u>
6.b. the litigants	①	2	3	<u>44-55</u>
6.c. the litigants' attorneys	①	2	3	<u>55-56</u>

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	<u>7-12</u>
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	"
7.d. the impact of a high volume of complex cases, repetitive mass tort cases, or prisoner civil rights cases	(1)	2	3	"
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**

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 12-13

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 \_\_\_\_\_

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 \_\_\_\_\_



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?

	Yes	No	Not Clear	Page or Section
12.a.systematic, differential treatment of civil cases	①	2	3	<u>2,10,11</u>
12.b.early and ongoing judicial control of the pretrial process, including				
b.1.case planning	①	2	3	<u>2,8</u>
b.2 early and firm trial dates	①	2	3	<u>2,8</u>
b.3 control of discovery	①*	2	3	<u>2,4</u>
b.4 deadlines for motions	①	2	3	<u>7-8</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>2,4,8</u>
12.d.encouragement of voluntary exchange of information among litigants and other cooperative discovery devices	①	2	3	<u>3</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>7</u>
12.f.authorization to refer appropriate cases to alternative dispute resolution programs	①	2	3	<u>4-6</u>

\* If the presently pending revisions of various discovery rules are not finally adopted, effective 12/1/93, the district court gives assurance it will revisit this issue.

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 18 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	_____
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	_____
		This has long been a custom in this district.		
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>8</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	_____
		This was unanimously rejected by the court.		
13.e. a requirement that, upon notice by the court, representatives of the party with authority both bind them in settlement discussions be present or available by telephone during settlement conferences	①	2	3	<u>5,6</u>
13.f. other features the district court thinks appropriate after considering the advisory group's recommendations	①	2	3	_____
		It's Dondi decision, pretrial and trial procedures; increased use of magistrate judges and special masters.		

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 \_\_\_\_\_

15. 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 \_\_\_\_\_

If yes, what significant contributions are required?

Hands-on early management of cases.  
Heightened attorney discipline.  
Monitoring discovery.  
Alternative dispute resolution.  
Enhanced use of magistrate judges and special masters.  
Improved settlement conference procedure.  
A general continuance of existing practices found to be beneficial.

16. 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 \_\_\_\_\_

If yes, what significant contributions are required?

Submission to ADR.  
Consent to more trials by magistrate judges.  
Settlement conference procedures.

17. 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 \_\_\_\_\_

If yes, what significant contributions are required? Please describe the contributions of the various categories of attorneys, such as those who practice in the district and those 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.

The Dondi case attorney-conduct imperatives.

ADR.

Settlements.

Voluntary exchange of information.

Greater use of magistrate judges.

(One member of the Committee notes that contingent-fee attorneys do not contribute to cost reduction of attorney fees.)

18. 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 \_\_\_\_\_

Attorneys' fees should be reduced by improvements in discovery.

Trial time should be reduced by judges exercising authority enunciated page 9.

Expert witness fees should be reduced by improved discovery practices.

No problems regarding excessive expense on travel, court reporting, or use of video.

Should funds become available, most judges would be receptive to electronic reporting.

19. **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))?**

Yes  
 No

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

20. **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.**

The Committee suggests that the judges of the Northern District revisit the issue of discovery limitations if the pending changes to the Rules of Civil Procedure are not adopted as planned. One member of the Committee suggests reconsideration of the possibility of setting a limit on contingent fees.

**THANK YOU**