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July 2, 1993

Mr. L. Ralph Mecham
Director
Administrative Office of the
United States Courts
One Columbus Circle, NE
Washington, DC 20544

Re: CJRA Advisory Group Report

Dear Mr. Mecham:

Enclosed please find the Report and Plan of the Civil Justice Reform Act Advisory Group for the District of the Northern Mariana Islands.

Sincerely,
UNITED STATES DISTRICT COURT

Galo L. Perez

110628

Report and Plan

of the

CIVIL JUSTICE REFORM ACT
ADVISORY GROUP

UNITED STATES DISTRICT COURT
NORTHERN MARIANA ISLANDS

JUNE 1993

FOREWORD

The Civil Justice Reform Act of 1990 (see Appendix A hereto) provides that the Chief Judge of each United States District Court appoint an Advisory Group of attorneys and other participants in the civil litigation process to aid the Court in carrying out the mandate of the Act. In compliance, the Honorable Alex R. Munson, Chief Judge for the District of the Northern Mariana Islands, appointed a 4-member Advisory Group comprised of Michael A. White, Senior Attorney of the firm of White, Pierce, Mailman & Nutting; David R. Nevitt of the firm of Carlsmith Ball Wichman Murray Case Mukai & Ichiki; Brian W. McMahon, Attorney at Law, currently serving as President of the CNMI Bar Association; and David T. Wood, Assistant U.S. Attorney in Charge of the CNMI.

The Advisory Group held its organizational meeting on February 26, 1991, and has held eight subsequent meetings which were attended by Judge Munson by continuing invitation of the Advisory Group.

In the process of developing this report and the recommended Plan accompanying it, a cross section of CNMI Bar Association members responded to a 24-question survey covering among others, such subjects as Discovery, Motion Practice, Experience with Federal Practice, Lawyer Client Relationships, Sanctions, Alternative Dispute Resolution, Mandatory Arbitration, and Tentative Rulings. Appendix B hereto reproduces the survey

questions and responses. Much credit for the recommended plan goes to those who participated. The Advisory Group carefully considered these responses which greatly aided the Group's choices in formulating the recommended Plan.

Judge Munson deserves special thanks for shared insights regarding this District and other areas in the Western Pacific which impact the CNMI. These insights gained through his previous judicial experience as Chief Judge for the Trust Territory of the Pacific Islands were of great help to the Advisory Group in tailoring this proposed plan.

Judge Munson is also commended for his availability for consultation and his inclusive approach in suggesting that the final Plan include significant input from the lawyers in the CNMI Bar Association as well as the Advisory Group members and the Court. His persistent belief that improved service to the people who depend on the Court to resolve their civil disputes is the paramount objective of cost and delay reduction is also noteworthy. The Advisory Group used this principle is shaping the recommended Plan.

In accordance with the congressional mandate, the Advisory Group submits this Report and Recommendation and Proposed Differentiated Case Management Plan to the Honorable Alex R. Munson, Chief Judge of the District of the Northern Mariana Islands.

ADVISORY GROUP REPORT
DISTRICT OF THE NORTHERN MARIANA ISLANDS

The District of the Northern Mariana Islands has an Article I (Legislative) Court located on Saipan, the largest of three major inhabited islands comprising the Commonwealth of the Northern Mariana Islands (CNMI). The Honorable Alex R. Munson is the chief and sole judge for this district.

Timely access to the Court is presently conveniently available. The Advisory Group does not believe additional legislation will impact cost or delay reduction in the district. Legislation which would jurisdictionally redefine the political relationship between the CNMI and the United States, particularly in areas of labor and/or immigration, would impact the business of the Court.

Civil filings have remained generally steady for 1992 and 1993, with a slight downward trend to date this year. The oldest active civil case was filed less than two years ago, so the court has been able to handle civil matters in an expeditious fashion.

Criminal case filings for 1993 are on a pace to exceed the yearly totals for 1991 and 1992, but the court has not experienced any problems with delay.

The Advisory Group believes that given more support by U.S. criminal investigative agencies, specifically including the assignment of on-island agents from the Drug Enforcement Administration and the Bureau of Alcohol, Tobacco and Firearms,

criminal filings would markedly increase. Presently there is no imbalance between civil and criminal filings which would cause delay in hearing civil cases.

The Advisory Group determined, through a questionnaire submitted to CNMI Bar Association members, that the majority of members responding do not believe as a general rule that civil litigation in this district involves unnecessary costs to their clients. However, when queried concerning individual experiences, the majority responding do believe they and the litigants they represent have in some cases been subjected to both unnecessary cost and delay caused by abuse of the discovery process and "hardball" tactics designed to wear down opponents by raising the costs and stress of the litigation process.

The Advisory Group concludes that, while no insurmountable difficulties exist, a "streamlining" process with earlier involvement by judicial officers in case tracking and management will reduce costs and delay both for the Court and the litigants in cases that proceed to trial and cases that settle.

Civil litigation, in addition to common procedural difficulties caused mainly by discovery disputes and delays, is complicated by travel of off-island litigants, witnesses and attorneys, by seasonal severe weather patterns (tropical storms and typhoons), and by communication difficulties (many island residents do not have easy access to telephones and live in areas that have no street addresses).

To minimize problems presented by these circumstances, to streamline court procedures, and to accomplish the statutory objectives of the just, speedy and inexpensive resolution of civil disputes, the Advisory Group concluded that the Court should devise its own plan relying partially on various concepts presented in model plans and innovating to meet this District's needs.

A differential case management system incorporating three case track categories which procedurally separate less complex cases with high settlement potential from more complex cases with issues almost certain to require determination by trial, is best suited to the district. This plan must include, among other provisions, assertive judicial management of pre-trial activity, a method for requiring and monitoring pre-trial disclosure, a structured discovery system which will avoid unnecessary delay, a case conference structure which will require early and adequate legal and factual case preparation, and judicial discretion regarding all procedural functions to maintain a high degree of flexibility.

Except for non-binding summary jury trials, the Advisory Group determined not to include provisions for an Alternative Dispute Resolution Program or a Neutral Evaluation Program in its recommended Plan. The small number of practicing lawyers in the Commonwealth, the lack of experience and unavailability of training necessary to utilize these concepts and the small case load of the Court eliminate many of the reasons for adopting such programs. The Advisory Group believes that the ideas presented by these new

concepts deserve further exploration and it is recommended that the local bar association take steps to educate its members as to the value of these techniques. The Advisory Group and the Court will periodically review this decision and if there is substantial interest, the bar association and/or the Advisory Group may recommend to the Court that it amend its local rules to allow these alternative methods of conflict resolution.

In Section Four of the recommended plan, the Advisory Group included a provision for non-binding summary jury trials which may be ordered by the court sua sponte, by motion of one of the parties, or by stipulation of the parties. The Advisory Group concluded that this process, although not likely often used, will allow flexibility particularly in complex cases which could, if tried, last several months. Since the results are non-binding, the Advisory Group concluded that no threat to the parties rights exists and the process may show a difficult client or an attorney who has misjudged his or her case how a binding jury would likely vote, thus leading to a settlement, avoiding costs and saving trial time.

While specific time limitations for necessary procedural steps must govern all stages of civil litigation, assertive judicial management and broad judicial discretion and flexibility are necessary particularly in evaluating case complexity, exploring the potential for settlement and in scheduling hearing and trial dates. The recommended Plan provides for and incorporates these concepts.

The District of the Northern Mariana Islands is the smallest district in the United States judicial system. However, significant growth of court business is expected because of economic expansion in the CNMI and an increasing reliance on the federal court as case law and political action continue to define, interpret and refine the legal and political relationship between the CNMI and the United States.

The recommended Plan accommodates these foreseeable changes and avoids the prospect of becoming prematurely outdated. The importance this Plan places on initial track classification of cases mandates early and direct involvement of judicial officers on a routine basis which continues through all preliminary and pretrial stages and incorporates assertive judicial management at the earliest opportunity.

The recommended initial track classification contained in Section One of the proposed Plan requires lawyers, litigants and the Court to identify factual and legal complexity of issues at an early stage. The Plan further requires an early analysis regarding the possibility of settlement in each case.

The differential case management system places an early burden on the Court, litigants, and lawyers by requiring a case management conference, a status hearing, and a case management plan. The Court and members of the Advisory Group are satisfied that this system allows the Court, as referee, to both preserve its neutrality and to come in from the sidelines offering early

direction and making early procedural decisions that will lessen expense, expedite timely resolution, and enhance the just determination of civil cases in this District.

Among other procedural matters, Section Two of the Plan provides for immediate pre-discovery managed by the Court as a necessary topic of the Case Management Conference and the Case Management Plan. Civility and professional conduct among lawyers, monitored by the court, is necessary.

The Advisory Group and the Court believe that openness and early and continuing preparation and discovery are key to avoiding bottleneck crises near or at trial. Additionally, required discovery made early facilitates a climate in which settlement, if possible, can best occur.

Subsection D of Section Two of the recommended Plan specifically requires an attorney at the case management conference who possesses authority to bind his client(s). The Court and the Advisory Group believe this requirement will end certain frustrations and gamesmanship, and will allow substantive conclusions to be reached at the conference or at a subsequent time agreed by the parties with court approval and/or ordered by the court.

Section Three of the recommended Plan controls the timing and extent and methods of discovery and motion practice.

This section compliments the requirements of Section Two and mandates disclosure of certain evidentiary matters as early in the

case as possible (see Section Three I.A.1). The Court and the Advisory Group believe regarding civil cases that nothing hinders the process of just determination of disputes more than the lack of timely preparation required for proper disclosure/discovery.

Reference is made to existing local rules regarding the form and length of motions. The Court may allow argument on any motion to be conducted by telephone. This procedure recognizes this district's secluded geographical location. The parties may agree in writing to waive oral argument on motions. In well briefed and factually documented cases, this provision will conserve time and expense.

Section Four establishes a reporting system for specific case information to be compiled and maintained by the District Court clerk and regularly reported to the Court.

These requirements will provide an accurate procedural record for each civil case as it progresses through the system and will keep the Court informed on a monthly basis of the status of all active cases.

For the clerk to accurately compile information and perform his reporting duties, all amendments to existing orders must be in writing and timely filed.

We, the Advisory Group, with thanks to the Court, its staff, members of the CNMI Bar Association, and the Office of the District Court Clerk, submit this report and the accompanying proposed Plan.

MICHAEL A. WHITE, ESQUIRE

BRIAN W. MCMAHON, ESQUIRE

DAVID R. NEVITT, ESQUIRE

DAVID T. WOOD, AUSA

CIVIL JUSTICE REFORM ACT PLAN

UNITED STATES DISTRICT COURT

FOR THE NORTHERN MARIANA ISLANDS

JULY, 1993

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INTRODUCTION

The Civil Justice Reform Act of 1990 requires that each United States District Court implement a plan to "facilitate deliberate adjudication of civil cases on the merits, monitor discovery, improve litigation management, and ensure just, speedy, and inexpensive resolutions of civil disputes." 28 U.S.C. §471. The United States District Court for the District of the Northern Mariana Islands has responded to that mandate by developing a Civil Justice Expense and Delay Reduction Plan that will improve the civil litigation process in the district, and foster the Act's goal of facilitating access to the court. The Plan developed and adopted by the court is set forth in detail and is implemented by local rules of procedure which will be formally adopted to effectuate the provisions of the Plan.

In satisfaction of statutory requirements, the Plan, together with the Report of the Advisory Group, will be filed with the Judicial Conference of the United States and the committee designated to review the Plan, pursuant to 28 U.S.C. §474(a)(1). The Plan becomes effective on December 31, 1993.

Pursuant to the directive of the Civil Justice Reform Act of 1990, the Plan incorporates those "principles and guidelines of litigation management and cost and delay reduction," 28 U.S.C. §473(a), which the court, in consultation with the Advisory Group, believes will effectively improve the civil litigation system of the district.

With the dedicated assistance of the Advisory Group, the court has concluded that a system of differential case management centered on the active and informed participation of both counsel and the court in the development of a case specific management plan

will ensure the civil litigation process accomplishes its intended purpose, i.e., the fair and efficient disposition of civil disputes.

Through the cooperative effort of the court, the bar and the litigants of the district, the Plan will reduce expense and facilitate access to the court.

Adoption of the Plan is a significant step in the continuing process of improving access to civil justice through the reduction of the delay and expense. The court will monitor the effectiveness of the various Plan provisions on an ongoing basis, and with the assistance of the Advisory Group, periodically assess the condition of the court's civil and criminal dockets, see, 28 U.S.C. §475. The Plan will be modified as circumstances warrant to improve the civil litigation process in this district.

SECTION ONE

Differentiated Case Management

I. General Provisions

A. Differentiated Case Management ("DCM").

1. The DCM system adopted by the court is intended to permit the court to manage its civil docket in the most effective manner, to reduce costs and to avoid unnecessary delay, without compromising the independence or the authority of either the judicial system or the individual Judge. The underlying principle of the DCM system is to make access to a fair and efficient court system available and affordable to all citizens.

2. Definitions.

a. "Differentiated Case Management" ("DCM") is a system providing for management of cases based on case characteristics. This system is marked by the following features: during the Case Management Conference the court and attorneys for the parties review and screen the civil case and channel the case to processing "tracks" which provide an appropriate level of judicial, staff, and attorney attention; each track employs a case management plan tailored to the general requirements of similarly situated cases; and provision is made for the initial track assignment to be adjusted to meet the special needs of any particular case.

b. "Case Management Conference" is the conference conducted by the Judge within fifteen (15) calendar days after the time for the filing of the last permissible responsive pleading where the track assignment, Alternative Dispute Resolution ("ADR") and discovery are discussed and where discovery and motion deadlines and the date of

the status hearing are set.

c. "Status Hearing" is the mandatory hearing that is held approximately midway between the date of the Case Management Conference and the discovery cut-off date.

d. "Case Management Plan" ("CMP") is the plan adopted by the Judge at the Case Management Conference. The CMP shall include the determination of track assignments, the type and extent of discovery, the setting of a discovery cut-off date, deadline for filing motions, and the date of the Status Hearing.

e. "Dispositive Motion" shall mean a motion to dismiss pursuant to Civil Rule 12(b), a motion for judgment on the pleadings pursuant to Civil Rule 12(c), a motion for summary judgment pursuant to Civil Rule 56, or any other motion which, if granted, would result in the entry of judgment or dismissal, or would dispose of any claims or defenses, or would terminate the litigation.

f. "Discovery Cut-off" is that date by which all responses to written discovery shall be due according to the Federal Rules of Civil Procedure and by which all depositions shall be concluded. Counsel must initiate discovery requests and notice or subpoena depositions sufficiently in advance of the discovery cut-off date so as to comply with this rule, and discovery requests that seek responses or schedule depositions after the discovery cut-off are not enforceable except by order of the Court for good cause shown. Notwithstanding the foregoing, a party seeking discovery will not be deemed to be in violation of the discovery cut-off if all parties consent to delay furnishing the requested discovery until after the cut-off date or, if, for example, a deposition that was commenced prior to the cut-off date and adjourned cannot reasonably be resumed until an agreed

date beyond the discovery cut-off; provided, however, that the parties may not, by stipulation and without the consent of the Court, extend the discovery cut-off to a date later than ten (10) days before the Final Pretrial Conference.

B. Date of Application

The plan is effective December 31, 1993. It will apply to all cases filed after that date and may, in the discretion of the Court, apply to earlier filed cases. Local rule changes required by this plan will take effect as of the date of adoption of the rule.

II. Tracks, Evaluation, and Assignment of Cases.

A. Number and Types of Tracks

1. "Expedited" - Cases on the Expedited Track shall be completed within six (6) months or less after filing, and shall have a discovery cut-off no later than sixty (60) days prior to trial. Discovery guidelines for this track include interrogatories limited to fifteen (15) single-part questions, fifteen (15) requests for admission, depositions of the parties, depositions on written questions of custodians of business records for non-parties, no more than one (1) fact witness deposition per party without prior approval of the Court, and such other discovery, if any, as may be provided for in the CMP.

2. "Standard" - Cases on the Standard Track shall be completed within twelve (12) months or less after filing, and shall have a discovery cut-off no later than sixty (60) days prior to trial. Discovery guidelines for this track include interrogatories limited to thirty (30) single-part questions, thirty (30) requests for admission, depositions of the parties, depositions on written questions of custodians of business records for non-parties, no

more than three (3) fact witness depositions per party without prior approval of the Court, and such other discovery, if any, as may be provided for in the CMP.

3. "Corriplex" - Cases on the Complex Track shall have the discovery cut-off established in the CMP and shall have a case completion goal of no more than eighteen (18) months. Discovery guidelines for this track include interrogatories limited to fifty (50) single-part questions, fifty (50) requests for admission, depositions of the parties, depositions on written questions of custodians of business records for non-parties, and such additional depositions and discovery to be set at the conference.

B. Evaluation and Assignment of Cases

1. Evaluation Criteria - The court shall consider and apply the following factors in assigning cases to a particular track:

a. Expedited:

(1) Legal issues: Few and clear

(2) Required Discovery: Limited

(3) Number of Real Parties in Interest: Few

(4) Number of Fact Witnesses: Up to five (5)

(5) Expert Witnesses: None

(6) Likely Trial Days: Less than five (5)

(7) Suitability for ADR: High

(8) Character and Nature of Damage Claims: Usually a fixed amount

b. Standard:

(1) Legal Issues: More than a few, some unsettled

(2) Required Discovery: Routine

(3) Number of Real Parties in Interest: Up to five (5)

(4) Number of Fact Witnesses: Up to ten (10)

(5) Expert Witnesses: Two (2) or three (3)

(6) Likely Trial Days: five (5) to ten (10)

(7) Suitability for ADR: Moderate to high

(8) Character and Nature of Damage Claims: Routine

c. Complex:

(1) Legal issues: Numerous, complicated and possibly unique

(2) Required Discovery: Extensive

(3) Number of Real Parties in Interest: More than five (5)

(4) Number of Fact Witnesses: More than ten (10)

(5) Expert Witnesses: More than three (3)

(6) Likely Trial Days: More than ten (10)

(7) Suitability for ADR: Moderate

(8) Character and Nature of Damage Claims: Usually requiring expert testimony.

2. Evaluation and Assignment - The Court shall evaluate and screen each civil case in accordance with this Section. Recommended track requirements will be sent to counsel with the notice of the date of the case management conference to give counsel advance notice of what procedural requirements are contemplated by the Court and to

reach agreement on a specific track assignment. The court will assign each case to one of the cases management tracks at the case management conference, to be held within 15 days after the receipt of the last responsive pleading.

SECTION TWO

Early and Ongoing Judicial Control of the Pretrial Process

A. Pretrial Activity

1. Assertive Judicial Management. The Judge shall manage the pretrial activity of the case through direct involvement in the establishment, supervision, and enforcement of a Case Management Plan. The Judge shall:

a. Timely convene and conduct a Case Management Conference as contemplated by Section I.A.2.b of this Plan;

b. Assess the complexity of the case and the anticipated discovery attendant to the case, and in consultation with counsel for the parties, implement a Case Management Plan which establishes, to the extent possible, deadlines for: joinder of additional parties; amendment of pleadings; filing motions; identification of expert witnesses; completion of discovery; filing proposed final pretrial order; trial; and any other dates necessary for appropriate case management.

2. Informed Participation by Counsel for All Parties at Case Management Conference.

a. Conference Statement. Counsel for all parties shall be required to file a written statement in advance of the Case Management Conference that specifically addresses

all matters critical to the development of a realistic and efficient Case Management Plan and which are specifically set forth in Rule 235-7 of the Rules of Procedure of the United State District Court for the Northern Mariana Islands.

b. Mandatory Pre-discovery Disclosure. In order to facilitate the implementation of an informed Case Management Plan, every party shall, not later than ten (10) days prior to the date set for the Case Management Conference, file and serve a pre-discovery disclosure statement, setting forth the information required to be disclosed pursuant to the provisions of Section 3.I.A of this Plan.

c. Representation by Attorney With Requisite Authority. The attorney for a party participating in a Case Management Conference shall have authority to enter into stipulations and to make admissions regarding all matters that the participants may reasonably anticipate may be discussed.

3. Case Management Plan. The Judge shall immediately enter an order summarizing the matters discussed and action taken in establishing the Case Management Plan. The Plan shall specifically designate the track to which the case has been assigned.

B. Maintenance of Trial Setting

1. An established trial date shall not be vacated unless there exists a compelling reason necessitating a continuance.

2. It shall be the policy of the Court to utilize all available judicial resources to allow the Court to adhere to an established trial date.

3. When the Court is unable to convene trial as scheduled, the Court shall, as

soon as practicable, take the following action:

(a) Determine if another judge would be available to preside over the trial on the date scheduled; or

(b) Convene a status conference for the purpose of advising counsel and the parties of the necessity to consider vacation of the trial date; or

(c) Establish a new trial date which will not unnecessarily inconvenience either counsel or the parties.

C. Settlement Conferences

1. Mandatory Consideration. The judicial officer to whom a case is assigned shall consider, both at the time of the Case Management Conference and at any subsequent conference, the advisability of requiring the parties to participate in a settlement conference to be convened by the court. Any party may also file a request for a settlement conference.

2. Mandatory Attendance by Representatives With Full Authority to Effect Settlement. Each party, shall be required to attend the settlement conference, either personally or through a representative with authority to participate in settlement negotiations and effect a complete compromise of the case.

3. Judge. The Judge may, in his or her discretion, preside over the settlement conference.

D. Representation by Attorney with Authority to Bind At Conference

1. Authority to Bind on Specific Topics. Participating attorneys will be required to have authority to bind the parties on the following matters, which may be discussed at

the Case Management Conference and subsequent conferences:

a. Whether any issue exists concerning jurisdiction over the subject matter or the person, or concerning venue;

b. Whether all parties have been properly designated and served;

c. Whether all counsel have filed appearances;

d. Whether any issue exists concerning joinder of parties or claims;

e. Whether any party contemplates adding further parties;

f. The factual bases and legal theories for the claims and the defenses involved in the case;

g. The type and extent of damages being sought;

h. Whether any question exists concerning appointment of a guardian ad litem, next friend, administrator, executor, receiver, or trustee;

i. The extent of the discovery undertaken to date;

j. The extent and timing of anticipated future discovery, including, in appropriate cases, a proposed schedule for the taking of depositions, serving of interrogatories and motions to produce, etc.;

k. Identification of anticipated witnesses or persons then known to have pertinent information;

l. Whether any discovery disputes are anticipated;

m. The time reasonably expected to be required for completion of all discovery;

n. The existence and prospect of any pretrial motions, including dispositive motions;

o. Whether a trial by jury has been demanded in a timely fashion;

p. Whether it would be useful to separate claims, defenses, or issues for trial or discovery;

q. Whether related actions in any court are pending or contemplated;

r. The estimated time required for trial;

s. Whether special verdicts will be needed at trial and, if so, the issues verdict forms will have to address;

t. A report on settlement prospects, including the prospect of disposition without trial through any process, the status of settlement negotiations, and the advisability of a formal mediation or settlement conference either before or at the completion of discovery;

u. The advisability of court-ordered mediation or early neutral evaluation proceedings, where available; and

v. The advisability of use of a court-appointed expert or master to aid in administration or settlement efforts.

2. Additional Matters by Specific Order. By specific order, the Judge also may require participation in a settlement conference, and may require preparation to discuss any other matter that appears to be likely to further the just, speedy, and inexpensive resolution of the case, including notification to the parties of the estimated fees and expenses likely to be incurred if the matter proceeds to trial.

3. Attendance of Party. The Judge may require the attendance or availability of the parties, as well as counsel.

E. Final Pretrial Conference

A pretrial conference shall be held not later than 7 days before the scheduled trial date, unless deemed unnecessary by the Court and counsel.

1. Individuals Attending

Unless excused by the Judge, each party shall be represented at the final pretrial conference by counsel who will conduct the trial. Counsel shall have full authority from their clients with respect to settlement and shall be prepared to advise the Judge as to

the prospects of settlement.

2. Final Pretrial Order

The following issues shall be discussed at the final pretrial conference and shall be included in the final pretrial order:

a. The firm trial date;

b. Stipulated and uncontroverted facts;

c. List of issues to be tried;

d. Disclosure of all witnesses;

e. Listing and exchange of copies and all exhibits;

f. Pretrial rulings, where possible, on objections to evidence;

g. Disposition of all outstanding motions;

h. Elimination of unnecessary or redundant proof, including limitations on expert witnesses;

i. Itemized statements of all damages by all parties;

j. Bifurcation of the trial;

k. Limits on the length of trial;

l. Jury selection issues;

m. Any issue that in the Judge's opinion may facilitate and expedite the trial, for example the feasibility of presenting testimony by a summary written statement;

n. The date when proposed jury instructions shall be submitted to the court and opposing counsel, which, unless otherwise ordered, shall be the first day of the trial.

SECTION THREE

Discovery Control; Motions Practice

I. Controlling the Extent and Timing of Discovery.

A. Required Disclosures; Methods to Discover Additional Matter.

1. Initial Disclosures. Except to the extent otherwise stipulated or directed by the court, each party shall, without awaiting a discovery request, provide to all other parties: (a) the name and, if known, the address and telephone number of each individual likely to have discoverable information relevant to disputed facts alleged with particularity in the pleadings, identifying the subjects of the information; (b) a copy of, or a description by category and location of, all documents, data compilations, and tangible things in the possession, custody, or control of the party that are relevant to disputed facts alleged with particularity in the pleadings; (c) a computation of any category of damages claimed by the disclosing party, making available for inspection and copying as under F. R. Civ. Pro. Rule 34 the documents or other evidentiary material, not privileged or protected from disclosure, on which such computation is based, including materials bearing on the nature and extent of injuries suffered; and (d) for inspection and copying as under F. R. Civ. Pro. Rule 34 any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment. Unless otherwise stipulated or directed by the court, these disclosures shall be made at or within 10 days after the Case Management Conference. A party shall make its initial disclosures based on the information then reasonably available to it and

is not excused from making its disclosures because it has not fully completed its investigation of the case or because it challenges the sufficiency of another party's disclosures or because another party has not made its disclosures.

2. Disclosure of Expert Testimony.

(a) In addition to the disclosures required by paragraph 1, a party shall disclose to other parties the identity of any person who may be used at trial to present evidence under Rules 702, 703, or 705 of the Federal Rules of Evidence.

(b) Except as otherwise stipulated or directed by the court, this disclosure shall, with respect to a witness who is retained or specially employed to provide expert testimony in the case or whose duties as an employee of the party regularly involve giving expert testimony, be accompanied by a written report prepared and signed by the witness. The report shall contain a complete statement of all opinions to be expressed and the basis and reasons therefor, the data or other information considered by the witness in forming the opinions; any exhibits to be used as a summary of or support for the opinions; the qualifications of the witness, including a list of all publications authored by the witness within the preceding ten years; the compensation to be paid for the study and testimony; and a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four years.

(c) These disclosures shall be made at the times and in the sequence directed by the court. In the absence of other directions from the court or stipulation by the parties, the disclosures shall be made at least 90 days before the trial date or the date the case is to be ready for trial or, if the evidence is intended solely to contradict or rebut

evidence on the same subject matter identified by another party under paragraph 2.b within 30 days after the disclosure made by the other party.

3. Pretrial Disclosures. In addition to the disclosures required in the preceding paragraphs, a party shall provide to other parties the following information regarding the evidence that it may present at trial other than solely for impeachment purposes:

(a) the name and, if not previously provided, the address and telephone number of each witness, separately identifying those whom the party expects to present and those whom the party may call if the need arises;

(b) the designation of those witnesses whose testimony is expected to be presented by means of a deposition and, if not taken stenographically, a transcript of the pertinent portions of the deposition testimony; and

(c) an appropriate identification of each document or other matter, including summaries of other evidence, separately identifying those which the party expects to offer and those which the party may offer if the need arises. Unless otherwise directed by the court, these disclosures shall be made at least 30 days before trial. Within 14 days thereafter, unless a different time is specified by the court, a party may serve and file a list disclosing (i) any objections to the use under F. R. Civ. Pro. Rule 32(a) of a deposition designated by another party under subparagraph (b) and (ii) any objection, together with the grounds therefor, that may be made to the admissibility of materials identified under subparagraph (c). Objections not so disclosed other than objections under Rules 402 and 403 of the Federal Rules of Evidence, shall be deemed waived unless excused by the court for good cause shown.

4. Supplemental Disclosure. The parties shall supplement the foregoing disclosures when required by F.R. Civ. Pro. Rule 26(e)(1).

5. Form of Disclosures; Filing. Unless otherwise directed by order or local rules, all disclosures under paragraphs 1 through 3 shall be made in writing, signed, served and promptly filed with the court.

6. Methods to Discover Additional Matter. Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property under F. R. Civ. Pro. Rule 34 or 45(a)(1)(C), for inspection and other purposes; physical and mental examinations; and requests for admission. Discovery at a place within a country having a treaty with the United States applicable to the discovery must be conducted by methods authorized by the treaty except that, if the court determines that those methods are inadequate or inequitable, it may authorize other discovery methods not prohibited by the treaty.

B. Methods of Resolving Discovery Disputes.

In conducting depositions, all parties should be mindful of the provisions of F.R. Civ. Pro. Rule 26(b)(1), relating to the scope of discovery, and the provisions of F. R. Civ. Pro. Rule 32(b), which allows the parties to reserve many objections until the time of trial.

Attention is directed to the provisions of Rule 230-10 of the Local Rules of the Court, which requires counsel to meet and confer before a discovery motion is filed.

Notwithstanding any other provision in the Local Rules, at the option of the moving party, discovery disputes that remain unresolved after a good faith effort by counsel to

resolve them shall be decided on oral motion, or on the basis of memoranda not to exceed two typewritten, double-spaced pages. The court will act as promptly as possible upon a motion so made. Such action may include a ruling upon the motion, or such other orders as may be appropriate, including but not limited to an order requiring the parties to file additional briefs and granting additional time to respond. The moving party is responsible for coordination of the date and time of the hearing upon such a motion with the court and opposing parties. Upon request, which may be oral, the court will resolve disputes regarding the date and time of hearing.

II. Motions Practice.

A. Timing. The Case Management Plan shall provide time limits in which motions may be filed. Local Rules 120 and 220 of the District Court provide for the form and length of all motions.

B. Dispositive Motions. Dispositive motions are governed by the applicable provisions of the Federal Rules of Civil Procedure and the Local Rules of the District Court, in particular, Local Rules 220-2 through 220-9.

C. Oral Argument. The parties may, by agreement, waive oral argument upon any motion. Upon request of either party, the court may, in its discretion, allow oral argument upon a motion to be conducted by telephone.

SECTION FOUR

Other Features

I. Procedures for Monitoring the Court's Caseload.

A. Case Status Information.

The Clerk of the Court shall develop and maintain an information and reporting system which allows ready access to the current status of every active case on the court's civil docket. The information system shall provide the following information relative to each active case upon the court's civil docket:

1. Date of filing;

2. Date of Case Management Conference;

3. Deadline established for discovery completion;

4. Date of submission of proposed final pretrial order;

5. Dates of any amendments to pretrial scheduling order;

6. Date of trial;

7. Specific identification of cases not scheduled for trial within 18 month of filing; and

8. Pending motions; date motion taken under advisement.

B. Report to Judge.

The Clerk of the Court shall prepare a monthly report that sets forth the case specific information referenced in A above for every active civil case. A copy of the report shall be provided to the judge.

C. Case Monitoring System.

The Clerk of the Court shall have the responsibility to monitor every active civil

case upon the docket of the Court to ensure:

1. Compliance with the service of process requirements prescribed by Rule 4(j) of the Federal Rules of Civil Procedure;

2. Scheduling of a Case Management Conference in accordance with local rules;

3. Compliance with the deadlines established by the Case Management Conference order implemented in the case; and

4. Compliance with local rules of procedure regarding the establishment of a trial date.

D. Aggregate Case Inventory.

The Clerk of the Court shall prepare a monthly report that inventories the caseload of the District by summarizing the number of civil and criminal cases pending at the close of each calendar month. The report shall categorize the pending civil caseload according to the following categories:

1. One year or less;

2. One to two years; and

3. More than two years.

II. Telephone Conferencing.

Upon request of any attorney who does not reside on the island of Saipan, or who is temporarily absent from Saipan, the Court, in its discretion, may hold pretrial and other conferences, and any scheduled oral argument on motions, by telephone. Telephone conferencing is encouraged when that practice will save the attorneys, parties, or court time and money.

III. Non-Binding Summary Jury Trials.

A. Eligible Cases. Any civil case triable to a jury may be assigned for summary jury trial.

B. Selection of Cases. A case may be selected for summary jury trial:

1. By the Court at the Case Management Conference; or

2. At any time:

a. By the court on its own motion;

b. By the Court, on the motion of one of the parties; or

c. By stipulation of all parties.

C. Procedural Considerations. Summary jury trial is a flexible ADR process. The procedures to be followed should be determined in advance by the Judge in light of the circumstances of the case. The following matters should be considered by the Judge and counsel in structuring a summary jury trial.

1. Scheduling. Ordinarily a case should be set for summary jury trial when discovery is substantially completed and conventional pretrial negotiations have failed to achieve settlement. In some cases, settlement prospects may be advanced by setting the case for an early summary jury trial. To facilitate an early summary jury trial, limited and expedited discovery should be obtained to accommodate earlier settlement potential. The summary jury trial should usually precede the trial by approximately sixty (60) days.

2. Judge. The summary jury shall be conducted by the Judge to whom

the case is assigned or referred.

3. Submission of Written Materials. It is generally advantageous to have various materials submitted to the Court before the summary jury trial begins. These could include a statement of the case, stipulations, exhibits, and proposed jury instructions.

4. Attendance. Each individual who is a party should attend the summary jury trial in person. When a party is other than an individual or when a party's interests are being represented by an insurance company, an authorized representative of the party or insurance company, with full authority to settle, should attend.

5. Size of Jury Panel. Usually the jury shall consist of six (6) jurors. To accommodate case concerns, the size of the jury panel may vary. Because the summary jury trial is usually concluded in a day or less, the judge may choose to use the challenged or unused panel members as a second jury. This procedure can provide the Court and counsel with additional juror reaction.

6. Voir Dire. Parties should ordinarily be permitted some limited voir dire. Whether challenges are to be allowed ought to be determined in advance.

7. Opening Statements. It is helpful if each party has a chance to make a brief opening statement to help put the case into perspective. It may be possible to combine voir dire and the opening statement into one

procedure, and fifteen (15) minutes may be sufficient time for each party.

8. Transcript or Recording. A party may cause a transcript or recording to be made of the proceedings at the party's expense, but no transcript of the proceedings should be submitted in evidence at any subsequent trial unless the evidence would be otherwise admissible under the Federal Rules of Evidence.

9. Case Presentations. As this is not a full trial, it is expected that counsel will present a condensed narrative summarization of the entire case consisting of an amalgamation of an opening statement, evidentiary presentations, and final arguments. In this presentation, counsel may present exhibits, read excerpts from exhibits, reports and depositions, all of which evidentiary submissions should be subject to the approval of the Judge by addressing motions in limine at a reasonable time in advance of the scheduled summary jury trial. This advanced consideration permits the summary jury trial proceedings to proceed uninterruptedly without objections. Generally, live non-party witnesses should not be permitted, although an exception may be made by the Judge. An attorney certifies that offering any such summary of testimony or evidence is based upon a good faith belief and a reasonable investigation that the testimony or evidence would be available and admissible at trial.

10. Jury Instructions. Jury instructions should be given. They will have

to be adapted to reflect the nature of the proceeding.

11. Jury Deliberations. Jury deliberations should be limited in time. Jurors should be encouraged to reach a consensus verdict. If that is not possible, separate verdicts may give the parties a sense of how jurors view the case.

12. Verdict. The jury may issue an advisory opinion regarding liability or damages, or both. Unless the parties agree otherwise, the advisory opinion is not binding and not appealable.

13. De-briefing the Jurors. After the verdict, the Judge should initiate and encourage a discussion of the case by the parties and the jurors.

14. Settlement Negotiations. Within a short time after the summary jury trial, the Judge and the parties should meet to see whether the matter can be compromised. A sufficient period between the end of the summary jury trial and the meeting is necessary to allow the parties to evaluate matters, but the Judge should exercise care not to allow too much time to elapse.

15. Trial. If the case does not settle as the result of the summary jury trial, it should proceed to trial on the scheduled date.

16. Limitation on Admission of Evidence. The Judge shall not admit at a subsequent trial any evidence that there has been a summary jury trial, the nature or amount of any verdict, or any other matter concerning the conduct of the summary jury trial or negotiations related to it, unless:

a. The evidence would otherwise be admissible under the Federal Rules of Evidence; or

b. The parties have otherwise stipulated.

Appendix A

PUBLIC LAW 101-650 [H.R. 5316]; December 1, 1990

JUDICIAL IMPROVEMENTS ACT OF 1990

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Judicial Improvements Act of 1990".

TITLE I—CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLANS

SEC. 101. SHORT TITLE.

This title may be cited as the "Civil Justice Reform Act of 1990".

SEC. 102. FINDINGS.

The Congress makes the following findings:

(1) The problems of cost and delay in civil litigation in any United States district court must be addressed in the context of the full range of demands made on the district court's resources by both civil and criminal matters.

(2) The courts, the litigants, the litigants' attorneys, and the Congress and the executive branch, share responsibility for cost and delay in civil litigation and its impact on access to the courts, adjudication of cases on the merits, and the ability of the civil justice system to provide proper and timely judicial relief for aggrieved parties.

(3) The solutions to problems of cost and delay must include significant contributions by the courts, the litigants, the litigants' attorneys, and by the Congress and the executive branch.

(4) In identifying, developing, and implementing solutions to problems of cost and delay in civil litigation, it is necessary to achieve a method of consultation so that individual judicial officers, litigants, and litigants' attorneys who have developed techniques for litigation management and cost and delay reduction can effectively and promptly communicate those techniques to all participants in the civil justice system.

(5) Evidence suggests that an effective litigation management and cost and delay reduction program should incorporate several interrelated principles, including—

(A) the differential treatment of cases that provides for individualized and specific management according to their needs, complexity, duration, and probable litigation careers;

(B) early involvement of a judicial officer in planning the progress of a case, controlling the discovery process, and scheduling hearings, trials, and other litigation events;

(C) regular communication between a judicial officer and attorneys during the pretrial process; and

(D) utilization of alternative dispute resolution programs in appropriate cases.

(6) Because the increasing volume and complexity of civil and criminal cases imposes increasingly heavy workload burdens on judicial officers, clerks of court, and other court personnel, it is necessary to create an effective administrative structure to ensure ongoing consultation and communication regarding effective litigation management and cost and delay reduction principles and techniques.

SEC. 103. AMENDMENTS TO TITLE 28, UNITED STATES CODE.

(a) CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLANS.—Title 28, United States Code, is amended by inserting after chapter 21 the following new chapter:

"CHAPTER 23—CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLANS

"Sec.

"§ 471. Requirement for a district court civil justice expense and delay reduction plan

"There shall be implemented by each United States district court, in accordance with this title, a civil justice expense and delay reduction plan. The plan may be a plan developed by such district court or a model plan developed by the Judicial Conference of the United States. The purposes of each plan are to facilitate deliberate adjudication of civil cases on the merits, monitor discovery, improve litigation management, and ensure just, speedy, and inexpensive resolutions of civil disputes.

"§ 472. Development and implementation of a civil justice expense and delay reduction plan

"(a) The civil justice expense and delay reduction plan implemented by a district court shall be developed or selected, as the case may be, after consideration of the recommendations of an advisory group appointed in accordance with section 478 of this title.

"(b) The advisory group of a United States district court shall submit to the court a report, which shall be made available to the public and which shall include—

"(1) an assessment of the matters referred to in subsection (c)(1);

"(2) the basis for its recommendation that the district court develop a plan or select a model plan;

"(3) recommended measures, rules and programs; and

"(4) an explanation of the manner in which the recommended plan complies with section 473 of this title.

"(c)(1) In developing its recommendations, the advisory group of a district court shall promptly complete a thorough assessment of the state of the court's civil and criminal dockets. In performing the assesment for a district court, the advisory group shall—

"(A) determine the condition of the civil and criminal dockets;

"(B) identify trends in case filings and in the demands being placed on the court's resources;

"(C) identify the principal causes of cost and delay in civil litigation, giving consideration to such potential causes as court procedures and the ways in which litigants and their attorneys approach and conduct litigation; and

"(D) examine the extent to which costs and delays could be reduced by a better assessment of the impact of new legislation on the courts.

"(2) In developing its recommendations, the advisory group of a district court shall take into account the particular needs and circumstances of the district court, litigants in such court, and the litigants' attorneys.

"(3) The advisory group of a district court shall ensure that its recommended actions include significant contributions to be made by the court, the litigants, and the litigants' attorneys toward reducing cost and delay and thereby facilitating access to the courts.

"(d) The chief judge of the district court shall transmit a copy of the plan implemented in accordance with subsection (a) and the report prepared in accordance with subsection (b) of this section to—

"(1) the Director of the Administrative Office of the United States Courts;

"(2) the judicial council of the circuit in which the district court is located; and

"(3) the chief judge of each of the other United States district courts located in such circuit.

"§ 473. Content of civil justice expense and delay reduction plans

"(a) In formulating the provisions of its civil justice expense and delay reduction plan, each United States district court, in consultation with an advisory group appointed under section 478 of this title, shall consider and may include the following principles and guidelines of litigation management and cost and delay reduction:

"(1) systematic, differential treatment of civil cases that tailors the level of individualized and case specific management to such criteria as case complexity, the amount of time reasonably needed to prepare the case for trial, and the judicial and other resources required and available for the preparation and disposition of the case;

"(2) early and ongoing control of the pretrial process through involvement of a judicial officer in—

"(A) assessing and planning the progress of a case;

"(B) setting early, firm trial dates, such that the trial is scheduled to occur within eighteen months after the filing of the complaint, unless a judicial officer certifies that—

"(i) the demands of the case and its complexity make such a trial date incompatible with serving the ends of justice; or

"(ii) the trial cannot reasonably be held within such time because of the complexity of the case or the number or complexity of pending criminal cases;

"(C) controlling the extent of discovery and the time for completion of discovery, and ensuring compliance with appropriate requested discovery in a timely fashion; and

"(D) setting, at the earliest practicable time, deadlines for filing motions and a time framework for their disposition;

"(3) for all cases that the court or an individual judicial officer determines are complex and any other appropriate cases, careful and deliberate monitoring through a discovery-case management conference or a series of such conferences at which the presiding judicial officer—

"(A) explores the parties' receptivity to, and the propriety of, settlement or proceeding with the litigation;

"(B) identifies or formulates the principal issues in contention and, in appropriate cases, provides for the staged resolution or bifurcation of issues for trial consistent with Rule 42(b) of the Federal Rules of Civil Procedure;

"(C) prepares a discovery schedule and plan consistent with any presumptive time limits that a district court may set for the completion of discovery and with any procedures a district court may develop to—

"(i) identify and limit the volume of discovery available to avoid unnecessary or unduly burdensome or expensive discovery; and

"(ii) phase discovery into two or more stages; and

"(D) sets, at the earliest practicable time, deadlines for filing motions and a time framework for their disposition;

"(4) encouragement of cost-effective discovery through voluntary exchange of information among litigants and their attorneys and through the use of cooperative discovery devices;

"(5) conservation of judicial resources by prohibiting the consideration of discovery motions unless accompanied by a certification that the moving party has made a reasonable and good faith effort to reach agreement with opposing counsel on the matters set forth in the motion; and

"(6) authorization to refer appropriate cases to alternative dispute resolution programs that—

"(A) have been designated for use in a district court; or

"(B) the court may make available, including mediation, minitrial, and summary jury trial.

"(b) In formulating the provisions of its civil justice expense and delay reduction plan, each United States district court, in consultation with an advisory group appointed under section 478 of this title, shall consider and may include the following litigation management and cost and delay reduction techniques:

"(1) a requirement that counsel for each party to a case jointly present a discovery-case management plan for the case at the initial pretrial conference, or explain the reasons for their failure to do so;

"(2) a requirement that each party be represented at each pretrial conference by an attorney who has the authority to bind that party regarding all matters previously identified by the court for discussion at the conference and all reasonably related matters;

"(3) a requirement that all requests for extensions of deadlines for completion of discovery or for postponement of the trial be signed by the attorney and the party making the request;

"(4) a neutral evaluation program for the presentation of the legal and factual basis of a case to a neutral court representative selected by the court at a nonbinding conference conducted early in the litigation;

"(5) 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 any settlement conference; and

"(6) such other features as the district court considers appropriate after considering the recommendations of the advisory group referred to in section 472(a) of this title.

"(c) Nothing in a civil justice expense and delay reduction plan relating to the settlement authority provisions of this section shall alter or conflict with the authority of the Attorney General to conduct litigation on behalf of the United States, or any delegation of the Attorney General.

"§ 474. Review of district court action

"(a)(1) The chief judges of each district court in a circuit and the chief judge of the court of appeals for such circuit shall, as a committee—

"(A) review each plan and report submitted pursuant to section 472(d) of this title; and

"(B) make such suggestions for additional actions or modified actions of that district court as the committee considers appropriate for reducing cost and delay in civil litigation in the district court.

"(2) The chief judge of a court of appeals and the chief judge of a district court may designate another judge of such court to perform the chief judge's responsibilities under paragraph (1) of this subsection.

"(b) The Judicial Conference of the United States—

"(1) shall review each plan and report submitted by a district court pursuant to section 472(d) of this title; and

"(2) may request the district court to take additional action if the Judicial Conference determines that such court has not adequately responded to the conditions relevant to the civil and criminal dockets of the court or to the recommendations of the district court's advisory group.

"§ 475. Periodic district court assessment

"After developing or selecting a civil justice expense and delay reduction plan, each United States district court shall assess annually the condition of the court's civil and criminal dockets with a view to determining appropriate additional actions that may be taken by the court to reduce cost and delay in civil litigation and to improve the litigation management practices of the court. In performing such assessment, the court shall consult with an advisory group appointed in accordance with section 478 of this title.

"§ 476. Enhancement of judicial information dissemination

"(a) The Director of the Administrative Office of the United States Courts shall prepare a semiannual report, available to the public, that discloses for each judicial officer—

"(1) the number of motions that have been pending for more than six months and the name of each case in which such motion has been pending;

"(2) the number of bench trials that have been submitted for more than six months and the name of each case in which such trials are under submission; and

"(3) the number and names of cases that have not been terminated within three years after filing.

"(b) To ensure uniformity of reporting, the standards for categorization or characterization of judicial actions to be prescribed in accordance with section 481 of this title shall apply to the semiannual report prepared under subsection (a).

"§ 477. Model civil justice expense and delay reduction plan

"(a)(1) Based on the plans developed and implemented by the United States district courts designated as Early Implementation District Courts pursuant to section 103(c) of the Civil Justice Reform Act of 1990, the Judicial Conference of the United States may develop one or more model civil justice expense and delay reduction plans. Any such model plan shall be accompanied by a report explaining the manner in which the plan complies with section 473 of this title.

"(2) The Director of the Federal Judicial Center and the Director of the Administrative Office of the United States Courts may make recommendations to the Judicial Conference regarding the development of any model civil justice expense and delay reduction plan.

"(b) The Director of the Administrative Office of the United States Courts shall transmit to the United States district courts and to the Committees on the Judiciary of the Senate and the House of Representatives copies of any model plan and accompanying report.

"§ 478. Advisory groups

"(a) Within ninety days after the date of the enactment of this chapter, the advisory group required in each United States district court in accordance with section 472 of this title shall be appointed by the chief judge of each district court, after consultation with the other judges of such court.

"(b) The advisory group of a district court shall be balanced and include attorneys and other persons who are representative of major categories of litigants in such court, as determined by the chief judge of such court.

"(c) Subject to subsection (d), in no event shall any member of the advisory group serve longer than four years.

"(d) Notwithstanding subsection (c), the United States Attorney for a judicial district, or his or her designee, shall be a permanent member of the advisory group for that district court.

"(e) The chief judge of a United States district court may designate a reporter for each advisory group, who may be compensated in accordance with guidelines established by the Judicial Conference of the United States.

"(f) The members of an advisory group of a United States district court and any person designated as a reporter for such group shall be considered as independent contractors of such court when in the performance of official duties of the advisory group and may not, solely by reason of service on or for the advisory group, be prohibited from practicing law before such court.

"§ 479. Information on litigation management and cost and delay reduction

"(a) Within four years after the date of the enactment of this chapter, the Judicial Conference of the United States shall prepare a comprehensive report on all plans received pursuant to section 472(d) of this title. The Director of the Federal Judicial Center and the Director of the Administrative Office of the United States Courts may make recommendations regarding such report to the Judicial Conference during the preparation of the report. The Judicial Conference shall transmit copies of the report to the United States district courts and to the Committees on the Judiciary of the Senate and the House of Representatives. Reports.

"(b) The Judicial Conference of the United States shall, on a continuing basis—

"(1) study ways to improve litigation management and dispute resolution services in the district courts; and

"(2) make recommendations to the district courts on ways to improve such services.

"(c)(1) The Judicial Conference of the United States shall prepare, periodically revise, and transmit to the United States district courts a Manual for Litigation Management and Cost and Delay Reduction. The Director of the Federal Judicial Center and the Director of the Administrative Office of the United States Courts may make recommendations regarding the preparation of and any subsequent revisions to the Manual. Government publications.

"(2) The Manual shall be developed after careful evaluation of the plans implemented under section 472 of this title, the demonstration program conducted under section 104 of the Civil Justice Reform Act of 1990, and the pilot program conducted under section 105 of the Civil Justice Reform Act of 1990.

"(3) The Manual shall contain a description and analysis of the litigation management, cost and delay reduction principles and techniques, and alternative dispute resolution programs considered most effective by the Judicial Conference, the Director of the Federal Judicial Center, and the Director of the Administrative Office of the United States Courts.

"§ 480. Training programs

"The Director of the Federal Judicial Center and the Director of the Administrative Office of the United States Courts shall develop and conduct comprehensive education and training programs to ensure that all judicial officers, clerks of court, courtroom deputies, and other appropriate court personnel are thoroughly familiar with the most recent available information and analyses about litigation management and other techniques for reducing cost and expediting the resolution of civil litigation. The curriculum of such training programs shall be periodically revised to reflect such information and analyses.

"§ 481. Automated case information

"(a) The Director of the Administrative Office of the United States Courts shall ensure that each United States district court has the automated capability readily to retrieve information about the status of each case in such court.

"(b)(1) In carrying out subsection (a), the Director shall prescribe—

"(A) the information to be recorded in district court automated systems; and

"(B) standards for uniform categorization or characterization of judicial actions for the purpose of recording information on judicial actions in the district court automated systems.

"(2) The uniform standards prescribed under paragraph (1)(B) of this subsection shall include a definition of what constitutes a dismissal of a case and standards for measuring the period for which a motion has been pending.

"(c) Each United States district court shall record information as prescribed pursuant to subsection (b) of this section.

"§ 482. Definitions

"As used in this chapter, the term 'judicial officer' means a United States district court judge or a United States magistrate.".

(b) IMPLEMENTATION.—(1) Except as provided in section 105 of this Act, each United States district court shall, within three years after the date of the enactment of this title, implement a civil justice expense and delay reduction plan under section 471 of title 28, United States Code, as added by subsection (a).

(2) The requirements set forth in sections 471 through 478 of title 28, United States Code, as added by subsection (a), shall remain in effect for seven years after the date of the enactment of this title.

(c) EARLY IMPLEMENTATION DISTRICT COURTS.—

(1) Any United States district court that, no earlier than June 30, 1991, and no later than December 31, 1991, develops and implements a civil justice expense and delay reduction plan under chapter 23 of title 28, United States Code, as added by subsection (a), shall be designated by the Judicial Conference of the United States as an Early Implementation District Court.

(2) The chief judge of a district so designated may apply to the Judicial Conference for additional resources, including technological and personnel support and information systems, necessary to implement its civil justice expense and delay reduction plan. The Judicial Conference may provide such resources out of funds appropriated pursuant to section 106(a).

(3) Within 18 months after the date of the enactment of this title, the Judicial Conference shall prepare a report on the plans developed and implemented by the Early Implementation District Courts.

(4) The Director of the Administrative Office of the United States Courts shall transmit to the United States district courts and to the Committees on the Judiciary of the Senate and House of Representatives—

(A) copies of the plans developed and implemented by the Early Implementation District Courts;

(B) the reports submitted by such district courts pursuant to section 472(d) of title 28, United States Code, as added by subsection (a); and

(C) the report prepared in accordance with paragraph (3) of this subsection.

(d) TECHNICAL AND CONFORMING AMENDMENT.—The table of chapters for part I of title 28, United States Code, is amended by adding at the end thereof the following:

"23. Civil justice expense and delay reduction plans..... 471".

SEC. 104. DEMONSTRATION PROGRAM.

(a) IN GENERAL.—(1) During the 4-year period beginning on January 1, 1991, the Judicial Conference of the United States shall conduct a demonstration program in accordance with subsection (b).

(2) A district court participating in the demonstration program may also be an Early Implementation District Court under section 103(c).

(b) PROGRAM REQUIREMENT.—(1) The United States District Court for the Western District of Michigan and the United States District Court for the Northern District of Ohio shall experiment with systems of differentiated case management that provide specifically for the assignment of cases to appropriate processing tracks that operate under distinct and explicit rules, procedures, and timeframes for the completion of discovery and for trial.

(2) The United States District Court for the Northern District of California, the United States District Court for the Northern District of West Virginia, and the United States District Court for the Western District of Missouri shall experiment with various methods of reducing cost and delay in civil litigation, including alternative dispute resolution, that such district courts and the Judicial Conference of the United States shall select.

(c) STUDY OF RESULTS.—The Judicial Conference of the United States, in consultation with the Director of the Federal Judicial Center and the Director of the Administrative Office of the United States Courts, shall study the experience of the district courts under the demonstration program.

(d) REPORT.—Not later than December 31, 1995, the Judicial Conference of the United States shall transmit to the Committees on the Judiciary of the Senate and the House of Representatives a report of the results of the demonstration program.

SEC. 105. PILOT PROGRAM.

(a) IN GENERAL.—(1) During the 4-year period beginning on January 1, 1991, the Judicial Conference of the United States shall conduct a pilot program in accordance with subsection (b).

(2) A district court participating in the pilot program shall be designated as an Early Implementation District Court under section 103(c).

(b) PROGRAM REQUIREMENTS.—(1) Ten district courts (in this section referred to as "Pilot Districts") designated by the Judicial Conference of the United States shall implement expense and delay reduction plans under chapter 23 of title 28, United States Code (as added by section 103(a)), not later than December 31, 1991. In addition to complying with all other applicable provisions of chapter 23 of title 28, United States Code (as added by section 103(a)), the expense and delay reduction plans implemented by the Pilot Districts shall include the 6 principles and guidelines of litigation management and cost and delay reduction identified in section 473(a) of title 28, United States Code.

(2) At least 5 of the Pilot Districts designated by the Judicial Conference shall be judicial districts encompassing metropolitan areas.

(3) The expense and delay reduction plans implemented by the Pilot Districts shall remain in effect for a period of 3 years. At the end of that 3-year period, the Pilot Districts shall no longer be required to include, in their expense and delay reduction plans, the

6 principles and guidelines of litigation management and cost and delay reduction described in paragraph (1).

(c) PROGRAM STUDY REPORT.—(1) Not later than December 31, 1995, the Judicial Conference shall submit to the Committees on the Judiciary of the Senate and House of Representatives a report on the results of the pilot program under this section that includes an assessment of the extent to which costs and delays were reduced as a result of the program. The report shall compare those results to the impact on costs and delays in ten comparable judicial districts for which the application of section 473(a) of title 28, United States Code, had been discretionary. That comparison shall be based on a study conducted by an independent organization with expertise in the area of Federal court management.

(2)(A) The Judicial Conference shall include in its report a recommendation as to whether some or all district courts should be required to include, in their expense and delay reduction plans, the 6 principles and guidelines of litigation management and cost and delay reduction identified in section 473(a) of title 28, United States Code.

(B) If the Judicial Conference recommends in its report that some or all district courts be required to include such principles and guidelines in their expense and delay reduction plans, the Judicial Conference shall initiate proceedings for the prescription of rules implementing its recommendation, pursuant to chapter 131 of title 28, United States Code.

(C) If in its report the Judicial Conference does not recommend an expansion of the pilot program under subparagraph (A), the Judicial Conference shall identify alternative, more effective cost and delay reduction programs that should be implemented in light of the findings of the Judicial Conference in its report, and the Judicial Conference may initiate proceedings for the prescription of rules implementing its recommendation, pursuant to chapter 131 of title 28, United States Code.

SEC. 106. AUTHORIZATION.

(a) EARLY IMPLEMENTATION DISTRICT COURTS.—There is authorized to be appropriated not more than $15,000,000 for fiscal year 1991 to carry out the resource and planning needs necessary for the implementation of section 103(c).

(b) IMPLEMENTATION OF CHAPTER 23.—There is authorized to be appropriated not more than $5,000,000 for fiscal year 1991 to implement chapter 23 of title 28, United States Code.

(c) DEMONSTRATION PROGRAM.—There is authorized to be appropriated not more than $5,000,000 for fiscal year 1991 to carry out the provisions of section 104.

TITLE II—FEDERAL JUDGESHIPS

SECTION 201. SHORT TITLE.

This title may be cited as the "Federal Judgeship Act of 1990".

SEC. 202. CIRCUIT JUDGES FOR THE CIRCUIT COURT OF APPEALS.

(a) IN GENERAL.—The President shall appoint, by and with the advice and consent of the Senate—

(1) 2 additional circuit judges for the third circuit court of appeals;

Appendix B

1. Case Types

The case type categories used in this analysis are derived from a more detailed taxonomy of nature-of-suit codes employed by the Administrative Office in its data collection and reporting. The table below shows exactly which nature-of-suit codes were included within each category.

Category	Nature-of-Suit Code and Description	
Asbestos	368	Asbestos
Bankruptcy Matters	420	Bankruptcy Trustee
	421	Bankruptcy Transfer
	422	Bankruptcy Appeals Rule 801
	423	Withdrawal
Banks and Banking	430	Banks and Banking
Civil Rights	440	Civil Rights: Other
	441	Civil Rights: Voting
	442	Civil Rights: Jobs
	443	Civil Rights: Accommodations
	444	Civil Rights: Welfare
Commerce: ICC Rates, etc.	450	Commerce: ICC Rates, etc.
Contract	110	Contract: Insurance
	120	Contract: Marine
	130	Contract: Miller Act
	140	Contract: Negotiable Instrument
	190	Other Contract
	195	Contract Product Liability
Copyright, Patent, Trademark	820	Copyright
	830	Patent
	840	Trademark
ERISA	791	ERISA
Forfeiture & Penalty (excl. drug)	610	Forfeiture and Penalty: Agriculture
	620	Forfeiture and Penalty: Food and Drug
	630	Forfeiture and Penalty: Liquor
	640	Forfeiture and Penalty: Railroad and Trucks
	690	Miscellaneous Forfeiture and Penalty
Fraud, Truth in Lending	370	Fraud
	371	Truth in Lending
Labor	710	Fair Labor Standards Act
	720	Labor Management Relations
	730	Labor Management Reporting and Disclosure
	740	Railway Labor Act
	790	Other Labor Litigation

Category	Nature-of-Suit Code and Description	
Land Condemnation, Foreclosure	210	Land Condemnation
	220	Foreclosure
Personal Injury	310	Airplane Personal Injury
	315	Airplane Product Liability
	330	Federal Employers Liability
	340	Marine Personal Injury
	345	Marine Product Liability
	350	Motor Vehicle
	355	Motor Vehicle Product Liability
	360	Other Personal Injury
	362	Medical Malpractice
	362	Medical Malpractice
	365	Personal Injury Product Liability
Prisoner	530	Habeas Corpus
	535	Death Penalty Habeas Corpus
	540	Mandamus and Other: Prisoner
	550	Civil Rights: Prisoner
RICO	470	RICO
Securities, Commodities	850	Securities, Commodities Exchange
Social Security	860	Social Security-General
	861	Social Security-HIA
	862	Social Security-Black Lung
	863	Social Security-DIWC
	864	Social Security-SSID
	865	Social Security-RSI
Student Loan and Veteran's	152	Recovery of Defaulted Student Loans
	153	Recovery of Veteran's Benefit Overpayment
Tax	870	Taxes
	871	Internal Revenue Service-Third Party
	875	Tax Challenge
Other	150	Contract: Recovery, Enforcement
	151	Contract: Medicare Recovery
	160	Contract: Stockholder Suits
	230	Rent, Lease, and Ejectment
	240	Torts to Land
	245	Real Property Product Liability
	290	All Other Real Property
	320	Assault, Libel and Slander
	380	Other Personal Property Damage
	385	Property Damage-Product Liability
	400	State reapportionment
	410	Antitrust
	460	Deportation
	510	Vacate Sentence

(*continued*)

Category	Nature-of-Suit Code and Description	
Other *(continued)*	520	Parole Board Review
	625	Drug-Related Property Forfeiture
	650	Air Line Regulations
	660	Occupational Safety/Health
	810	Selective Service
	890	Other Statutory Actions
	891	Agricultural Acts
	892	Economic Stabilization Act
	893	All Environmental Matters
	894	Energy Allocation Act
	895	Freedom of Information Act
	900	Equal Access to Justice Act Appeal of Fee Determination
	910	Local Question: Domestic Relations
	920	Local Question: Insanity
	930	Local Question: Probate
	950	Constitutionality of State Statutes
	970	NARA
	990	Miscellaneous Local Matters
	992	Local Question: Local Appeal

2. Case weights for certain case categories

Where we refer to case weights, we use weights from a 1979 study in which judges kept records of time expended on all cases worked on during a three-month period. Results of this study showed that the average time across all case types in all districts was about 3.9 hours for a weight of 1.0. For comparison, the weight for an automobile personal injury case is 0.87, or about 3.4 judge-hours. Three prominent categories of cases were not separately identified at the time of the 1979 study. Weights subsequently assigned to these categories are those of the most similar category identified in the 1979 study. Asbestos cases were assigned the same weight as other personal injury product liability cases: 1.43, representing an average of about 5.6 hours of judge time per case. The two other prominent categories not separately identified in the 1979 study are student loan and recovery of overpayments of veteran's benefits, both of which are assigned a weight of 0.03.

It is important to understand that these weights are derived by dividing all terminated cases of a certain type into all judge time expended on that type. That means that cases requiring no judge action were included in the divisor. Accordingly, among cases that required any judge time, the average weight will be considerably higher than the weight for all cases.

3. Life expectancy computation

Life expectancy was calculated as follows. Case filing and termination dates and age at termination were computed to exact months. For each district and each month within the statistical year, counts were made of the number of cases pending at each age (from 0 through 99, and 100 or more months of age) and the number that were terminated at that age. For each

age, both pending and termination counts were totalled across the twelve months of the statistical year. The ratio of termination total to pending total then gives a precise estimate of the probability that a case reaching a given "birthday" (from the "0th," which is birth itself, to the 100th month) will terminate before reaching its next birthday. These probabilities were then used in standard life expectancy computations, wherein a constant filing rate is broken down according to the probabilities of termination or survival ($1 - m_i$, where m_i is the probability of termination at age i). The standard computation proceeds as follows: for constant filings of F, $F*(1 - m_0)$ cases survive to age 1 month. In turn, $(1 - m_1)$ of these survive to age 2 months, and so on. At each age, the average at death is calculated at i + 0.495 (it is not precisely at the 1/2 month point, since slightly more cases terminate between ages i and i + .5 than the number that terminate between ages i + .5 and i + 1). The average age at termination for all cases that ensues from the constant filing rate is then the life expectancy (at case filing) for the statistical year.

4. Indexed average lifespan (IAL) computation

IAL is computed in a two-step process. First, an expected average lifespan is computed for the cases terminated in a given year. Each terminated case is assigned an expected lifespan, which is simply the average age at termination observed among all cases of the same case type in all districts over the past ten years. For instance, the average age at termination for the nearly 73,000 automobile personal injury actions terminated in the last ten years was 11.8 months. Summing the expected lifespans for all cases terminated in the district in the relevant year and dividing by the total number of cases produces the expected average lifespan (EAL). It suggests what the actual average lifespan of these cases would have been if, for each case type, the average age at termination was the same as it had been among all cases of the same type in all districts in the last ten years. In that sense, EAL suggests what the average age at termination would be in an "average" district that had exactly the same mix of cases as the district in question.

Second, we compute the actual average lifespan (AAL) for the cases disposed of in the district in the year. The indexed average lifespan is 12 × AAL/EAL (the "index" of 12 is chosen because the overall average age at termination among civil cases is about 12 months). If the actual average lifespan for cases terminated in the district is 13 months, but the expected average lifespan is 15 months, then IAL is 12 × 13 ÷ 15, or about 10.4. It is lower than 12, suggesting that the average lifespan for the district was lower than "expected" and thus that the district's cases appear to be disposed of more quickly than is typical among all districts.

PART A

CJRA SURVEY

	1	2	3	4	5
1.	3	7	9	12	7
2.	1	2	6	17	12
3.		5	4	11	18
4.	4	11	9	8	6
5.	6	9	11	5	6
6.	4	4	11	15	3
7.	7	7	12	8	4
8.	1	9	14	8	6
9.		6	16	11	4
10.	1	4	6	15	11
11.	1	2	4	14	15
12.		4	13	8	9
13.		3	14	9	11

PART B

14.	5	9	9	11	6
15.	6	7	12	11	4
16.	10	21	5	2	2
17.	13	11	5	6	6
18.	4	9	4	11	12
19.	7	10	13	6	4
20.	10	12	10	6	2
21.	7	13	5	9	4
22.	4	14	9	8	6
23.	11	14	8	5	3

24. 0-2 - 8 2-7 - 18 or greater - 15 = 41