

United States District Court
Northern District of California
450 Golden Gate Avenue — Box 36008
San Francisco, California 94102

Abel

Chambers of
Wayne A. Brazil
United States Magistrate

(415) 556-2442
(FCS) 556-2442

August 16, 1991

Mr. Stan Riggenschach
Personnel Division (Human Resources)
Administrative Office of the United States Courts
Washington, D.C. 20544

Re: Need for Approval of Certain Salary Levels for Authorized Staff Positions to Implement the Court's Demonstration Program under the CJRA Mandate

Dear Mr. Riggenschach:

I write at your suggestion to follow-up on our telephone conversation yesterday and to provide some of the information in which you expressed an interest.

At the outset, I want to express my deep appreciation for the spirit in which you have been attempting to help us meet the needs that arise out of our responsibilities as a statutorily designated demonstration district under the CJRA. Since, under the statute, we have been "demonstrating" since January 1 of this year, we feel acute time pressure to fill the positions about which we have been talking for some weeks.

I enclose copies of several documents, most of which I infer you have not seen. First is Duane Lee's Memorandum of June 25, 1991, setting forth the then current response by the Court Administration and Case Management Committee to the submissions received from district courts in response to the special budget call for implementing the CJRA in FY 1991. This Memorandum supersedes the memorandum of April 10, the document from which you have been working, which reflected temporary decisions designed to help provide the Advisory Groups with modest start up authorizations pending submission and approval of budgets. As you will note in the June 25 Memorandum, Judge Parker's Committee approved the four positions this court requested in the budget proposal it submitted on May 2, 1991 (copy enclosed) in response to the special call.

Since late June we have been trying to learn what salaries we can offer for the four positions Judge Parker's Committee approved. We were told (orally, and by whom I do not recall) in late June

that it appeared that we were limited to a salary within the GS 13 range even for the top lawyer-professional position. That communication inspired Chief Judge Henderson to write to Duane Lee on July 2, 1991, appealing for permission to raise the position level to a GS 15. Subsequently, again orally and by whom I am not sure, we were told that we could advertise that position at the level of GS 14. Because we feel such time pressure to position ourselves to begin systematic implementation of our program, and despite the fact that we believe that a level 14 cap will impair our ability to attract a person with the qualifications we sincerely believe are essential to effectively performing this job, we began advertising the position at the GS 14 level about two weeks ago. A copy of the advertisement is enclosed, along with a brief supplemental job description prepared by Jim Gilmore, Chief Deputy Clerk of this Court.

Then yesterday, after our telephone conversation (by which I was much encouraged), I received a copy of Duane Lee's August 12 response to Chief Judge Henderson's letter of July 2. I also enclose a copy of that letter from Duane Lee. I have not spoken to Duane about this matter for about a month, so I do not know how current the information reflected in his letter of August 12 is. But it appears to be essentially the same information he gave me over the phone in late June, even before Chief Judge Henderson's letter of July 2. Needless to say, it is quite disappointing. His suggested temporary solution is creative and inspired by the spirit in which he always works (trying to help solve problems), but clearly will not meet our needs, for at least two reasons. One is that if we spend the \$35,000 dedicated to consultants as he suggests, we will have no money for real consultants, which we need to help us design and implement reliable analyses of our current ADR programs and of our civil docket generally. The staff professional about which we are talking here is not primarily a researcher, but a lawyer with program design and management skills. The second problem with his suggestion is that we would be able to promise compensation of no more than \$35,000 for all of next year to the professional we are now attempting to hire. No one we would want for this job will agree to work under these conditions.

As you can see, we are feeling confused and dispirited by this whole process. We do not want to be embarrassed by having to withdraw the advertisement we made in good faith. But much more importantly, we need timely, straightforward answers to what seem to us to be simple questions. We have been authorized to hire four people. What can we offer to pay them?

I will not repeat here the bases for our request that we be able to hire the top level professional we have been authorized at the high end of the GS 15 salary range. We continue to feel that this position is crucial to the success of all of our demonstration efforts. As we understand it, Nancy Stanley, who performs exactly the same kind of work in the District of Columbia, is paid at this

level (she is on the staff of the Circuit Executive for the District of Columbia Circuit).

With respect to the second level position, when we hastily prepared our budget submission last spring we felt that we could satisfy our needs by offering a salary within the GS 11 range. Subsequently two things have happened that have changed our mind. One is that we have refined our thinking about the kinds of things we want this person to do. Given the range of responsibilities we expect to impose on the two staff professionals in this new program, we have realized that we need a person with legal training, who can write well, who has had some exposure to ADR, and who can inspire confidence in the lawyers and judges with whom he or she will be required to interact regularly. A person without legal training and well-developed writing skills will not be able to provide the kind of help that our number one person will need in the areas of program design, training of neutrals, case screening and selection, data analysis, preparation of reports and presentations, etc. The second development since last spring is that we have begun discussions with a person whom we believe to be well-qualified for this work. He is a recent law graduate, but, before going to law school, he worked as a program administrator for four or five years for the American Arbitration Association, doing some of the kinds of things we would like done here by the person in our number two position. He has a job offer in hand from a large San Francisco firm which would pay him \$65,000 annually, starting in October. He is interested in the job with us (for the term of one year and one day we can offer it), but feels some considerable concern about the salary if it is confined to the GS 11 level. Given both of these developments, our court now asks for permission to advertise and hire the number two position that we have been authorized (a temporary staff professional) at the upper end of the GS 13 range. As we discussed on the phone yesterday, it appears that a person is being paid at this level for doing the same kind of work in the federal courts in the District of Columbia (the person working under Nancy Stanley's supervision).

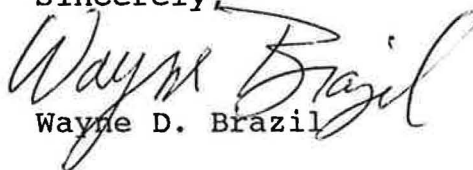
With respect to the two temporary clerical positions which Judge Parker's committee approved for our court, our original budget submission sought permission to hire at the GS 9 level. Jim Gilmore informs me that he has not clearly been given permission to advertise the jobs at that level, that someone has suggested that we might be confined to the GS 7 level. We have people on staff now who are doing the same kind of work for the court that will be done by these new hires. The work requires considerable attention to detail and native intelligence, as well as good communication skills. We have found that we need the level 9 authorization to get the kind of people we need for this work. Thus we repeat here our request for the level 9 authorization.

As I know both you and Duane Lee fully appreciate, we cannot proceed to advertise fairly for any of these positions without the

information we have requested here. Until we can advertise, our whole process remains stalled. Thus we urgently request written authorization to advertise and hire the top level position that Judge Parker's Committee has approved for us at the upper end of the GS 15 range, the second position at the upper end of the GS 13 range, and the two clerical/administrative positions at the upper end of the GS 9 range.

We understand well that the CJRA has imposed immense time pressures on many people in the Administrative Office and that the Act has created needs for kinds of positions (and thus for personnel decisions) that are almost unprecedented (there are arguable analogues in some Courts of Appeals staff offices). Thus all of us are working in a largely new environment, trying sensibly to comply with the statute's mandates. I speak sincerely when I say that we are most appreciative of the spirit in which everyone with whom we have communicated about our needs has attempted to help us. Thank you.

Sincerely,


Wayne D. Brazil

cc: Duane R. Lee
Charlotte G. Peddicord
Abel Mattos
Bob Lowney
Jim McCormack
Anne Gibson
Scott Little
JaBrai Scott

riggen.let

- RW -

L. RALPH MECHAM
DIRECTOR

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

DUANE REX LEE
CHIEF, COURT ADMINISTRATION
DIVISION

JAMES E. MACKLIN, JR.
DEPUTY DIRECTOR

WASHINGTON, D.C. 20544

August 12, 1991

RECEIVED

AUG 16 1991

UNITED STATES MAGISTRATE
SAN FRANCISCO, CALIFORNIA

Honorable Thelton E. Henderson
Chief Judge, United States District Court
Northern District Of California
Post Office Box 36060
San Francisco, California 94102

Dear Judge Henderson:

I am writing to bring you up to date on your request for funds for the implementation of the Civil Justice Reform Act. The information you have provided and subsequent conversations with Magistrate Judge Brazil about the alternative dispute resolution (ADR) programs in the Northern District of California are appreciated. I want to assure you that the Court Administration Division is doing everything possible to ensure that you receive funding for all of the items that were included in your response to the April 10, 1991, budget call.

The total funding request in the budget call for the Northern District of California was \$210,000. The Court Administration and Case Management Committee at its June 9-11 meeting approved the fiscal year 1991 spending plan for the implementation of the Civil Justice Reform Act. As a result, your district received a special allotment in the amount of \$153,750. The Committee deferred approving the remaining \$56,250 until certain spending issues could be fully addressed.

Since that time, your court has requested an \$85,000 staff professional to supervise the ADR programs. Presently all positions allocated need to be grade classified using existing criteria in the Judiciary Salary Plan (JSP). Consequently, a full-time temporary attorney position was classified for your court at the JSP-13 level, with a maximum salary of \$57,650. I understand that your court cannot hire a qualified person in San Francisco while limited to the salary equivalent of a JSP-13. We contacted the Human Resources Division and inquired about initiating the process to seek approval for a higher-graded program administrator position for your court. They advised that a request of this nature requires the action of the Judicial Resources Committee and the Judicial Conference.

Honorable Thelton E. Henderson

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As an alternative to the lengthy procedure outlined above, we have recommended to Judge Brazil, the following process as a way to achieve the ends that you initially described in your response to the Special Budget Call. As I previously recommended to Magistrate Judge Brazil, your district could hire a consultant to design, implement, refine, and evaluate an administrative system for your ADR programs. A consultant could be hired for the remainder of fiscal year 1991, which ends September 30, 1991, at a maximum hourly rate of \$75 with a maximum daily rate of \$416. This is the hourly and daily equivalent of an annual salary of \$108,300. The consultant's contract could then be renewed in fiscal year 1992 at the same rates, however, annual compensation is limited to \$35,000. The consultant is the equivalent of the type of professional position that was requested and it is immediately available to your office. The procurement of a consultant must be in accordance with Chapter VIII of the Guide to Judiciary Policies and Procedures.

In the interim the Court Administration Division will continue to examine the other alternatives which may satisfy your needs for a full-time professional program administrator. If you have any questions about the above information, please do not hesitate to contact me.



Duane R. Lee

Chief

Court Administration Division

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO, CALIFORNIA 94102

THELTON E. HENDERSON
CHIEF JUDGE

July 2, 1991

Duane R. Lee, Esq.
Chief, Court Administration Division
Administrative Office of the United States Courts
Washington, D.C. 20544

Dear Duane:

I write at Wayne Brazil's suggestion to explain further a pivotal aspect of this Court's request for funding to implement its Civil Justice Expense and Delay Reduction Plan.

As you appreciate, the CJRA compels this district to serve as a "demonstration" district and to "experiment with various methods of reducing cost and delay in civil litigation, including alternative dispute resolution." § 104(b). We began "demonstrating," by statutory fiat, January 1, 1991. Because our programs will be the subject of special scrutiny, and because we already are six months into the period over which their potential will be measured, we feel an acute need to have prompt access to the resources without which we cannot do justice to our obligation under the statute and to the potential in ADR programs.

One item is at the center of our needs. It is essential to the success of most of the major components of the package of efforts that we now contemplate making under the CJRA. We need, more than any one other thing, a full-time professional to run our two principal ADR programs (early neutral evaluation and arbitration) and to help design and implement the one additional important ADR program that we lack: mediation. For several years Magistrate Judge Brazil has been trying to do this work around his other (full time) judicial duties. He has spent countless hours on program design, training sessions, recruiting and screening neutrals, administrative mechanics, training court staff and responding to their questions (about specific cases/problems and about the processes generally), making program adjustments to incorporate lessons from the programs as they mature, educating the bar, etc. Despite these considerable efforts, he reports that he has not been able to do any of this work adequately. As a result, the potential quality of our programs has suffered significantly. And he simply cannot continue to devote the time to them that he has in the past. Judge Brazil has identified several kinds of needs that are pressing and that are going unmet every day. We badly need better training and re-training of our neutrals and our court staff, better recruiting of neutrals (our

Duane R. Lee, Esq.
Chief, Court Administration Division

July 2, 1991
Page 2

pools are in great need of infusions of new, highly qualified lawyers), substantially more sensitive, matter-specific initial screening of cases for appropriate matching with our programs, more systematic attention to the day-to-day administration of the programs, much faster responsiveness to suggestions for program improvements, etc. These are not things that can be done by inexperienced administrative personnel; rather, they can only be done by a person who is law-trained, who has meaningful litigation experience, and who knows something about ADR. This person will have to work closely with the bar and the court (both in design and modification of programs and in their administration), and will have to make sensitive judgments about the fit between individual cases (their needs) and the distinct characteristics and limitations of each of our programs.

In the San Francisco bay area, we cannot hope to hire a person qualified to do this work for a salary of less than about \$85,000 per year (first year associates in the major law firms here will be making about \$70,000 per year). Limiting us to the salary equivalent of a GS 13 for this position literally would disable us, in this market, from hiring the kind of person we really need. And without that kind of person, our ability to "demonstrate" the real potential of our ADR programs will be seriously compromised. Thus we urgently request that we be provided the means to hire a professional at this salary level.

We do not fully understand what response is being made to this or the other aspects of our budget proposal. We hope that we will be permitted to proceed with each item in our proposal at the levels we projected. We included each budgeted item because we concluded that each was necessary if we were to do adequately the job that Congress has assigned to us. If there are other areas in our proposal about which you need additional information, please call me, Judge Brazil, or Jim Gilmore of our clerk's office. We want to provide whatever information or help in this process we can, and we welcome the opportunity to work with you to find ways to achieve the ends that we have described in our Response to the Special Budget Call (May 2, 1991, copy attached).

Thank you very much for the spirit of service with which you have responded to our questions and concerns.

Sincerely,



Thelton E. Henderson
Chief Judge

bcc: Magistrate Judge Wayne D. Brazil

L. RALPH MECHAM
DIRECTOR

JAMES E. MACKLIN, JR.
DEPUTY DIRECTOR

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

WASHINGTON, D.C. 20544

June 25, 1991

DUANE REX LEE
CHIEF COURT ADMINISTRATION
DIVISION

RECEIVED

JUL 8 1991

UNITED STATES MAGISTRATE
SAN FRANCISCO, CALIFORNIA

MEMORANDUM TO CLERKS, U.S. DISTRICT COURTS

SUBJECT: Special Allotment for Implementation of the Civil Justice Reform Act
of 1990

The Court Administration and Case Management Committee at its June 9 - 11 meeting approved the fiscal year 1991 proposed spending plan for the implementation of the Civil Justice Reform Act (CJRA). As a result, we are allotting all funds, except for judges' travel, under budget object code (BOC) 2529 as shown in Attachment A. These funds have been made available for (CJRA) expenses only and should be reprogrammed to other appropriate budget object codes (BOCs) as necessary. However, it is imperative that local reprogramming of this special allotment be limited to costs of CJRA implementation. Spending is restricted to the categorical limits specified in the spending plan (Attachment B). Funds listed under the "other" section in attachment B are limited to those items listed in each court's response to the special budget call.

The amount of funds each court requested for travel of judges for CJRA implementation activities has been authorized. These travel expenses should be charged to the judges' general travel authorization using Budget Organization Code OXXBBCX, together with the appropriate court organization code for each judge as the Cost Organization Code.

Requests for temporary positions in the special budget call for secretaries, analysts, and attorneys, which have been approved and shown on Attachment A, will be automatically processed by the Court Administration Division. To further the purposes of the Act and to enhance case management capabilities, additional temporary positions are available to all courts that require assistance in setting up or updating their ICMS databases. The court's regional administrator is authorized to act on all subsequent requests for temporary positions.

The clerk's office may use the funds allotted for secretarial support to reimburse the reporter of the advisory group for secretarial expenses or to contract with a local

temporary help service firm to provide additional secretarial support to the clerk's office. To meet additional secretarial needs the clerk's office may request a temporary secretarial position from the Court Administration Division.

The purchase of any supplies or equipment from these funds shall be in accordance with Chapter VIII, Procurement, Contracting & Property Management of the Guide to Judiciary Policies and Procedures.

Compensation rates for advisory group reporters, other than federal employees, have been revised and are now limited to \$75 per hour, with a maximum of \$416 per day. Each district is restricted to one compensable reporter and all reporters must account for their work on an hourly basis. Compensation rates for consultants have also been similarly adjusted and are now restricted to \$75 per hour, with a maximum of \$416 per day. Courts wishing supplemental funds based upon the new compensation rates may direct their request to their regional administrator.

The Court Administration and Case Management Committee deferred approving several funding requests. These districts have been asked to provide additional justification to support their request. Once the additional documentation has been received the request will be resubmitted to the Committee or Subcommittee for reconsideration. Shortly, the Administrative Office will contact you about a (CJRA) budget submission for fiscal year 1992.

Please note, all courts which received an advanced authorization of funds for expenses related to the Civil Justice Reform Act have had their special allotment reduced by the amount of the advance.

If you have any questions regarding the special allotments to your court, please contact your regional administrator in the Court Administration Division.


DUANE R. LEE

Attachments

cc: Chief Judges, United States
Courts of Appeals
Chief Judges, United States
District Courts
Circuit Executives
District Court Executives

ATTACHMENT A

FY91 SPECIAL ALLOTMENT FOR CIVIL JUSTICE REFORM ACT

Fiscal Year/Fund: 91-092030

Budget Organization: D/Circuit/District/X e.g. (D08H0VX) Decentralized Courts (D08H0VC)

Cost Organization: D/Circuit/District/C e.g. (D08H0C)

AMOUNT IN BOC 2529 POSITIONS			AMOUNT IN BOC 2529 POSITIONS		
ALABAMA (N)	2,394		MONTANA	10,300	1
ALABAMA (M)	3,750		NEBRASKA	27,700	2
ALABAMA (S)	0		NEVADA	6,440	2
ALASKA	72,800	2	NEW HAMPSHIRE	1,540	
ARIZONA	8,400	1	NEW JERSEY	4,000	
ARKANSAS (E)	19,000	1	NEW MEXICO	24,810	
ARKANSAS (W)	4,996	1	NEW YORK (N)	21,030	2
CALIFORNIA (N)	80,500	4	NEW YORK (E)	60,100	
CALIFORNIA (E)	49,800	2	NEW YORK (S)	55,834	2
CALIFORNIA (C)	7,824		NEW YORK (W)	20,000	
CALIFORNIA (S)	32,200	1	N. CAROLINA (E)	5,000	2
COLORADO	9,950		N. CAROLINA (M)	10,650	1
CONNECTICUT	1,680		N. CAROLINA (W)	18,795	
DELAWARE	29,660	3	NORTH DAKOTA	2,350	
D. C.	8,625	1	OHIO (N)	93,400	3
FLORIDA (N)	13,550		OHIO (S)	11,440	
FLORIDA (M)	12,900	2	OKLAHOMA (N)	14,090	
FLORIDA (S)	11,700	1	OKLAHOMA (E)	8,400	1
GEORGIA (N)	22,750	1	OKLAHOMA (W)	11,300	
GEORGIA (M)	14,250		OREGON	10,300	2
GEORGIA (S)	56,990		PENN (E)	94,170	2
HAWAII	2,000		PENN (M)	5,215	1
IDAHO	26,860	1	PENN (W)	5,115	
ILLINOIS (N)	390	2	PUERTO RICO	39,300	1
ILLINOIS (S)	11,000	1	RHODE ISLAND	29,750	2
ILLINOIS (C)	5,700		S. CAROLINA	24,060	
INDIANA (N)	10,950		SOUTH DAKOTA	24,380	
INDIANA (S)	9,020		TENN (E)	7,565	
IOWA (N)	16,200		TENN (M)	1,500	1
IOWA (S)	2,236	1	TENN (W)	26,350	
KANSAS	35,150	2	TEXAS (N)	7,200	
KENTUCKY (E)	10,865		TEXAS (E)	35,700	2
KENTUCKY (W)	21,460	1	TEXAS (S)	56,868	2
LOUISIANA (E)	7,300		TEXAS (W)	24,900	1
LOUISIANA (M)	3,990		UTAH	35,050	1
LOUISIANA (W)	22,537	1	VERMONT	5,650	
MAINE	2,400		VIRGINIA (E)	11,200	
MARYLAND	14,000		VIRGINIA (W)	23,480	
MASS.	28,750		VIRGIN ISLANDS	63,000	1
MICHIGAN (E)	1,000		WASHINGTON (E)	9,992	
MICHIGAN (W)	96,280	4	WASHINGTON (W)	4,645	
MINNESOTA	7,550		W. VIRGINIA (N)	12,180	
MISS (N)	3,000		W. VIRGINIA (S)	23,250	1
MISS (S)	7,780		WISCONSIN (E)	30,600	1
MISSOURI (E)	6,894	1	WISCONSIN (W)	1,700	
MISSOURI (W)	22,040	3	WYOMING	50,966	1
TOTALS	839,071	37	TOTALS	1,071,265	35
GRAND TOTALS	1,910,336	72			

	Travel	Reporter	Consultant	Secretary	Equip.	Office	Forms &	Postage	Phone	Other	Subtotal	Less	Total
	Comp.	Comp.	Comp.	Support		Supplies	Printing					Advance	
DC CIRCUIT													

B. OF COLUMBIA	3,600	2,400	800	360	0	215	850	300	100	0	8,625	0	8,625
1ST CIRCUIT													

MAINE	2,150	0	0	0	0	50	350	50	300	0	2,900	500	2,400
MASSACHUSETTS	750	25,000	2,000	0	0	200	100	50	50	600	28,750	0	28,750
NEW HAMPSHIRE	900	0	0	240	0	0	400	0	0	0	1,540	0	1,540
RHODE ISLAND	7,500	0	20,000	0	0	500	1,000	500	250	0	29,750	0	29,750
PUERTO RICO	1,000	22,000	9,000	2,700	700	2,200	300	200	200	1,000	39,300	0	39,300
2ND CIRCUIT													

CONNECTICUT	1,680	0	0	0	0	0	0	0	0	0	1,680	0	1,680
NEW YORK (N)	2,700	6,400	4,000	700	6,400	400	0	100	50	1,230	21,980	950	21,030
NEW YORK (K)	19,700	18,000	8,000	3,900	0	2,500	5,000	1,500	1,000	500	60,100	0	60,100
NEW YORK (S) *	3,900	5,000	20,000	500	5,479	2,000	7,500	2,000	1,200	8,255	55,834	0	55,834
NEW YORK (W)	2,000	6,000	10,000	0	0	500	500	500	200	300	20,000	0	20,000
VERMONT	750	4,000	0	500	0	100	100	100	100	0	5,650	0	5,650
3RD CIRCUIT													

DELAWARE *	900	17,600	7,400	1,200	0	100	2,000	100	360	0	29,660	0	29,660
NEW JERSEY	4,000	0	0	0	0	0	0	0	0	0	4,000	0	4,000
PENN (E) *	31,500	10,000	25,000	1,500	6,000	10,000	10,000	4,000	1,000	0	99,000	4,830	94,170
PENN (M)	7,000	0	0	0	0	300	0	25	200	0	7,525	2,310	5,215
PENN (W)	2,000	2,400	0	400	0	240	0	0	75	0	5,115	0	5,115
VIRGIN ISLANDS	21,500	8,000	25,000	0	0	2,000	5,000	1,500	0	0	63,000	0	63,000

1991 CJRA SPENDING LIMITS BY CATEGORY

	Travel	Reporter	Consultant	Secretary	Equip.	Office	Forms &	Postage	Phone	Other	Subtotal	Less	Total
	Comp.	Comp.	Comp.	Support		Supplies	Printing					Advance	
4TH CIRCUIT													
MARYLAND	5,000	0	8,000	0	0	500	0	500	0	0	14,000	0	14,000
N CAROLINA (E)	5,000	0	0	0	0	0	0	0	0	0	5,000	0	5,000
N CAROLINA (N)	2,100	5,000	1,000	700	0	1,000	150	350	350	0	10,650	0	10,650
N CAROLINA (W)	12,000	5,000	1,000	300	0	100	200	145	50	0	18,795	0	18,795
SOUTH CAROLINA	5,500	3,200	3,500	960	6,000	1,000	1,500	1,200	1,200	0	24,060	0	24,060
VIRGINIA (E)	6,100	4,000	0	600	0	100	0	200	200	0	11,200	0	11,200
VIRGINIA (W)	10,700	3,200	1,600	480	3,000	2,000	500	1,000	1,000	0	23,480	0	23,480
WEST VIR. (N) &	4,450	5,000	0	480	0	500	1,000	500	250	0	12,180	0	12,180
WEST VIR. (S)	5,500	4,000	0	600	0	500	1,000	250	400	11,000	23,250	0	23,250

5TH CIRCUIT

LOUISIANA (E)	200	4,000	800	600	1,500	100	0	0	100	0	7,300	0	7,300
LOUISIANA (N)	2,700	400	400	240	0	50	100	50	50	0	3,990	0	3,990
LOUISIANA (W)	21,000	0	0	0	700	0	0	0	0	837	22,537	0	22,537
MISS (N)	3,000	0	0	0	0	0	0	0	0	0	3,000	0	3,000
MISS (S)	3,750	2,520	500	360	0	200	250	100	100	0	7,780	0	7,780
TEXAS (N)	4,600	0	0	1,500	0	300	500	300	0	0	7,200	0	7,200
TEXAS (E)	30,000	0	4,000	0	0	1,000	500	100	100	0	35,700	0	35,700
TEXAS (S) *	30,500	0	20,000	0	3,500	0	0	578	3,790	0	58,368	1,500	56,868
TEXAS (W)	13,500	5,000	0	1,200	0	300	4,000	4,000	1,000	0	29,000	4,100	24,900

1991 CJA SPENDING LIMITS BY CATEGORY

	Travel	Reporter	Consultant	Secretary	Equip.	Office	Forms &	Postage	Phone	Other	Subtotal	Less	Total
	Comp.	Comp.	Comp.	Support		Supplies	Printing					Advance	
6TH CIRCUIT													
KENTUCKY (E)	9,600	1,000	0	0	0	100	75	50	40	0	10,865	0	10,865
KENTUCKY (V)	14,000	4,000	2,000	960	0	200	200	0	100	0	21,460	0	21,460
MICHIGAN (K)	1,000	0	0	0	0	0	0	0	0	0	1,000	0	1,000
MICHIGAN (V) d	13,000	11,680	25,000	1,600	0	7,500	8,000	3,000	6,500	25,000	101,280	5,000	96,280
OHIO (H) d	35,000	8,000	8,000	1,200	0	2,000	5,000	10,000	5,000	25,000	99,200	5,800	93,400
OHIO (S)	8,000	0	800	960	0	500	500	200	480	0	11,440	0	11,440
TENN (V) a	4,000	18,400	2,000	600	0	600	500	0	250	0	26,350	0	26,350
TENN (H)	1,300	0	0	0	0	0	0	0	200	0	1,500	0	1,500
TENN (E)	1,950	4,000	0	600	0	50	705	130	130	0	7,565	0	7,565

7TH CIRCUIT

ILLINOIS (H)	390	0	0	0	0	0	0	0	0	0	390	0	390
ILLINOIS (C)	3,750	0	1,000	0	0	0	500	200	250	0	5,700	0	5,700
ILLINOIS (S)	1,600	4,800	1,000	0	2,700	400	250	250	0	0	11,000	0	11,000
INDIANA (H)	3,500	5,000	1,000	750	0	0	500	0	200	0	10,950	0	10,950
INDIANA (S)	1,100	5,000	0	1,920	0	500	0	0	500	0	9,020	0	9,020
WISCON (E) a	10,000	4,000	800	1,800	10,000	1,500	1,000	500	1,000	0	30,600	0	30,600
WISCON (V)	1,700	0	0	0	0	0	0	0	0	0	1,700	0	1,700

1991 GJRA SPENDING LIMITS BY CATEGORY

	Travel Reporter Comp.	Consultant Comp.	Secretary Support	Equip.	Office Supplies	Forms & Printing	Postage	Phone	Other	Subtotal	Less Advance	Total	
8TH CIRCUIT													
ARKANSAS (K)	3,700	8,000	0	800	0	2,500	5,000	0	0	0	20,000	1,000	19,000
ARKANSAS (W)	5,000	0	800	0	0	100	150	696	250	0	6,996	2,000	4,996
IOWA (W)	18,700	0	1,000	0	0	100	500	150	250	500	21,200	5,000	16,200
IOWA (S)	2,400	0	0	0	0	100	0	0	0	0	2,500	264	2,236
MINNESOTA	800	5,000	750	0	0	0	0	0	0	1,000	7,550	0	7,550
MISSOURI (K)	2,200	3,000	1,000	444	0	0	250	0	0	0	6,894	0	6,894
MISSOURI (W) d	4,000	7,040	3,000	700	6,000	250	400	300	350	0	22,040	0	22,040
NEBRASKA	11,000	5,000	5,000	500	6,000	400	400	300	1,200	400	30,200	2,500	27,700
NORTH DAKOTA	2,200	0	0	0	0	0	0	0	0	150	2,350	0	2,350
SOUTH DAKOTA	15,500	5,000	0	240	0	750	1,500	290	600	500	24,380	0	24,380

9TH CIRCUIT

ALASKA	25,000	23,600	11,800	2,400	0	0	0	0	0	10,000	72,800	0	72,800
ARIZONA	2,300	4,800	1,000	600	0	400	100	0	0	0	8,400	0	8,400
CALIFOR (W) d	9,000	8,000	25,000	1,000	32,500	4,000	1,000	0	0	0	80,500	0	80,500
CALIFORNIA (K)	20,000	12,000	8,000	1,800	7,000	1,000	800	300	400	0	51,300	1,500	49,800
CALIFORNIA (C)	700	6,400	0	504	0	110	0	0	110	0	7,824	0	7,824
CALIFOR (S) *	2,000	0	25,000	0	2,500	0	2,500	200	0	0	32,200	0	32,200
HAWAII	0	2,000	0	0	0	0	0	0	0	0	2,000	0	2,000
IDAHO	23,000	1,000	2,000	800	300	500	1,190	1,038	300	0	30,128	3,268	26,860
MONTANA	8,700	0	1,000	300	0	0	300	0	0	0	10,300	0	10,300
NEVADA	4,500	3,200	1,200	400	0	150	300	100	1,500	360	11,710	5,270	6,440
OREGON	3,300	0	0	0	5,000	1,000	750	250	0	0	10,300	0	10,300
WASHINGTON (K)	4,500	4,080	1,000	600	0	0	0	0	0	0	10,180	188	9,992
WASHINGTON (W)	250	0	0	405	3,190	0	600	290	0	0	4,645	0	4,645
GUAM													
N. H. ISLANDS													

FY92 CJIA SPENDING LIMITS BY CATEGORY

	Travel	Reporter	Consultant	Secretary	Equip.	Office	Forms &	Postage	Phone	Other	Subtotal	Less	Total
	Comp.	Comp.	Comp.	Support		Supplies	Printing					Advance	
10TH CIRCUIT													
COLORADO	3,750	4,000	1,000	300	0	0	500	150	250	0	9,950	0	9,950
KANSAS	16,700	6,000	5,000	600	5,500	200	500	300	350	0	35,150	0	35,150
NEW MEXICO	15,500	1,600	1,600	300	3,600	160	1,000	300	250	0	24,810	0	24,810
OKLAHOMA (H)	2,700	4,300	840	650	600	1,000	1,000	500	1,500	1,000	14,090	0	14,090
OKLAHOMA (R)	2,900	0	0	0	2,500	1,000	500	0	500	1,000	8,400	0	8,400
OKLAHOMA (W) *	600	0	4,500	0	0	200	4,000	2,000	0	0	11,300	0	11,300
UTAH *	6,000	0	21,200	2,500	4,000	750	500	0	100	0	35,050	0	35,050
WYOMING	46,100	0	966	1,500	3,900	500	500	500	1,000	2,000	50,966	0	50,966

11TH CIRCUIT

ALABAMA (H)	1,900	0	0	120	0	300	0	44	30	0	2,394	0	2,394
ALABAMA (H)	750	2,400	0	360	0	50	50	40	100	0	3,750	0	3,750
ALABAMA (S)	0	0	0	0	0	No Request	0	0	0	0	0	0	0
FLORIDA (H)	8,150	0	600	900	2,500	200	250	400	250	300	13,550	0	13,550
FLORIDA (H)	20,000	0	800	600	0	200	250	150	200	200	22,400	9,500	12,900
FLORIDA (S)	1,300	7,000	1,000	1,050	0	200	700	250	200	0	11,700	0	11,700
GEORGIA (H) *	6,000	16,800	0	1,700	0	0	0	0	0	0	24,500	1,750	22,750
GEORGIA (H)	10,000	4,800	0	600	0	500	0	0	0	0	15,900	1,650	14,250
GEORGIA (S)	51,500	2,400	800	540	0	500	500	500	250	0	56,990	0	56,990
TOTAL ALL DISTRICTS	745,620	380,620	339,456	54,123	130,979	59,425	86,020	43,576	38,265	91,132	1,969,216	58,880	1,910,336

* - denotes pilot court

d - denotes demonstration court

OFFICE OF THE CLERK
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

RICHARD W. WIEKING
CLERK

450 GOLDEN GATE AVENUE
SAN FRANCISCO, CA 94102
(415) 556-3031

May 2, 1991

TO: Court Administration Division

FROM: Richard W. Wieking, Clerk, United States District Court for the Northern District of California

RE: Response to April 10, 1991 Special Budget Call for Implementation of the Civil Justice Reform Act of 1990 ("CJRA")

I. INTRODUCTION.

This response to the April 10, 1991 special budget call is submitted by the Civil Justice Reform Act Advisory Committee and the Judicial Liaison Committee (Chief Judge Thelton E. Henderson, Judge Eugene F. Lynch, Judge Robert F. Peckham, Magistrate Judge Wayne D. Brazil) of the Northern District of California.

As set forth herein, the areas for which we request funds fall principally into two categories: (1) alternative dispute resolution programs (section II herein); and (2) docket assessment programs (section III herein). These funds will be used to implement the provisions of the CJRA which mandate that our District conduct a demonstration program in the field of alternative dispute resolution (CJRA, § 104(b)), and which require our Advisory Group to "* * * promptly complete a thorough assessment of the state of the court's civil and criminal dockets" (CJRA, § 472(c)(1)).

It is especially critical that the requested funding be provided in response to this budget call. This District's 30-member Advisory Group, with the approval of the Court's Judicial Liaison Committee, has voted unanimously to implement an expense and delay reduction plan by December 31, 1991. Thus, this District is both a Demonstration District, and will seek to be an Early Implementation District, under the provisions of the CJRA. To accomplish all of the required work, as set forth more fully herein, we need to move quickly. Allocation of the requested funds now will provide us with the ability to accomplish our goals in a thorough and organized fashion.

In addition, the requested funds will assist the District to build upon its long-standing tradition of establishing innovative and productive dispute resolution techniques. Begun by the Task Force led by then Chief Judge Robert F. Peckham and now Magistrate Judge Wayne D. Brazil, this District has experimented since the late 1970's with creative case management and alternative dispute resolution techniques. The requested funds are needed to improve and enhance these programs for their continued use in this District, and for possible use in other Districts across the nation.

Finally, we request funding for the continued operation of our Advisory Group and its Reporter (section IV). The funds which we request for this purpose are substantially less than those requested in either of the other two categories. In this regard, the lawyer-members of the Northern District of California Advisory Group intend to accomplish the majority of their work on a pro bono basis, continuing the spirit of volunteerism which is so much a part of the legal culture of the Northern District of California.

Section V of this request is a summary of the funds requested.

If you have any questions about any of the information contained herein, you may contact the following individuals:

Advisory Group Co-Chair Pauline O. Fox:
(415) 983-1283

Advisory Group Co-Chair
and Reporter Prof. Morton P. Cohen:
(415) 442-7284

II. ALTERNATIVE DISPUTE RESOLUTION PROGRAMS.

A. The District's Current Programs.

Pursuant to section 104(b) of the Civil Justice Reform Act, the Northern District of California is required to demonstrate, among other things, the efficacy and potential of its alternative dispute resolution ("ADR") programs. The District currently provides a considerable number of ADR procedures whose primary purpose is to reduce expense and delay in civil litigation. In addition to the programs discussed below, this District offers its litigants the use of:
(1) special masters for case management/discovery and for settlement;

(2) nonbinding summary jury and bench trials; (3) settlement conferences conducted by judges and magistrates; and (4) private ADR options.¹

At the present time, the two most extensively used ADR programs in the District are nonbinding arbitration and early neutral evaluation ("ENE"). In combination, these programs currently touch upwards of one thousand civil cases each year. Studies² of these programs have demonstrated that they enjoy very substantial support in the bar. More than 80% of lawyers polled in a Federal Judicial Center ("FJC") study endorsed the arbitration program. Almost 90% of lawyers polled in a study of the ENE program during an earlier, experimental stage urged the court to extend the program to more cases. In the latter study, lawyers were asked to compare a required ENE session to a typical initial status conference in this court. Of the lawyers polled, 95% felt that ENE contributed more to communication across party lines; 88% felt that ENE contributed more to prospects for settlement; 83% felt that ENE contributed more to issue clarification, and 73% felt that ENE contributed more to setting the groundwork for cost-effective discovery. Thus, there is substantial reason to believe that these programs offer valued services to lawyers and litigants that are not being delivered in the traditional adjudicatory process. See, e.g., Brazil, A Close Look, supra, pp. 303-397.

An analysis has, as well, been made of the District's arbitration program. In 1988, the FJC evaluated and assessed our arbitration program, among others, concluding that such programs "have shown themselves to be a useful tool if carefully designed and implemented" and that "the task for court administrators and researchers is to continue to try to identify optimal procedures most likely to provide the highest quality of justice at maximum efficiency for

1 These procedures are described in a pamphlet produced by the District and provided to counsel and the public. A copy of this pamphlet, Dispute Resolution Procedures in the Northern District of California, is attached hereto as Appendix 1.

2 These programs have been the subject of considerable scholarly, bar and judicial attention, as well as self-examination. The District's early neutral evaluation program has been the subject of four published studies. See Brazil, Kahn, Newman & Gold, Early Neutral Evaluation, 69 *Judicature* 279 (1986); Levine, Early Neutral Evaluation: A Follow-Up Report, 70 *Judicature* 236 (1987); Levine, Northern District of California Adopts Early Neutral Evaluation to Expedite Dispute Resolution, 72 *Judicature* 235 (1989); and Brazil, A Close Look at Three Court-Sponsored ADR Programs: Why They Exist, How They Operate, What They Deliver, and Whether They Threaten Important Values ("A Close Look"), 1990 *University of Chicago Legal Forum*, pp. 331-363.

various types of cases." See "Court-Annexed Arbitration in the Northern District of California" (1988) Federal Judicial Center; B. Meierhoefer, Court-Annexed Arbitration in Ten District Courts, Federal Judicial Center (1990) pp. 131-132 (1990); see also Brazil, A Close Look, supra.

In light of their use and potential to reduce case expense and delay in civil litigation both in this District and nationally, a considerable part of our budget submission focuses upon our arbitration and ENE programs. In addition, the District proposes actively to consider adding mediation as another ADR program. Mediation, as an ADR technique, utilizes a process quite different from the other ADR methods now offered by the District. We envision a mediation program to provide an interest-analysis approach to dispute resolution as compared to the position-bargaining approaches utilized in our arbitration and ENE programs. Given these process differences, mediation promises to be a better tool to use in cases which are not as well suited to position-bargaining techniques (e.g., public policy disputes). See Agenda, National Conference on Emerging ADR Issues in State and Federal Courts, Harvard Law School, April 18-20, 1991, Public Policy Disputes in the Courts: The Promise of Mediation.

B. The Future of the District's ADR Programs.

The District's experience in ADR, and its willingness to expand its current methods, provides an excellent opportunity to implement the mandate of the Civil Justice Reform Act. The requested funding will permit the District to consider expanding its ADR programs to include cases which, for lack of resources, have not historically been included in the ENE program. As explained more fully herein, the District's ENE program has been available only to even-numbered filings. Even on this limited basis, this District's resources have been stretched to an unreasonable degree. The requested funding will enable us to offer ENE to all appropriate filings, regardless of file number. Further, the requested funding will permit the District to include in its ADR programs additional types of cases not currently reached by such programs (e.g., civil rights cases, mass torts and prisoner applications). A court-wide, systematic procedure which expands upon the cases now included in ADR, and then refers them to an appropriate ADR process, will further reduce unnecessary cost and delay in civil litigation.

In addition, there is presently an enormous need to better train and educate the members of the bench and bar who provide ADR services. These individuals, called "neutrals" (arbitrators, evaluators, special masters and mediators) must be adequately trained in order to effectively provide ADR services. The more capable the neutrals, the more likely it is that the public, bench and bar will accept ADR concepts. The training must be designed in light of local and nationwide experience, with sufficient flexibility to incorporate

changes as knowledge and experience grows. Educational materials and trainers are necessary to ensure that these programs continue to provide useful services.

Finally, the District needs to do an in-depth analysis of its ADR programs. Due to the scarcity of resources available in the past, analyses of our ADR programs have been limited to measuring lawyer perceptions and attitudes concerning these programs. Given the CJRA mandate, we need to conduct a systematic and empirical study to assess what the impact of these programs has been on case processing time and cost, and to measure their overall value in the administration of justice.

A review and revision of existing programs will require additional personnel to ensure proper management. The remainder of this section of the budget request consists of a description of the personnel and associated expenses necessary during the remainder of fiscal year 1991 to demonstrate, consider, revise and expand upon the District's ADR programs.

1. Personnel.
 - a. Staff professional (one position).

To reliably demonstrate the District's ADR program, we need a full-time staff professional who is law-trained, experienced in civil litigation and knowledgeable about ADR processes. Previously, supervision of the ADR programs has, in large part, been dependent solely upon the volunteer work of one of our Magistrate Judges, Wayne D. Brazil. We cannot, in good conscience, expect Judge Brazil to continue his herculean efforts. He has, as well, judicial responsibilities which, due to the enormous caseload of this District, require his full and undivided attention. Given the additional demands of the CJRA which now mandate that we demonstrate the use and potential of these programs, this District needs assistance. Only the requested funding can supply that assistance. To this end, we request funding for an individual who shall have principal responsibility for all aspects of the District's ADR programs. Specific duties shall include:

- i. Program structure.
 - Design and implement an administrative system for all our ADR programs.
 - Coordinate the activities of the ADR-related consultants, if funded (see infra).
- ii. Case selection.
 - Evaluate and refine current case selection criteria.

- Develop additional criteria for identifying those cases (or subsets thereof) in which an ADR process promises to be most productive.
- Analyze which ADR processes are most appropriate for use in particular categories of cases.
- Work with the bench and bar to identify additional categories of cases which are appropriate for some form of ADR (e.g., civil rights cases, mass tort, prisoner applications).

iii. Recruitment, training and outreach.

- Establish screening mechanisms and recruit a substantial number of additional attorneys to supplement our pool of neutrals in the ENE, arbitration and, if funded, mediation programs. This process should include, among other things, an interview with each applicant to determine temperament, commitment, subject matter expertise, etc., to ensure that each neutral has the requisite qualifications.
- Design a system for the continuous replenishment of our pools of neutrals, with regard to maintaining an appropriate balance among the various segments of the bar and with regard to ensuring adequate coverage of subject area specialties (e.g., intellectual property).
- Design and conduct intensive and repeated training programs for the neutrals.
- Design and conduct intensive and repeated educational programs for members of the bench, bar and client groups to explain the ADR programs, and to teach users to utilize these programs in the most productive manner.
- Provide a visible, accessible resource to respond to questions from neutrals about their assignments and from all other members of the District's many interested constituencies (e.g., client groups, bar associations, etc.).

iv. Evaluation.

- Assist in the effort to design and implement mechanisms to systematically collect data about the District's ADR programs (see section II.B.1.f).
- Collect and analyze user (client and lawyer) feedback and suggestions for program improvement.

- Collect and analyze feedback from the neutrals; design and implement systems to share information among neutrals.

v. Coordination.

- Seek support from, and coordinate delivery of service among, the many bar associations and state courts within our jurisdiction. (This could lead to cost-sharing among all of these groups.)

- Regularly communicate with staff and judicial officers in other courts to ensure that we are timely informed of new ideas and developments in other places.

- Respond to the many requests for assistance and information about our programs.

- Work with neutrals and the Advisory Group to draft changes in the District's Local Rules and General Orders, especially as they relate to ADR (e.g., General Order No. 26).

To attract an appropriately qualified person in the San Francisco Bay Area, we need to be able to offer a salary equivalent to the upper end of JSP-15 (\$80,000). At that annual rate, we would need approximately \$33,000 (for salary) through the end of the fiscal year (September 30, 1991).

b. Administrative analyst (one position).

One administrative assistant will be needed to support the work of the staff professional. This position requires an individual who is capable of understanding the ADR programs and of interacting in a confidence-inspiring manner with lawyers (both neutrals and users), ADR professionals, judges and court staff, and representatives of other jurisdictions. This person will assist with the day-to-day administration of ADR programs, education and training programs, evaluation and data collection, together with a wide range of more mechanical tasks.

To attract a sufficiently qualified person, we request authorization to hire at the upper end of the JSP-11 level, i.e., \$40,000 annualized salary base. For the period remaining in this fiscal year, we request a \$15,000 budget allocation.

c. Clerical assistance.

Although hundreds of cases are processed each year in the ENE program, insufficient funding for clerical staff positions exists for this program. At present, the ENE and arbitration programs require the almost full-time efforts of four clerical positions. Only two such positions are allocated for this purpose in

the District's budget. Thus, there are presently two full-time JSP-9 level individuals who are devoted almost entirely to administering the ENE and arbitration programs even though they are not allocated in our budget for that purpose. These individuals are responsible for analyzing and identifying civil actions to determine eligibility for referral to arbitration in compliance with Local Rules, monitoring eligible cases for compliance with time deadlines provided in Local Rules, interfacing between the arbitrators and the Clerk's office, selecting eligible arbitrators, coordinating and scheduling the arbitrations, attending arbitration proceedings (as needed), maintaining all documents and records, filing arbitration awards and judgments, preparing vouchers for compensation of arbitrators, and performing such other clerical tasks which arise in connection with these programs. The present understaffing, particularly in light of the possible expansion of the ADR programs and the addition of mediation, adversely impacts the Court's ability to deliver ADR services. To remedy this situation, we request funding for two clerks at a JSP-9 level. For the next five months of the 1991 fiscal year, we request a budget allocation in the amount of \$24,000.

d. Expert consultant re training.

The success of the District's ADR programs depends upon whether the neutrals are trained to effectively organize, lead and resolve disputes. Since training in ADR skills requires sophistication and experience, we request funding for an expert consultant to design and conduct the training programs to be instituted before the end of this fiscal year.

Other courts (the District of Columbia) which have engaged such experts advise that consulting and teaching fees will cost approximately \$4,000 per training program (two professionals, each working a two-day session, together with preparation and materials). Before the end of this fiscal year, we request funding to conduct two training programs for those attorneys who serve as evaluators in the ENE program (50 lawyers per program, training a total of 100 lawyers), and one training program for those attorneys who serve as the neutrals in the arbitration program. Accordingly, we request funding in the amount of \$12,000 for an expert consultant(s) for training programs.

e. Expert consultant re possible mediation program.

During the next several months, this District would like to explore the advisability of adding a mediation program to our ADR offerings. Mediation is a process quite different from the other ADR tools currently offered. We believe that some cases which are now sent to arbitration or ENE might be better served by mediation. At this juncture, we request funding for a consultant to help us determine whether a mediation program might offer sufficiently distinct advantages, at least in some kinds of cases, to warrant a commitment of resources. We also need advice concerning the organization, administration and integration

of such a program into our other ADR programs. Specific areas to explore include case selection criteria and mediator training/certification. We request funding in the amount of \$5,000 for this purpose.

f. Expert consultant re evaluation studies.

The ENE program would benefit from, and presents a unique opportunity for, a systematic evaluation.

As a result of a study conducted in 1988 by the National Institute for Dispute Resolution of our ENE program, the District made ENE a presumptively permanent part of the pretrial system in certain kinds of cases. Accordingly, the District has sent every even-numbered case that meets certain established criteria into the ENE program since late fall 1988. Almost 800 even-numbered cases have been so designated for this program.

By virtue of our limited resources, the odd-numbered cases were deemed to be ineligible to participate in the ENE program. However, those cases now present a "control group" by which to evaluate the usefulness of the ENE program.

We have kept some statistical information on the cases assigned to the program, and have a system in place for learning a limited amount of information about the effects of the program from the lawyer-evaluators. We have not had the resources, however, to conduct a thorough study of the program in its post-experimental period (since November of 1988). We need to undertake such a study at this time in order to assess the net effect of the program, and to know whether it merits continuation or expansion. In addition, it would be useful to know whether the ENE program should be limited to particular kinds of cases, whether adjustments or improvements should be made, what to emphasize during our new training programs, and what errors to teach our neutrals to avoid.

To this end, we need the help of an expert consultant to assess the kinds of information available through existing channels, suggest alternative ways of acquiring more data, assist us in designing and executing a research strategy, then help us interpret the resulting data.

We also need assistance to design and implement a system to regularly capture useful data about our ADR programs. Installation of contemporary data entry systems will enable us to efficiently answer important evaluative questions without conducting labor-intensive historical research in individual case files. Such systems will assist us to monitor and evaluate ADR programs without significant additional resource commitments. For all of this important research and development work, we request a budget of \$35,000.

trials completed per judgeship has declined from 24 in 1985 to 17 in 1990. Guidance memo, p. 8. There are many possible explanations for this phenomenon. For example, it is possible that the number of trials per judge has declined due to the success of the court's ADR programs. It is also possible that the statistics reported do not accurately reflect the number of trials per active judge in light of the relatively high number of judicial vacancies and other unique circumstances of this Court. Some combination of these explanations, or others, is also possible.

In order to investigate these and other matters pertaining to the current state of the docket, the Advisory Group is requesting that a consultant be hired to help it design a study to assess the current state of the docket in an orderly and thorough fashion.

To this end, the Advisory Group has contacted a number of potential consultants, including Deborah Hensler of the Rand Corporation. Based upon information obtained from these consultants, it is estimated that such a study can be designed for approximately \$30,000.

IV. ADVISORY GROUP, JUDICIAL LIAISON COMMITTEE AND REPORTER.

The District's Advisory Group is composed of 30 individuals selected from this district's many different constituencies, including representatives from the plaintiffs' bar, the defense bar, large and small law firms, solo practitioners, public interest lawyers, law school professors, in-house legal counsel and the publisher of legal self-help books.

Since its formation in March 1991, the Advisory Group has been very active. Its first major project was to adopt an organizational structure best suited to carry out the purposes of the CJRA. To that end, eight committees were formed, together with a Steering Committee composed of each committee chair and the Advisory Group co-chairs. The Advisory Group as a whole has met on three occasions since its formation.

The Advisory Group's second major project was to investigate whether this District should attempt to implement a cost and delay reduction plan by January 1992. Based upon the recommendation of the Early Implementation Committee, the Advisory Group voted to recommend to the District that we try to meet the early implementation deadlines specified in the CJRA. A timetable for the Group's work, consistent with that goal, has been adopted.

Meanwhile, the Advisory Group and its Committees have already begun their substantive work. Each of the Committees has formulated a plan of action to, among other things, "undertake a broad review of litigation practices

and procedures both in and out of court with a view toward learning how these practices could be modified to reduce cost and delay." Guidance memo, p. 23. As an example, the Discovery Committee proposes to undertake a comprehensive review with respect to the conduct of discovery in the Northern District of California. The Committee's study will identify costs and delays resulting from the discovery process, determine the causes of those costs and delays, consider whether the causes may be eliminated or corrected, and propose methods for streamlining discovery in order to alleviate costs and delays.

The Committee's study will include (1) a review of court procedures related to discovery, and a study of whether any of them contribute unnecessarily to discovery cost delays;³ (2) an analysis of litigant and attorney practices;⁴ (3) an analysis of specific data concerning the length of discovery delays and the costs resulting from discovery inefficiencies; and (4) consideration of the impact of recent judicial efforts to reform the discovery process.⁵ Consideration of other

3 As the Guidance memo recommends, the Committee will consider the use of discovery cut-off dates, controls on the scope and volume of discovery, Rule 26(f) conferences, voluntary exchanges and other alternatives to traditional discovery, procedures for resolving discovery disputes, sanctions for discovery abuse, and the use of magistrates. See Guidance memo., p. 24.

4 As the Guidance memo suggests, the Committee will review such consensual litigant and attorney practices as voluntary exchanges of information, admissions and stipulations, limitations on discovery, resolution by counsel of discovery disputes, discovery motions, and compliance with rulings. See Guidance memo, p. 26. The Committee will determine the extent to which these practices have contributed to a reduction in discovery-related costs and delays.

5 Several judges and magistrates in the Northern District of California have attempted to streamline discovery through the use of innovative discovery orders. See, e.g., Klein v. King, 132 F.R.D. 525 (N.D.Cal. 1990) (Magistrate Brazil ordered three-phase discovery management program in complex securities class action). Other changes, presently under consideration, include mandatory initial disclosures of documents and witnesses, supplemental pre-trial disclosures, and increased obligations to correct and supplement discovery responses, all without the necessity of formal discovery requests. The Committee will evaluate the efficacy of these efforts in reducing discovery costs and delays. The Committee anticipates that its study will lead to proposed changes in procedures within the Northern

(continued...)

Prof. Cohen, who is also Co-Chair of the Advisory Group, has expended between 15 and 20 hours per week on Advisory Group activities including committee formation, chairs and assignments, conducting meetings of the Advisory Group, meeting with the District's Judicial Liaison Committee, determining early implementation issues, defining CJRA compliance requirements, researching concepts and implementation of cost/delay reduction techniques, analyzing and preparing budget needs, and performing other CJRA-related tasks.

It is expected that Prof. Cohen will continue to perform similar tasks, including preparing a compendium and bibliography for Group committees as to cost/delay reduction ideas in state and federal court, coordinating with other CJRA reporters nationwide, studying particular cost/delay reduction concepts, designing studies for cost/delay reduction, assisting in preparing educational and outreach materials, and performing similar tasks. Additionally, Prof. Cohen is expected to continue to chair meetings, oversee and assist committee work, meet with the District's Judicial Liaison Committee, and perform other Advisory Group administrative duties.

In order to perform these duties adequately, Prof. Cohen will need administrative and research support as well as equipment and supplies. The remainder of this section of the budget sets forth the requested funding.

1. Reporter compensation.

Over the next five months, it is expected that the Reporter will expend an average of 10 hours per week on CJRA-related activities which, at \$40 per hour, is a total of \$8,000.

2. Research assistance.

One student research assistant will be used by the Reporter, working 15 hours per week at \$7.50 per hour, totalling \$2,250.

3. Secretarial assistance.

A part-time secretary or secretarial service will be hired for 10 hours a week at \$15 per hour, totalling \$3,000 for the five-month period.

4. Supplies, printing and communications.

For fax, duplicating, telephone, postage and similar expenses, it is estimated that \$1,000 will be expended over the remainder of the fiscal year.

5. Travel, transportation and subsistence.

For transportation to the federal court in San Francisco and San Jose, and to offices of Advisory Group members, \$500 is necessary. For travel to conferences inclusive of subsistence, \$1,500 is necessary.

V. BUDGET REQUEST SUMMARY.

A. Additional Personnel and Support.

Staff Professional	\$30,000
Administrative Analyst	15,000
Clerical Support	24,000
Equipment, Furniture, Supplies for Above	32,750
Expert Consultant (Training)	12,000
Expert Consultant (Mediation Program)	5,000
Expert Consultant (ENE and ADR Evaluation)	35,000
Current State of the Docket Consultant	<u>30,000</u>
 SUBTOTAL	 \$186,750

B. Advisory Committee.

Steering Committee, Travel and Subsistence	\$ 5,000
Phones, Postage, Supplies	<u>2,000</u>
 SUBTOTAL	 \$ 7,000

C. Reporter Budget.

Reporter Compensation	\$ 8,000
Research Assistance	2,250
Secretarial Support	3,000
Supplies, Printing, Communications	1,000
Travel and Subsistence	<u>2,000</u>
 SUBTOTAL	 \$ 16,250
 GRAND TOTAL	 <u>\$210,000</u>

The Northern District of California, together with its Advisory Group, hopes that you will look favorably upon this budget request, and will grant us the funds requested.

UNITED STATES DISTRICT COURT
for the
NORTHERN DISTRICT OF CALIFORNIA

**ALTERNATIVE DISPUTE RESOLUTION (ADR)
PROGRAM MANAGER**

The United States District Court for the Northern District of California in San Francisco is seeking an experienced litigator with strong administrative and organizational skills, to serve as the Court's ADR Program Manager.

The ADR Program Manager will oversee the design, implementation and evaluation of new ADR programs for civil cases, and the evaluation of the Court's existing Court Annexed Arbitration and Early Neutral Evaluation programs. The ADR Program Manager will design and put into place a wide range of educational and informational programs and materials to help the Bar and other users of the Court understand ADR policies and procedures. In addition, the ADR Program Manager will devise and put into place programs for recruitment and training of evaluators, mediators and arbitrators.

Candidates should have 4 yrs. experience in the practice of law; demonstrated strength in litigation, legal administration and/or program design/development is desirable. This full-time temporary position (minimum one year) carries full Federal health/life ins., vacation and sick leave benefits. Salary will be \$56,598 to \$73,579, depending on qualifications and experience. Send resumés to: U.S. District Court, P.O. Box 36060, San Francisco CA 94102. ATTN: James R. Gilmore, Chief Deputy Clerk of Court.

ADR Program Manager

The Alternative Dispute Resolution (ADR) Manager is responsible for the design, implementation, oversight and evaluation of ADR programs for civil cases including, but not limited to, mediation, arbitration, and early neutral evaluation.

Responsibilities of the ADR Program Manager will include, but not be limited to:

1. Design, development and implementation of an administrative system for the district's ADR programs.
2. Coordinating the activities of ADR consultants.
3. Evaluating and refining current criteria for selecting cases to be placed in an ADR program, and developing additional criteria for identifying those cases (or subsets thereof) for which an ADR program promises to be most productive.
4. Analyzing which ADR processes are most appropriate for use in particular categories of cases.
5. Establishing screening criteria and mechanisms for the recruitment of substantial numbers of arbitrators, neutral evaluators and mediators who are qualified to participate in court ADR programs.
6. Designing and putting into place a system for continuous replenishment and training of the court's pool of neutral evaluators, arbitrators and mediators.
7. Designing and conducting regular educational programs for members of the bench, the bar and client groups to explain the court's ADR programs, and to teach users how to utilize these programs in the most productive manner.
8. Assisting in the design and implementation of mechanisms to systematically collect data about the district's ADR programs, including user (client and lawyer) feedback.
9. Collecting and analyzing feedback from neutral evaluators, arbitrators and mediators, and designing systems to share information among them.
10. Maintaining liaison with bar associations, state courts and other federal courts to ensure that this court share new ideas and developments from other sources.
11. Providing a visible, accessible information source to respond to questions about their assignments from neutral evaluators, arbitrators and mediators, and from all other members of the district's interested constituencies (client groups, bar associations, etc.).
12. Responding to the many requests for assistance and information about ADR programs in the Northern District of California.