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FOR THE  
UNITED STATES COURTS  
WASHINGTON, D.C. 20544

MEMORANDUM

TO : All Ninth Circuit District Judges and Magistrate Judges,  
and LRCC Members

FROM : Mark Mendenhall, *Assistant Circuit Executive*

DATE : December 10, 1990

RE : Civil Justice Reform Act of 1990

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The Office of the Circuit Executive has prepared the attached summary of the requirements and provisions of the Civil Justice Reform Act of 1990, along with a time line that summarizes the main target dates set forth in the statute. Courts and judges are welcome to contact this office for assistance and advice in fulfilling their responsibilities under the Act.

Attachment

cc: L. Ralph Mecham  
Robert Feidler

## CIVIL JUSTICE REFORM ACT FACT SHEET

On December 1, 1990, the President signed Public Law No. 101-650, the Civil Justice Reform Act. Of particular interest to district judges are the Act's requirements that:

- a) each district court adopt an expense and delay reduction plan by the end of 1993;
- b) each district form a representative Advisory Group by March 1, 1991 to assess and draft a plan to alleviate civil case cost and delay;
- c) each district publicly report its delay reduction plan and consider whether case tracking, strong judicial case management, discovery monitoring, voluntary discovery mechanisms, certification of discovery requests and the use of ADR should be required in the district in order to reduce cost and delay;
- d) each district court annually reexamine its delay reduction plan and consider whether additional changes should be made;
- e) the Administrative Office make semi-annual public reports concerning the timeliness of each district judge's docket; and
- f) the U.S. Judicial Conference propose by 1995 legislation so that the Federal Rules of Civil Procedure would require case tracking, stronger judicial management, discovery control and ADR, or other measures which will reduce court delay and cost.

The specific deadlines and measures to achieve this national delay reduction program are:

1. **Pilot Districts.** Between January 1 and March, 1991<sup>1</sup> the U.S. Judicial Conference must select 10 "pilot" districts. Such pilot districts must utilize six methods for reducing litigation cost and delay: case tracking; judicial control of pretrial process; discovery management; cooperative discovery; limitations on discovery motions and reference of matters to ADR. Pilot courts lose flexibility in forming delay reduction plans because they cannot dispense with any of these essentials of the pilot program until 1994. Sec.105(b)(3).
2. **Demonstration Districts.** Beginning January 1, 1991 the U.S. Judicial Conference will conduct a case-tracking experimental program in W.D.Michigan and N.D. Ohio; and the N.D. Cal, N.D.W.Va. and W.D.Mo experiment with ADR and Discovery Management. The Conference will report on the success of these experiments by December 31, 1995. Sec.104.
3. **Advisory Group.** No later than March 1, 1991 each chief district judge will appoint a district advisory group. The group is to examine the dockets, identify trends and causes of delay and recommend a plan to reduce costs and delay. The Advisory Group must be "representative" of the types of litigants in the district court. The chief judge may also appoint a reporter to manage the work and deliberations of the advisory group. Congress authorized funds for the work of the advisory group, but it failed to appropriate funds for their activities. Funds for advisory group operations may not be available until after Congress passes a supplemental appropriation in 1991. 28 U.S.C. § 478.

4. **A.O. Reports on District Judge Delay.** On or about June 1991<sup>2</sup> the A.O. Director will make publicly available the names of cases in which a district judge has had motions pending over 6 months, bench trials over 6 months, or were not terminated within 3 years. These reports on each district judge will be compiled by the A.O. twice a year. 28 U.S.C. § 476(a).
5. **Early Implementation Districts.** Pilot districts and districts which consider and implement a plan based on the report by their advisory group between June 30 and December 31, 1991 are automatically designated an Early Implementation District (EID). Districts participating in the demonstration program may apply to the U.S. Judicial Conference for designation as an EID. Early Implementation Districts may receive technical and staff resources. However, while Congress authorized funds for the EIDs, it failed to appropriate these funds. Availability of this assistance may have to await a supplemental appropriation by Congress in 1991. Sec. 103(c).
6. **Report on Early Implementation Districts.** By June 1, 1992 the U.S. Judicial Conference must report on the operation of the EID plans. It is likely at this time that the Conference will propose a model plan for districts which have not yet adopted a plan. Sec. 103(c)(3).
7. **Advisory Group Activities.** After its appointment (see #3, above) and before summer 1993<sup>3</sup> the Advisory Group must examine the court dockets, identify trends and causes of delay and legislative changes effect on delay. It must make a report to the district with recommendations for a delay reduction plan which can either be an original plan developed by the group or the model plan developed by the Judicial Conference (see #8, below). After the district court considers the Advisory group's plan, the court should decide on a plan and order its implementation in the district. Note: the advisory group should focus not simply on actions to be taken by the court, but also on activities that should be required of the bar and litigants to achieve delay and cost reductions. 28 U.S.C. §472(c)(1) *et seq.*
8. **District Court Delay Reduction Plans.** By December 1, 1993 the district court must implement a delay and cost reduction plan (which will include changes in local court rules, implementation of new programs and other measures). The court must specifically consider and adopt or reject case tracking, judicial control of pretrial process, discovery management, cooperative discovery, limitations on discovery motions, and reference of matters to ADR. If the district decides to use the U.S. Judicial Conference's model plan (see #6, above) instead, the district must still have a report and recommendation from its advisory group. 28 U.S.C. §§ 473(a), 482(b).
9. **Review of District Plans.** After a district implements its delay reduction plan, a committee of the circuit's chief district judges will review the plan and make suggestions to the district for modifications or other changes. The U.S. Judicial Conference will also review district plans and can request that the district take actions if the Conference feels the district has not appropriately dealt with the problems of the district or the report made by the district advisory group. 28 U.S.C. § 474(b).
10. **Periodic Assessments.** Each year after its implementation of its delay reduction plan, each court must perform a reassessment of its plan. 28 U.S.C. § 475.

11. **Assistance to the Courts.** The U.S. Judicial Conference must provide automatic information retrieval on case status and adopt a Manual for Litigation Management developed by the FJC. Based on the experience of the early implementation districts, the Conference will prepare a model delay reduction plan for the district courts. The Conference will also provide training to judges and court staff in litigation management. 28 U.S.C. §§ 479(c)(1), (2) & (3), 480, 481.

12. **Report on Delay Reduction Plans.** By December 1, 1994 the U.S. Judicial Conference must report on all plans developed by the district courts. 28 U.S.C. § 479(a).

13. **Pilot Project Ends.** On December 31, 1994 the pilot program ends. Pilot districts may amend their plans to dispense with any of Congress' six principles of litigation management it finds to be unhelpful. However, the pilot districts must still maintain some delay reduction plan. Sec. 105(b)(3).

14. **Changes in the Federal Rules of Civil Procedure.** By December 31, 1995 the Conference will report on the results of the pilot project and make recommendations for changes to the Federal rules - either encapsulating Congress' six principles or substituting other principles found to be effective. Sec. 105(c)(2).

15. **Demonstration District Report.** By December 31, 1995 the U.S. Judicial Conference must report on litigation management in the Demonstration Districts. Sec. 104(c).

16. **End of Civil Justice Reform Act.** The Act sunsets on December 1, 1997. Sec. 103(b).

December 5, 1990

### Endnotes

1. It is anticipated that the Conference will select pilot districts by its March 1991 meeting, in order to give the pilots sufficient time to plan and implement the required delay reduction plan by the December 31, 1991 deadline.

2. The A.O. is required to report semiannually on District Judge delay; we anticipate they will do so once in the summer and once at the end of the year.

3. The district must adopt a delay reduction plan by December 1, 1993. We assume here that the court will want to have 6 months to consider a plan. This would make June 1, 1993 the last date at which the Advisory Group could submit to the Court its report and proposed plan.

**Time Line**  
**Civil Justice Reform Act**

	Dec. 1, 1990	—	Date of Enactment
<u>1991</u>	Jan. 1, 1991	—	USJC Demonstration Program Begins
	Mar. 1, 1991	—	Advisory Groups Selected
	Mar. 12, 1991	—	USJC Selects 10 Pilot Districts
	June 1, 1991	—	Probable First A.O. Public Reports on Individual Judge Delays <sup>1</sup>
	June 30, 1991	—	First Day for EID Application
	Dec. 31, 1991	—	Last Day for EID Qualification
<u>1992</u>			
	June 1, 1992	—	USJC Report on EID Status; Propose Model Plans <sup>2</sup>
<u>1993</u>			
	June 1, 1993	—	Last Day for District Advisory Groups to Submit Plans <sup>3</sup>
	Dec. 1, 1993	—	Deadline for Implementation of Delay Reduction Plan by Each District Court
<u>1994</u>			
	Dec. 1, 1994	—	USJC Report on All District Plans
	Dec. 31, 1994	—	Pilot District Program and Demonstration Program End
<u>1995</u>			
	Dec. 31, 1995	—	USJC Report on Pilot District Court Program and Demonstration Program Proposal for Federal Rule Changes
<u>1996</u>			
<u>1997</u>			
	Dec. 1, 1997	—	Sunset. End of Civil Justice Reform Act.

**Endnotes**

1. The A.O. is required to make this report semiannually; we anticipate they will do so once in the summer and once at the end of the year.

2. The status report on EIDs is required by the Act. It is likely at this time that the Conference will propose a model plan for districts which have not yet adopted a plan.

3. The district must adopt a delay reduction plan by December 1, 1993. We assume here that the court will want to have 6 months to consider a plan. This would make June 1, 1993 the last date at which the Advisory Group could submit to the Court its report and proposed plan.