

# COMMITTEE ON COURT ADMINISTRATION AND CASE MANAGEMENT

## *JUDICIAL CONFERENCE of the UNITED STATES*

*Honorable Robert M. Parker*  
Chairman

October 22, 1992

MEMORANDUM TO: CHIEF JUDGES, UNITED STATES COURTS OF APPEALS  
CHIEF JUDGES, UNITED STATES DISTRICT COURTS  
CHAIRS, ADVISORY GROUPS APPOINTED UNDER THE  
CIVIL JUSTICE REFORM ACT

SUBJECT: Civil Justice Reform Act Implementation

The Court Administration and Case Management Committee has been assigned responsibility for many of the tasks required in the implementation of the Civil Justice Reform Act. It has proved to be a learning experience that has left us with some firmly held beliefs and some questions that are as yet unanswered.

First of all, we have concluded that this legislation or some similar effort was, in fact, necessary. We are now persuaded that in spite of the early tensions surrounding enactment of the Civil Justice Reform Act that the Congress led by Senator Biden has performed a valuable service to the Judiciary by focusing attention on problems associated with civil dispute resolution. Without question, civil cases processed in the traditional manner cost too much and take too long. The interest of society is not served by a system that is so expensive that access to the courts is denied to a significant number of deserving litigants.

It is also apparent that true reform of our civil justice system will require significant changes in the traditional role of judicial officers. We will assume a much greater management role in securing early and inexpensive resolution of cases. The historical model is simply too expensive.

For the sixty districts that are in the process of adopting a plan and for the thirty-four districts that are monitoring the success of their adopted plans, we invite your attention to two significant areas -- controlling the extent of discovery, and controlling contingent fees.

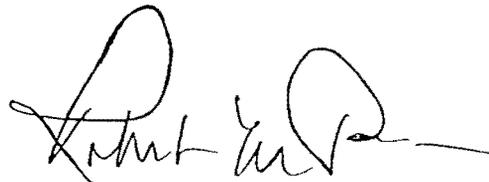
The single greatest factor that contributes to unacceptable cost is excessive discovery. We have seen that merely accelerating the process will not significantly reduce cost. Unless the extent of discovery is closely controlled, a plan cannot be successful.

The matter of contingent fees is a more difficult question. The Committee favors contingent fee arrangements and recognizes that without contingent contracts, many citizens would have no means to address their grievances. We are also mindful of the fact that the Judicial Conference has a very limited role in the area of fee arrangements.

The Civil Justice Reform Act provides little guidance in the area of litigation cost control in terms of attorneys fees. One of the purposes of each plan under the Act is to ensure inexpensive resolution of civil disputes, and the requirement exists that attorneys make significant contributions to the problems of cost and delay. The Committee recognizes that significant contributions may be made by attorneys in areas other than fee reductions. We also believe that plans that do not prohibit contingent fees in the range of 40%, 45% and even 50%, such as in personal injury cases, do not ensure inexpensive resolution of civil disputes for those litigants. While the primary focus of the Act is on various case management techniques that are presumed to result in a reduction of cost and delay, the concern exists that plans that control litigation cost by controlling the extent of discovery will provide a benefit to litigants who pay for lawyers on an hourly basis without a corresponding benefit to litigants who incur litigation cost in the form of contingent fees.

However, the Committee has determined that because the Act is not clear and because we cannot perform judicial interpretation of legislation that we should leave the matter to the discretion of each district. For these reasons, we have not recommended modification of plans that have not addressed litigation cost in the form of contingent fees. For those districts that wish to address the question, you may wish to examine the limitations imposed in New Jersey by court rule, and in New York by state statute. The model plan also contains the provisions utilized by the Eastern District of Texas.

The Committee wishes to commend the advisory groups and the courts for their significant efforts involved in the adoption of Civil Justice Reform Act plans. We recognize that the process of reform will be long and that the Civil Justice Reform Act is but a first step. We also appreciate the fact that the Congress has given us an opportunity to have a major voice in the changes needed to address problems associated with cost and delay in civil disputes.

A handwritten signature in black ink, appearing to read "Robert M. Parker", with a long horizontal line extending to the right.

Robert M. Parker