CIVIL JUSTICE REFORM ACT REPORT

DEVELOPMENT AND IMPLEMENTATION OF PLANS BY THE UNITED STATES DISTRICT COURTS

PREPARED BY THE
JUDICIAL CONFERENCE OF THE UNITED STATES

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I. Implementation of Civil Justice Reform Act and Fulfillment of Act's Requirements

A. Introduction

Section 479(a) of Title 28 of the United States Code requires the Judicial Conference of the United States to prepare a comprehensive report on the implementation of the Civil Justice Reform Act of 1990 (CJRA or "the Act"), Title I of Pub.L. 101-650, by the 94 United States district courts. This report, prepared with the assistance of the Administrative Office of the United States Courts and the Federal Judicial Center, is submitted in fulfillment of that requirement. The Report contains a comprehensive summary and analysis of the civil justice expense and delay reduction plans adopted by all the district courts.

This is the second report to Congress submitted by the Judicial Conference relating to CJRA. The first report, submitted on June 1, 1992, was required by Section 103(c) of the Act, and dealt specifically with the plans adopted by "early implementation district courts." Under the Act, districts implementing their plans by December 31, 1991 became eligible for designation as early implementation districts. A total of 34 courts completed their plans by December 1, 1991 and were designated by the Judicial Conference as early implementation districts. These included the ten pilot courts and four demonstration courts required by the Act as well as 20 other districts.

The present report incorporates information from the remaining 60 court plans with the information from the 34 early implementation courts detailed in the earlier report. Thus, it provides a comprehensive overview of all the civil justice expense and delay reduction plans presently in place in United States district courts.

B. Progress to Date

1. Meeting Statutory Deadlines

Section 478(a) of Title 28 requires the chief judge of each district court, within 90 days of the Act's enactment, to appoint a CJRA advisory group made up of attorneys from the district as well as other litigant representatives. By March 1, 1991, over 1700 individuals had been appointed to serve on advisory groups in the various districts.

Section 105(b) of the Act requires that ten pilot courts, designated by the Judicial Conference, implement plans by December 31, 1991. These plans must include the six principles and guidelines of litigation management and cost and delay reduction identified in 28 U.S.C. 473(a). The ten pilot courts designated by the Conference are: 1) the Southern District of California; 2) the District of Delaware; 3) the Northern District of

Georgia; 4) the Southern District of New York; 5) the Western District of Oklahoma; 6) the Eastern District of Pennsylvania; 7) the Western District of Tennessee; 8) the Southern District of Texas; 9) the District of Utah; and 10) the Eastern District of Wisconsin. All pilot courts had their plans in place by the required date. Section 482(b) of Title 28 requires all other United States district courts to implement a civil justice expense and delay plan within three years of the Act's enactment. By the statutory deadline of December 1, 1993, all of the district courts had adopted cost and delay reduction plans.

2. Review Procedures

Section 474 of Title 28 requires that a circuit committee review each advisory group report and civil justice expense and delay reduction plan. Section 474(a)(7) provides that the committee will consist of the chief judge of the circuit and the chief judge of each district within the circuit, or their designees. The mission of each review committee is to make suggestions for additional action or modification to the plans as the committee deems appropriate.

The reviews by the circuit committees for each of the 94 district court plans have been completed. The Judicial Conference's Committee on Court Administration and Case Management, in conjunction with the Administrative Office and Federal Judicial Center, developed a checklist to assist the circuit review committees with their tasks.

Section 474 of Title 28 also requires each report and plan be reviewed by the Judicial Conference of the United States. The Judicial Conference may request the district to take additional action if it has not met the Act's statutory requirements, has not responded adequately to the condition of the district's civil docket, or has not adequately addressed the recommendations of the advisory group. All plans have been reviewed by the Judicial Conference's Court Administration and Case Management Committee.

The circuit review committees and the Court Administration and Case Management Committee informed the courts of the results of their reviews. In some instances, courts were asked to provide clarification of plan provisions. Other courts received suggestions for improvements, or suggestions that they revisit some of the recommendations of their advisory groups. The Committee on Court Administration and Case Management requested that a number of courts include a report on the progress of certain programs or procedures when they undertake their annual assessment.

3. Model Plan

In accordance with the provisions of 28 U.S.C. § 477(a), the Judicial Conference developed a model civil expense and delay reduction plan based on the plans adopted by the early implementation courts. The model plan was completed in October of 1992 and

distributed to all United States district courts. At that time, it also was submitted to the Committees on the Judiciary of the Senate and the House of Representatives in accordance with 28 U.S.C. § 477(b).

The model plan developed by the Judicial Conference reflects the collective efforts of the early implementation courts, the Administrative Office of the U.S. Courts, the Federal Judicial Center, and the members of the Judicial Conference and its committees. It includes the principles, guidelines, and techniques of civil litigation management set forth in 28 U.S.C. § 473, which the district courts were required to consider in devising their plans. It also includes many new and creative techniques developed by the early implementation courts and their advisory groups.

In recognition of the Act's emphasis that the courts' plans be tailored to the particular needs and circumstances of each district, the Conference chose a "menu" format for the model plan. Generally, more than one set of procedures was provided for each of the principles, guidelines, and techniques set forth in 28 U.S.C. § 473. This format allowed courts to select the provisions most responsive to their needs and circumstances. The commentary accompanying the model plan discusses the advantages and disadvantages of various approaches to the Act's principles, guidelines, and techniques. The model plan assisted those courts that had not yet developed plans and serves as a useful reference for those wishing to modify plans already in place.

II. Overview of Contents of Plans

A. Introduction

This section summarizes the case management practices and ADR programs the courts include in their CJRA plans. Appendix I details the principles (set forth in 28 U.S.C. § 473) that are incorporated into each plan. Appendix II contains a comprehensive analysis of the contents of each plan. While Appendix I organizes the information from the plans into the Act's 11 case management principles and techniques, Appendix II examines the plans through a more detailed set of case management categories. These categories were derived from the plans of the 34 early implementation districts and from a general knowledge of court practices. Consequently, the two appendices differ in their approach to the plans and are not strictly comparable.

In part, this report presents a numerical tally of the courts adopting various provisions of the Act. Any effort to reduce the complex management practices of the courts to a set of standard categories is to some degree a mater of judgment. This report reflects a judgment of the courts' responses to the case management suggestions of the CJRA.

It is also important to note that this report reflects the contents of the courts' CJRA plans, not necessarily the totality of the courts' procedures or rules of practice.

Prior to the CJRA many courts had established, either by local rule or general order, various principles and techniques contained in the statute. For this reason, the courts' plans do not generally include all provisions of the statute, but only those found by the advisory group and judges of each court to be beneficial to the court at that time.

B. Summary of the Courts' Adoption of the Principles, Guidelines and Techniques in Section 473 of Title 28 United States Code

Section 473(a) of Title 28 offers the courts six specific principles and guidelines for litigation management. As shown in Appendix I, the third principle of "controlling the extent of, and time for completion of, discovery for complex or any other appropriate cases ...", was almost universally (96 percent) adopted by the courts. The courts also widely (91 percent) adopted the second principle of "early and ongoing control of the pretrial process through involvement of a judicial officer...." The fourth principle, "encouragement of cost effective discovery through voluntary exchange..." was adopted by 87 percent of the courts. This slightly lower adoption rate may be explained, in part, by the then ongoing debate regarding proposed amendments to FRCP Rule 26, involving mandatory disclosure. Many districts expressed reservations about adopting a rule that would then be subject to more stringent requirements. The amendments to Rule 26 were subsequently accepted after review by the Judicial Conference of the United States, the Supreme Court, and the Congress.

Seventy-eight percent of the courts adopted the fifth principle of "certification of discovery motions," which was a preexisting local rule in many districts. The sixth principle, "authorization to refer appropriate cases to ADR programs..." was featured in 86 percent of the district plans. The first principle, relating to the "systematic, differential treatment of civil cases" was adopted by 77 percent of the courts. Unlike the other principles, the first and sixth principles are relatively new concepts that are programmatic in nature, requiring a permanent investment in personnel, automation, and management resources. Nevertheless, overwhelming majorities adopted all six principles.

Section 473(b) of Title 28 lists a set of litigation management techniques for the courts to consider in developing their expense and delay reduction plans. The districts had mixed reactions to the techniques. The Act's first technique requiring the submission of joint discovery plans at an initial pretrial conference, is presently a feature of the FRCP Rule 26(f)(2), and is contained in nearly all local court rules. While specific adoption rates are not reflected in the chart contained in Appendix I, this technique has found almost universal acceptance in all court plans. The second technique, which would require a representative with the power to bind the parties to be present at all pre-trial conferences, and the fifth technique, which would require a representative with the power to bind the parties to be present at all settlement conferences, were widely accepted. Both techniques were adopted by 68 percent of all districts.

The third technique, which would require any requests for extensions to be signed by both the attorney and the party seeking the extension, was adopted only by 17 percent of the districts. Many courts expressed a concern that this technique would lead to undue interference with attorney-client relations as well as creating additional time-consuming and expensive procedural hurdles.

The fourth technique the courts were required to consider was the creation of a neutral evaluation program. Thirty-eight percent of the districts endorsed this technique. As discussed more fully in the next section, early neutral evaluation is a relatively new method of ADR and has not been widely disseminated. The next section provides more detailed descriptions of these case management principles and techniques.

C. Description of Case Management Principles and Techniques

1. Alternative Dispute Resolution

Section 473(a)(6) of Title 18 requires all courts to consider including in their cost and delay reduction plans "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, mini-trial, and summary jury trial."

Section 473(b)(4) requires all courts to consider adopting "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." In practice, early neutral evaluation is generally considered a form of ADR.

General Authorization in the Plans to Use ADR

Although ADR programs are rapidly growing and changing nationwide, several forms have emerged in state and federal courts. These include arbitration, mediation, early neutral evaluation, settlement weeks, summary jury trials, and mini-trials. In addition, judge-hosted settlement conferences, although not always included under the ADR umbrella, have long provided an alternative to trial. Appendix III contains definitions of these various forms of ADR.

Each of these types of ADR could be found in the federal district courts prior to the Civil Justice Reform Act. For example, twenty courts were designated in 1988 as pilot courts for mandatory and voluntary arbitration under the authority of 28 U.S.C. §§ 651 *et seq.*; the authorization for continuing these programs for non-binding arbitration with either mandatory or voluntary procedures was recently extended by Congress through December 31, 1997. Other courts had established mediation programs, summary jury trial procedures, early neutral evaluation programs, and settlement weeks.

With strong encouragement from their CJRA advisory committees, courts across the country have embraced the adoption of ADR methods for many types of cases. The courts show consensus on the need for innovative approaches in resolving disputes fairly and promptly, and ADR provides a meaningful alternative to costly and lengthy litigation.

The Act requires each district court to consider whether any form of ADR might assist the court and litigants in resolving cases, and many plans include authorization to use ADR. All but 13 authorize the court's judges to assess the suitability of ADR for individual cases on their docket, and nearly three-quarters of the courts state that they have or intend to establish procedures for the use of ADR. Only seven of the 94 district courts specifically reject ADR, usually doing so on the basis that it is unnecessary or that they lack sufficient resources to establish a program.

Many districts incorporate into their CJRA plan or their local rules language encouraging the use of ADR mechanisms. For example, many districts instruct the judicial officer and parties to discuss at the initial case management conference the feasibility of using some form of ADR. Judges are permitted by these plans to refer appropriate cases, usually with party consent, to authorized ADR programs.

Adoption of Specific Forms of ADR

Judicial Settlement Conferences and Summary July Trials: The most common alternative dispute resolution practice, reflected in two-thirds of the cost and delay reduction plans, is the traditional settlement conference with a judicial officer. However, these conferences vary greatly, from mandatory conferences in some courts to assistance upon a party's request in others. Reliance on a judicial officer for settlement assistance is also seen in a substantial number of courts that authorize summary jury trials.

Particularly noteworthy in this process is the emerging role of magistrate judges, many of whom conduct settlement conferences and preside over summary jury trials and other forms of ADR. Nearly a dozen courts have institutionalized magistrate judge settlement/mediation programs, where specified case types are routinely referred for settlement assistance.

Mediation: Fifty percent of the courts' plans authorize the referral of cases to mediation, which is the most frequently used form of ADR after judicial settlement conferences. A third of the plans authorize a court-based program in which the court maintains a roster of court-approved attorney neutrals, establishes criteria for the selection of cases and assignment of neutrals, and sets rules for procedural matters such as the conduct of ADR sessions

Arbitration: A third of the courts authorize referral of cases to arbitration, although mandatory referral is found only in the courts authorized by 28 U.S.C. § 651 to establish such a referral method. Of the courts that authorize the use of arbitration,

approximately 20 have established court-based programs. The remainder simply authorize judicial officers to suggest that parties consider using the services of a private-sector arbitrator.

Early Neutral Evaluation (ENE): Less common than mediation and arbitration, ENE is authorized by only 16 courts. In many of these districts, magistrate judges, rather than attorney neutrals, provide the neutral evaluation.

Other Forms of ADR: Only a handful of courts indicate an intention to establish occasional settlement weeks. Other forms of ADR mentioned in a few plans are mini-trials, summary bench trials, and the use of special masters as settlement officers.

Multi-Option Programs

Although a third of the courts authorize more than one form of ADR, 16 courts actually provide multiple ADR services. Seven of the ten courts authorized to provide mandatory procedures for arbitration have added mediation to their ADR programs. In four of these seven courts, arbitration is no longer mandatory for the designated class of cases, but is simply one of the ADR options offered to parties.

When courts offer multiple forms of ADR there is generally an initial screening process to determine which form is appropriate for a particular case. In some courts, such as those with mandatory arbitration programs, the selection is made by case type. In these courts, contract and tort cases under a specified dollar amount are automatically referred to arbitration, while more complex cases are selected for mediation.

In other courts, such as the Northern District of Ohio and the Western District of Michigan, judges and parties discuss the courts' ADR options and decide which would be appropriate for the case. The Northern District of California is experimenting with such a selection process, with the added feature of specialized staff assistance in the selection of cases. In that court, counsel are required, prior to the initial case management conference, to participate in a telephone conference with the ADR administrator to discuss the available ADR options. In the Western District of Missouri's Early Assessment Program, the program administrator discusses the court's ADR options in a mandatory conference held thirty days after the final answer is filed. Many cases are mediated by the administrator at this initial meeting.

ADR Administration

Most court-based ADR services are managed by the clerk's office. Eleven courts, however, have established specialized ADR offices. These offices are usually established by courts with multiple programs or specialized status under the CJRA, such as demonstration districts and pilot courts, and are administered by staff with backgrounds in ADR or civil litigation.

Many courts produce ADR brochures that either describe their own ADR options or alert counsel and litigants to services available in the private sector. Also, ADR has become a frequent seminar topic in local continuing legal education programs. A number of courts have established extensive ADR programs by using the pro bono services of experienced attorneys who are certified to accept appointments to serve as ADR facilitators.

2. The Systematic, Differential Treatment of Civil Cases

Section 473(a)(1) of Title 28 requires the pilot courts and two demonstration courts (Western District of Michigan and Northern District of Ohio) to consider a management system offering "systematic, differential treatment of civil cases...", more commonly known as differentiated case management (DCM). The statute also recommends that all other courts consider instituting DCM programs. DCM, as presented in the Act, calls for a system that "... tailors the level of... 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."

DCM brings together two trends in case management into one cohesive system: 1) the monitoring of case events; and 2) the supervision of time periods between case events through case processing "tracks", keyed to serve broad case types. Each track carries with it a specific set of procedures and case event timelines that govern the cases assigned to each track. The categorization schemes underlying the tracks are usually based upon case complexity and/or the usual needs of particular types of cases, and can be as simple as "expedited, standard, and complex." Regardless of their designation, the tracks are devised to streamline the use of judicial and court resources and tailor them to the needs of the cases.

DCM is to be distinguished from other case management approaches that treat each case on an entirely individual basis, with no systematic recognition of differences in cases over broad categories. The premise of DCM is not to deny individual justice, but to conserve court resources, and thereby to increase efficiency and reduce expense and delay.

DCM techniques, without the systematized tracks that characterize DCM at the state level, have existed for some time in the federal court system. Federal judges have long employed less stylized differentiated case management concepts for two management tracks of "simple" (or "standard") and "complex" cases, with accompanying procedures and rules keyed to them. The CJRA has thus provided the federal courts with an incentive to merge long-practiced DCM concepts with the more expansive, systematized approach recommended in the Act.

Of the 94 plans, 72 courts adopted some form of DCM and 43 courts adopted a detailed system incorporating formal systematized tracks. This report will concentrate on the courts with the most comprehensive DCM programs. While the approaches to DCM differ from court to court, they all share at least three general characteristics: track design, track numbers, and track assignment procedures.

a. Track Design

The design of individual tracks is often based on case complexity and is represented in track designations of "simple" (or "expedited"), "standard", and "complex". Track designations can also reflect particular case types (e.g., Social Security or asbestos) or case characteristics (e.g., "administrative" cases). Designations based on complexity may be employed alone or in conjunction with case types or characteristics. Twelve of the 43 subject courts chose the former option, while 21 adopted a combination of both complexity and other designations. Five courts opted for case characteristics only to designate tracks; the remainder were either non-specific or still under development. Elements of an "administrative" track can be found in 24 track designation approaches.

Seventeen courts have designed, or are in the process of designing standardized rules, procedures, and orders keyed to specific case tracks. In four of these courts the least complex and most expedited tracks were assigned no specific discovery devices. Three courts incorporated an experimental track for randomly assigned or "control group" cases. Two courts established tracks for discovery only.

b. Track Numbers

Forty-one courts adopted DCM programs and established case management systems containing two to seven tracks. Three and five track systems were the most favored, representing 12 and 10 of the subject courts, respectively. Seven courts chose six track systems, six courts chose two track systems, five courts chose four track systems, and one court chose a seven track system. Two other courts adopted DCM programs, but decided to use formalized tracks for discovery purposes only.

c. Assignment of Cases to Tracks

The initial method of assigning cases to a particular track varies from court to court. Most courts use a combination of methods. Twelve courts rely on judges alone to make the initial assignment decision, usually at an early case management conference. In other courts, the decision is made by a judge in conjunction with a clerk of court (four courts); with staff attorneys (one court); with parties (three courts); and through pleadings (six courts). Six plans specify that the "court" should make the case assignment and seven plans designate the clerk of court to make the assignments.

In addition to these specific track assignment systems, many court plans include an automatic track assignment process for certain types of cases. Administrative appeal cases such as bankruptcy and social security appeals are identified by their pleadings and are automatically assigned to the administrative case management track. For cases of greater complexity, not easily designated by case type, greater court involvement in the track assignment process is usually required. Most plans preserve judicial discretion to change a track designation.

Court plans that require the individual parties or the court clerical staff to assign a case to a particular track place greater emphasis on track descriptions and characteristics to ensure correct selection. In these courts, procedures for appeal to a district judge from an early nonjudicial track assignment are usually established.

3. Discovery Management

Section 473(a) of Title 28 requires each district court to consider, in consultation with its advisory group, certain principles, guidelines, and techniques of civil case management and cost and delay reduction and incorporate these into their expense and delay reduction plan. Based on the goals of conserving judicial resources and achieving cost-effective discovery, Section 473 includes the following provisions regarding discovery:

1) The early and ongoing control of the pretrial process through involvement of a judicial officer, including control of the extent of discovery, the time for completion of discovery, and the timely compliance of all parties with appropriate discovery requests.

2) In complex cases, and other appropriate cases, the preparation of a discovery schedule consistent with any presumptive time limits set by the district court.

3) Encouragement of voluntary exchange of information among litigants and their attorneys and the use of cooperative discovery devices.

4) Prohibition of discovery motions unless accompanied by a certificate that the moving party has made a reasonable and good faith effort to reach agreement with opposing counsel on the disputed matters.

5) A requirement that counsel for each party jointly, present a discovery-case management plan at the initial pretrial conference.

6) A requirement that requests for extensions of discovery deadlines by signed by the attorney and the party making the request.

Early and Ongoing Control of Discovery

Of the six principles listed above, the adoption of deadlines for discovery appear most frequently in the district courts' CJRA plans. Virtually all of the plans indicate some form of time limit for discovery, usually in the range of four to six months for standard cases. However, the Southern District of Florida allows up to 269 days for discovery in standard cases, and the District of Alaska allows up to a full year for discovery in all cases.

Not all districts establish a fixed-length period for discovery. For example, the Western District of Virginia specifies that discovery will be completed 45 days prior to the trial date. In that district, trial dates are set by a scheduling official with a goal of beginning the trial six to eight months after service of process.

How these discovery deadlines are established for individual cases varies greatly. Many districts establish discovery deadlines in a scheduling order issued pursuant to FRCP Rule 16. Some districts adopt a DCM system with specific tracks for different types of cases. Among other things, these tracks typically establish discovery periods of varying length, such as no discovery for certain types of administrative cases, four to eight months for standard cases, and longer periods for complex cases.

Other district plans call for the establishment of discovery deadlines at the initial pretrial conference. Counsel may be required to submit a joint case management plan, prior to the conference, that includes limits and deadlines for discovery. In the absence of specific tracks, many districts have guidelines for the completion of discovery, although the assigned judicial officer has the discretion to determine the appropriate length of discovery for an individual case. This discretion is a feature of the DCM systems as well; judicial officers have the opportunity to change the track assignment after reviewing a particular case and, for good cause shown, change the length of the discovery period.

The guidelines listed above also call for the district courts to consider controlling the extent of discovery. To that end, 32 district court plans establish limits, or suggest that judicial officers place limits, on interrogatories, depositions, or both. Typically, these limits are set within a DCM system and therefore vary by track and length of discovery; more complex cases are given more time for discovery, and litigants are allowed a greater number of interrogatories and depositions. In the absence of a DCM system, these limits may also be determined at the pretrial conference or set in a scheduling order.

Discovery Schedules in Complex Cases

Apart from the establishment of discovery deadlines, most district court plans call for the formation of a discovery schedule in the majority of cases, usually in a scheduling order issued pursuant to FRCP Rule 16. A discovery schedule not only establishes an overall deadline for completion of discovery, but typically includes benchmarks for

completion of specific discovery items. If cases are exempted from the requirement of a discovery plan, they are cases for which no discovery is expected (e.g., administrative cases). Only a few districts limit discovery plans to complex cases. There are other districts where the process for management of complex cases was well established prior to the CJRA. In these districts discovery management continues without explicit mention in the CJRA related plan.

Voluntary Exchange of Information

Thirty of the district court plans state that voluntary exchange of information among all parties is encouraged. Fifty-two of the district court plans indicate some form of required discovery, typically involving the exchange of core information. Core information includes:

1) Name, address, and telephone number of each individual likely to have discoverable information relevant to disputed facts;
2) 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; and
3) A computation of any category of damages claimed by the disclosing party and any relevant insurance agreement.

Approximately half of the plans that encourage voluntary exchange also require this exchange of core information, often through standard interrogatories that all parties must answer. Also, the enactment of amendments to FRCP Rule 26 in December 1993 imposed new discovery requirements upon local CJRA plans. Under that rule, additional courts opted into the system of early disclosure of relevant information subject to adaptation of their CJRA plans.

Discovery Motions/Meet and Confer

In order to reduce the number of discovery disputes that require judicial intervention, 45 district plans cite a requirement that counsel meet and confer, some with the parties present, before filing motions with the court. One-third of these plans also state that if a discovery motion is filed, the moving party must certify that a reasonable and good faith effort was made to resolve the discovery dispute without judicial intervention. More than half of the plans that require parties to meet and confer indicate that this requirement predated the plan.

Joint Discovery-Case Management Plans

Thirty of the district plans state that counsel for all parties are required to submit a joint discovery case management plan or a draft scheduling order, usually before the initial pretrial conference. These joint plans address issues such as the trial date,

deadlines for discovery, and the filing of nondispositive motions. Many of these plans also state that, in the absence of agreement by counsel on a joint plan, counsel must submit separate plans to the court.

Signed Requests for Discovery Extensions

Nine district courts state in their plans that they will institute a rule either requiring counsel and parties to sign requests for discovery extensions or requiring counsel to certify that their clients have been notified of the request. However, 22 courts expressly state that they do not have such a rule, and thirteen explicitly reject the rule as unnecessary or inappropriate. Several of the districts adopting this requirement limit it to the discretion of the judicial officer. The District of Alaska limits the requirement to second and third requests for deadline extensions.

D. Innovative Procedures Adopted

This section is intended to highlight some of the more innovative concepts developed by the courts and their advisory groups to reduce cost and delay in federal litigation. Many of the concepts were incorporated into the Model Cost and Delay Reduction Plan developed by the Judicial Conference.

1. Court Management Policies

An individual judge can do little to reduce the number of cases filed in his or her court. The district as a whole, however, can formulate policies to govern the court's business generally. The court management policies enumerated below have been included in various expense and delay reduction plans.

1) Assign visiting judges solely to criminal cases to reduce delay in civil case disposition;

2) Encourage the use and development of procedures for videotaped evidence and telephone conferencing;

3) Assign magistrate judges automatically for civil pretrial and trial duties;

4) Redistribute assigned cases if individual caseloads exceed per judgeship averages by more than 20 percent;

5) Impose caps on contingent fees to ensure that all segments of the practicing bar contribute to cost reduction in civil cases;

6) Adopt uniform pretrial procedures throughout the court system;

7) Separate out and consolidate pretrial and discovery aspects of a case assigned to one judge and transfer them to the calendar of another judge;

8) Allow judges to place trials on the stand-by trial calendar and be tried by the first available judge after a certification of readiness by attorneys;

9) Require that caseload statistics include information developed through DCM tracking systems;

10) Establish a standard four day trial week for lengthy trials in order to maintain the court's calendar and increase efficient use of court time;

11) Adopt a set civil trial week each month, which would start on Mondays, to conserve jurors;

12) Encourage magistrate judges or senior judges to rule on the backlogged motions of another judge ("Judicial Swat Team");

13) Establish a task force of judges to review and attempt to terminate three year old civil cases of other judges ("Civil Case Task Force");

14) Allow a judge, who has presided over a criminal case lasting longer than 15 continuous trial days, to skip one criminal case assignment for every additional two trial days that the criminal trial lasts ("Long Criminal Trial Relief");

15) Assign short civil matters, lasting five days or less, to a special calendar for visiting judges or judges with available trial time ("Short Civil Trial Calendar");

16) Allow each regular judge with a full calendar assignment to receive a 3 month case assignment "skip" every 60 months ("Periodic Calendar Adjustment Program");

17) Pool simple, trial-ready civil cases for settlement and trial activity by a team of judges; and

18) Establish a separate multiple defendant criminal case assignment deck for cases with five or more defendants.

2. Case Management Techniques

Case management is the core function of the adjudicative process. Judges have the authority to control the adversary process in individual cases, including the duration and nature of courtroom proceedings, the staff allocated to case processing, and the conduct of lawyers and litigants. It is within this framework that individual judges have

the greatest opportunity to reduce disposition times and litigation costs. The following innovative case management techniques have been adopted or endorsed in one or more districts.

1) Conduct settlement conferences three weeks out of every year, and include in the settlement program all standard cases in which discovery has been completed and are not part of ongoing ADR efforts;

2) Require all pilot program case attorneys to use a case management checklist to guide the preparation of a joint case management proposal to be submitted to the court;

3) Require parties requesting continuances to submit information on all previous continuance requests, their underlying reasons, and their disposition;

4) Impose time limits for segments of the trial process;

5) Require parties in cases designated as "complex" to file joint quarterly progress reports with the court;

6) Require that court-wide statistical case management goals be met on a yearly basis;

7) Impose costs as a sanction in cases where the court is not notified of settlement prior to the week of trial;

8) Require parties seeking attorney fees to file monthly time summaries;

9) Allow motions that are more than six months old to be transferred to an available judge, who will handle all subsequent matters relating to that motion;

10) Employ uniform orders and procedures throughout the court wherever possible;

11) Require counsel, through a joint case management plan, to submit estimated litigation costs at the time of discovery cut-off, at trial and through appeal;

12) Require counsel, through a joint pretrial order, to submit time estimates for all stages of trial activity;

13) Include representatives from the state and county bar associations in the district case management and ADR advisory committees;

14) Encourage courts to develop uniform pretrial procedures for criminal wiretap cases that will provide for the editing of tapes and transcripts;

15) Permit the clerk of court to rule on a select category of uncontested motions under an administrative order of the court;

16) Permit the clerk of court to issue a standard scheduling order for simple civil cases; and

17) Refer cases requiring early judicial intervention to a magistrate judge, with notice to the parties.

3. Discovery Management

Discovery management has been identified in most attorney and litigant surveys as a primary tool for reduction of civil case expense and delay. It is generally viewed as that part of the litigation process most subject to abuse and most in need of strong judicial management. While discovery management initiatives (such as the certification of discovery motions, the filing of joint discovery plans, and limits on the number of discovery tools employed) are interwoven in the case management features of most plans, the following practices are particularly innovative.

1) Require counsel and the parties to certify that they have conferred to establish a budget for discovery and the case in general;

2) Establish a discovery "hotline," staffed by a judicial officer, to quickly dispose of extension requests and discovery disputes;

3) Establish a discovery peer review panel to aid the court in determining discovery policy and provide reports to the court on particular discovery disputes;

4) Create a standardized dictionary of discovery terms and definitions;

5) Use mandatory disclosure of core case information as a prelude to phased discovery techniques;

6) Require that costs be taken into account when considering discovery requests;

7) Promulgate guidelines for the conduct of depositions;

8) Impose witness fees and court costs if a trial award does not exceed a rejected certified offer of judgement or settlement;

9) Require counsel to jointly prepare a benchbook of all trial exhibits and trial aides and require the court, upon objection, to exclude at trial any exhibit or aide not appearing in the benchbook; and

10) Employ standard court interrogatories in all civil cases.

4. Information/Education/Other

Civil justice cost and delay reduction requires more than specific managerial strategies, tools and methods. Success lies ultimately in the development of a local legal culture that creates and fulfills the expectations of all participants (judges, lawyers, litigants, and the public) for the efficient, effective resolution of disputes. The creation of such a legal environment is fostered by long-term, broad-based information and education programs. The following initiatives have been advanced by one or more courts in their expense and delay reduction plans.

1) Conduct educational seminars for the bar on the CJRA and cost and delay reduction efforts;

2) Produce pamphlets on ADR techniques and require counsel and the parties to certify that they have read them;

3) Develop and distribute an attorney code of conduct and decorum;

4) Publish a manual of internal court operating procedures to provide guidance on uniform and customary procedures;

5) Conduct public hearings on the formulation and development of cost and delay reduction plans;

6) Produce educational videos for the benefit of the bar and public on the CJRA, court operations, and cost and delay reduction techniques;

7) Produce a manual outlining the differences in case processing practices and deadlines between local, state, and federal court systems;

8) Produce a handbook for pro se litigants;

9) Establish a resource center to aid in cooperative research among appointed counsel;

10) Establish a standing committee on court technology to keep the court informed of new technology applications;

11) Encourage multiple districts within one state to develop uniform local rules;

12) Encourage courts to utilize state court certified mediators;

13) Encourage parties to consent to a magistrate judge trial by publishing a pamphlet for lawyers and litigants explaining the consent system and providing professional and biographical information on all magistrate judges;

14) Establish a panel of litigants and attorneys to monitor the performance of ADR programs; and

15) Form a multi-agency advisory committee on criminal case management.

E. Recommendations

1. Recommendations for Action by Congress

Section 102(2) of the Act recognizes that Congress as well as courts, litigants, and attorneys "share responsibility for cost and delay in civil litigation...." Section 102(3) further provides that "the solutions to problems of cost and delay must include significant contributions... by the Congress...." Accordingly, many of the CJRA advisory group reports and district court plans include recommendations for Congressional action.

These recommendations may be divided into seven categories: 1) judicial vacancies; 2) "federalization" of criminal prosecutions; 3) courtroom and court office needs; 4) criminal procedural requirements; 5) assessment of the impact on the Judiciary of proposed legislation; 6) personnel needs; and 7) miscellaneous concerns.

Judicial Vacancies

Thirty-nine advisory group reports cite the length of time required to fill a judicial vacancy as a fundamental cause of delay in the federal civil justice system. Several of the reports suggest that the current process of selecting, nominating, and confirming federal judges is far too lengthy and cumbersome. As the Central District of California's report states, "[t]he failure to fill vacancies in authorized judicial positions is unquestionably the single most significant cause of delay and expense to litigants in the district."

Many of the advisory group reports and court plans simply include a recommendation encouraging Congress and the Executive Branch to fill judicial vacancies as expeditiously as possible. However, several courts make more specific recommendations. The Eastern District of Pennsylvania suggests that Congress hold hearings to examine the process of filling vacancies and authorizing new judgeships. Other advisory groups, including the Northern District of Iowa and the Southern District of Florida, urge the Executive Branch, the Senate, and the American Bar Association to

review their procedures and consider how to expedite the nomination and confirmation process.

"Federalization" of Criminal Prosecutions

Nineteen advisory groups and courts express concerns regarding the growing "federalization" of drug and firearm crimes that have traditionally been prosecuted in state courts. While the courts recognize the extreme importance of reducing violent crime, they also note that the growing federal prosecution of criminal cases has severely impeded processing the civil docket historically handled by federal courts. Even in districts with relatively low crime rates the influx of criminal cases has had a dramatic effect on court resources. For example, in the Western District of Pennsylvania seven of the nine judges report a sharp increase in the time they spend on criminal matters. Many now spend the majority of their time on criminal cases, and one judge reports spending more than 80 percent of his time on the criminal docket.

Several advisory groups and courts recommend that relatively minor criminal cases, especially drug charges involving small quantities of narcotics, be prosecuted in state courts with federal prosecutions being limited to cases involving large cases, such as drug distribution networks and conspiracies that cross state lines.

Others, such as the advisory group report for the Middle District of Florida, are strongly opposed to "federalizing" crimes involving firearms that traveled in interstate commerce and crimes involving domestic violence. That advisory group states, "We believe the federalization of such crimes would virtually overwhelm the federal district courts and likely displace the trial of many more serious federal crimes not subject to state court jurisdiction, as well as all federal civil cases."

Criminal Procedural Requirements

A number of federal criminal procedural requirements mandated by Congress have had a significant impact on the civil docket. Thirty advisory groups and courts list the Speedy Trial Act, the sentencing guidelines, and mandatory minimum sentences as significant sources of delay in civil litigation. The Speedy Trial Act requires federal courts to place a priority on criminal cases. Many advisory groups and courts report that setting firm trial dates for civil cases, an essential element of effective case management, is difficult because intervening criminal eases must take priority.

Advisory groups, ranging from the Western District of Texas to the District of Maine, recommend that Congress reexamine the impact federal sentencing procedures have had on the federal courts. They suggest that the sentencing guidelines and mandatory minimum sentences complicate sentencing hearings, increase collateral litigation, and decrease plea bargaining, thereby increasing the number of criminal trials. Four advisory groups go further, recommending that Congress repeal both the sentencing

guidelines and the legislation establishing mandatory minimum sentences.

Courtroom and Office Space

Without sufficient courtroom facilities it is impossible to maintain an efficient and up-to-date civil docket. Lack of space also limits the use of magistrate judges, senior judges, and visiting judges whose services might otherwise be of great assistance in reducing a court's civil caseload.

For these reasons, 13 courts reach the consensus that adequate space and facilities are essential for the efficient disposition of civil cases. A number of courts, such as the District of the Virgin Islands and the District of North Dakota, are presently constructing additional space, while others are awaiting federal appropriations. The advisory groups for the Western District of Texas and the Eastern District of Washington recommend that improvements and renovations be made to existing courtrooms. Jury rooms, parking facilities, holding cells, and library resources are also lacking in a number of districts.

Assessment of the Impact of Proposed Legislation on the Judiciary

Twenty-eight advisory groups and courts urge Congress to consider fully the impact that proposed legislation will have on the federal judiciary. These courts echo the concern that sweeping legislation, with the potential to increase drastically both criminal and civil case filings, is often passed without proper consideration of its impact on the federal courts.

Many districts recommend that legislation with the potential to substantially impact the courts be accompanied by a judicial impact statement, and that Congress fully consider the impact of such legislation on the judiciary. The Judicial Impact Office of the Administrative Office of the U.S. Courts was established in 1991, and is currently providing judicial impact statements to Congress.

Personnel Needs

Thirty-two districts recommend that Congress authorize additional Article III judgeships or provide added funding for magistrate judges, law clerks, and other court personnel. For example, the advisory groups for the District of Hawaii and the Western District of Louisiana advocate hiring an additional staff attorney to improve efficiency. Several other courts recommend additional funding for staff attorneys or law clerks to handle prisoner pro se and social security appeal cases. Additional positions would allow the courts to process these cases in a more efficient manner. Finally, the Western District of New York recommends that their CJRA attorney and analyst positions become permanent. Although the Judicial Conference takes initial action on personnel programs affecting the Judiciary, authorization of Article III judgeships and funding for personnel must come from Congress. The 104th Congress will have a Judicial

Conference request for 21 permanent district court judgeships, five temporary district court judgeships, and 20 temporary appellate judgeships.

Miscellaneous Concerns

The advisory group reports and the district court plans also include a wide range of other suggestions aimed at reducing cost and delay in the federal civil justice system.

The advisory group and the court in the Southern District of Indiana recommends the passage of legislation allowing the assessment of prejudgment interest, to encourage defendants to settle cases sooner.

The advisory groups for the Western District of Michigan and the Southern District of Illinois suggest that cost and delay could be reduced by the passage of legislation permitting the assessment of sanction fees in certain cases. The advisory group in the Western District of Michigan recommends that fees be assessed against a party who proceeds to trial *de novo* and receives an award not substantially greater than the prior ADR award. The advisory group in the Southern District of Illinois recommends a "loser pays attorneys' fees" rule for all litigated discovery disputes.

The Central District of Illinois advocates Congress urge the states to establish a formal administrative review procedure for state pro se prisoners who challenge the conditions of their confinement.

The advisory groups in the District of Oregon, the Western District of Michigan, and the Western District of Pennsylvania recommend increased federal funding for attorneys representing indigent parties. The Central District of Illinois recommends Congress consider a broader mandate for the Legal Services Corporation to ensure that competent counsel is available to indigent plaintiffs and defendants in civil cases.

The Western District of Texas urges Congress to consider enacting legislation eliminating the requirement that magistrate judges or district judges preside over traffic cases issuing from federal enclaves.

The Northern District of Oklahoma recommends Congress revise § 636 of Title 28, to allow a party to preserve an issue for ultimate appeal to the appellate court without first appealing a magistrate judge's ruling to the district court. If the statute was changed to allow a claim to be preserved without an appeal to the district court, it would speed the process and save the parties' time and expense.

2. Recommendations for Action by the Judicial Conference of the United States and Others Within the Judiciary

Many of the CJRA advisory group reports and court plans include recommendations to the Judicial Conference of the United States, the Administrative Office of the U.S. Courts, and the Federal Judicial Center for reducing expense and delay in civil litigation. These recommendations have been referred to the responsible entities within the Judiciary for their consideration.

The advisory groups and courts for the Southern District of Indiana, the District of Idaho, the Southern District of Iowa, the Eastern District of Kentucky, and the Middle District of North Carolina note that their pro se prisoner cases are being handled by staff attorneys or pro se law clerks. Without their assistance, magistrate judges and district judges would be required to devote far more time to these cases, thereby causing additional cost and delay in all civil cases. The courts make a number of recommendations to the Judicial Conference regarding these positions, including changing their tenure and salaries, revising their allocation formula, and authorizing additional positions. A number of advisory groups and courts make similar suggestions regarding staff attorneys and law clerks who handle social security cases.

Six advisory groups and courts note that the civil justice expense and delay reduction plans will increase the workload of magistrate judges. Therefore, they suggest that the Judicial Conference authorize an additional law clerk for magistrate judges. A number of advisory groups also recommend that district court judges be assigned a third law clerk. These staffing changes would require additional funding by Congress.

Several advisory groups and courts also note that visiting judges from other districts can play a key role in reducing cost and delay in civil litigation. Because courtroom space for these judges is limited in many districts, the courts resolve to participate in long range planning with the Administrative Office to meet future space and courtroom requirements.

Five courts are concerned that the Judicial Conference's court statistics accurately represent the amount of time required to resolve different types of cases. Judicial workload statistics are under the jurisdiction of the Judicial Conference's Committee on Judicial Resources. The Administrative Office and the Federal Judicial Center assist the Committee in responding to these recommendations. The District of Alaska and the Eastern District of California, two courts that handle a high number of cases difficult to characterize, such as Native American litigation and habeas corpus death penalty cases, recommend that the Judicial Conference consider revising its case weighting system to produce a more accurate depiction of the effect of such cases on the civil case docket. The advisory group for the District of New Jersey recommends that the Administrative Office develop a "median disposition time" statistic for individual categories of cases, so that cases requiring an extended time period for disposition will not skew their statistical

information. The advisory group for the Northern District of California believes the statistics should include the time judges spend conducting settlement conferences. The District of Columbia Advisory Group recommends the Judicial Conference use more in-depth statistics. A new case weighting system was approved last year.

Several courts request that the Judicial Conference make recommendations to Congress regarding existing legislation. The advisory group for the Western District of Pennsylvania suggests that the Judicial Conference recommend to Congress that the sentencing guidelines be amended to encourage criminal prosecutions in state courts rather than federal courts. The District of New Mexico recommends that the Judicial Conference endorse the repeal of the sentencing guidelines.

3. Recommendations for Amendments to the Federal Rules of Civil Procedure (FRCP)

A number of courts and advisory groups believe that changes in the Federal Rules of Civil Procedure could assist in reducing civil justice expense and delay. These recommendations have been referred to the appropriate rules committees of the Judicial Conference for their consideration.

The advisory group for the District of Minnesota recommends that Rule 16, which requires a court to hold a pretrial conference within 120 days, be amended to require that the conference be held within 90 days. The group considers these conferences to be a critical case management tool and feels that early intervention by a judicial officer promotes quick case disposition.

Rule 4(m) requires that a summons and complaint be served upon a defendant within 120 days of the filing of a complaint. Several advisory groups recommend that the period from filing to service be shortened to avoid delays in the disposition of civil cases.

Under Rule 12, an answer to a complaint must generally be served within 20 days. However, if the opposing party serves a motion to dismiss, the time for serving the answer is tolled until the court rules upon the motion. The Northern District of Georgia advisory group recommends that the FRCP be amended to require an answer be served within 20 days regardless of whether a motion to dismiss is pending. The District also urges an amendment to Rule 53, that would permit special masters to be compensated with government funds. Under the existing Rule, special masters (other than magistrate judges) are compensated by the parties.

The advisory group for the Southern District of Illinois advocates amending Rule 68. That rule provides that a party "defending against a claim" may serve an offer of judgment upon an opposing party, but makes no provision for a party asserting a claim to extend such an offer. Moreover, the FRCP only address offers of judgment and does not cover nonjudgment settlement offers. The advisory group recommends that Rule 68 be

amended to cover all parties and all settlement offers. The Rule is currently under examination by the Advisory Committee on Civil Rules.

A number of the plans also contain recommendations concerning the then proposed amendments to the FRCP, especially the amendments to Rule 11 and Rule 26. The courts hold differing opinions on the changes, some advocating and some against the amendments. However, the amendments went into effect in December of 1993, and therefore these recommendations are moot.

III. Meeting Other Requirements of the Act/Next Steps

A. Status of the Ongoing Annual Assessment Process

Section 475 of Title 28 requires each court, after it develops a cost and delay reduction plan, to "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 this assessment each court must consult with its CJRA advisory group. The statute gives no other instructions to the courts and requires no submission or review of the annual assessments.

To provide guidance to the courts in conducting the annual assessment the Court Administration and Case Management Committee, to whom the Judicial Conference delegated oversight responsibility for the CJRA, issued a memorandum in February 1993, establishing basic procedures for the assessments. The Committee requested that annual assessments be prepared as written documents and be submitted to the Administrative Office and the Federal Judicial Center. The Committee also recommended, in recognition that implementation may take some months to effect, that annual assessments take place one year after the CJRA plan becomes operational rather than a year after adoption. Finally, the Committee urged the courts to undertake, in addition to the analysis of the dockets required by the statute, an examination of the plan's impact on other elements of the court including the court's budget, litigation costs, and attorney, client, and judge satisfaction.

Since most courts adopted their CJRA plans in late 1993, most are not yet required to conduct an annual assessment or are just approaching that stage. To date, 33 courts have completed a formal assessment process, with several of these courts submitting assessments for both the first and second years after implementation of their CJRA plan. In addition, other courts have conducted informal assessments and have made changes to their plans. These annual assessments reveal a wide variety of approaches, ranging from in-depth discussions between the court and advisory group to surveys sent to the bar and litigants. Most assessments include an examination of caseload statistics that offer an update of the analysis done by the advisory group in preparing its initial report to the court. Many assessments also include recommendations

for further changes or refinements in the court's procedures, sometimes following up on matters the advisory group and court had set aside for closer study.

B. Status of RAND Studies

Section 471 of Title 28 requires the Judicial Conference to submit to the Senate and the House Judiciary Committees an independent study of the civil justice expense and delay reduction plans established by the pilot and comparison courts. The Act specifies that an independent organization with expertise in the area of federal court management complete this comparative report.

In May 1992, the Administrative Office contracted with the RAND Corporation to conduct the independent study. In September 1992, the contract was amended to incorporate an additional and more detailed study of the ADR programs developed by the courts in accordance with 28 U.S.C. § 473(a)(6). The amendment's objective is to determine if the ADR programs are helping to achieve the Act's goals of reducing cost and delay.

Both studies are well underway. The Act originally required completion of the report by December 31, 1995. However, the Judicial Amendments Act of 1994 extended that date for one full year to allow more comprehensive data to be included and to promote a more thorough analysis of the Act's impact on civil litigation management. The Judicial Conference will continue to monitor the progress of the study.

C. Status of the Demonstration Courts

Section 104 of Title 28 establishes five districts as demonstration districts. The Western District of Michigan and the Northern District of Ohio are designated as experimental courts for differentiated case management. Three other districts, the Western District of Missouri, the Northern District of California, and the Northern District of West Virginia, are to experiment with various forms of ADR. Each of these five courts established their demonstration programs within the first year after enactment of the statute, and therefore have had substantial experience with them. The Federal Judicial Center, and the courts themselves, have been monitoring the progress and impact of these programs. The experience of the courts under these programs will be reported to Congress by December 1, 1995 unless the demonstration programs are extended for a year in parallel with the pilot court programs.

D. Dissemination of Litigation Management Information

Under § 479, the statute makes a number of requirements for dissemination of information about litigation management, including preparation of a Manual for Litigation Management and Cost and Delay Reduction. A first edition of this manual was prepared and published by the Federal Judicial Center in 1992 and provided to all

federal judges. Entitled "Manual for Litigation Management and Cost and Delay Reduction", the publication focuses on case management techniques for individual judges and describes the management of all phases of the civil litigation process. It will be revised and updated as necessary. Methods of alternative dispute resolution and court wide programs will be the subject of a separate manual.

E. Research, Education, and Training

Section 479(b) of Title 28 requires the Judicial Conference to study, on an ongoing basis, ways to improve litigation management and dispute resolution services and to make recommendations to the courts (28 U.S.C. § 479(b)). Much of the work of the Conference and its committees is directed toward this task, with the aid of the Administrative Office and the Federal Judicial Center. The Federal Judicial Center is specifically directed by its authorizing legislation "to conduct research and study of the operation of the courts of the United States" and "to develop and present for consideration by the Judicial Conference ... recommendations for the improvement of the administration and management of the courts..." As part of its ongoing statutory function, the Center regularly examines many issues relevant to the goals of CJRA. Current projects whose findings will assist the courts in litigation management are studies of class actions, discovery, pro se litigation, management of scientific evidence, and voir dire.

Section 480 of Title 28 also requires that the Administrative Office and the Federal Judicial Center provide ongoing education and training "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." Both the Administrative Office and the Federal Judicial Center provide such education as part of their regular duties on behalf of the courts. Appendix IV lists examples of programs provided by the Federal Judicial Center as part of its statutory responsibility "to stimulate, create, develop, and conduct programs of continuing education and training for personnel of the judicial branch ... [to] improve the operation of the judicial branch" (28 U.S.C. § 620 (b)(3)). Each program is relevant to the purposes of the Civil Justice Reform Act and many specifically addressed the requirements of the Act.

IV. Conclusion

The Act established December 1, 1993 as the deadline for adoption of the court civil justice expense and delay reduction plans. This deadline was met. In developing their plans the courts carefully considered the principles, guidelines, and techniques set out in the Act, tailoring them to the individual needs of their districts. Thus, the plans represent a very substantial effort by the courts to resolve the problems of litigation cost and delay.

The Act also mandated that an independent study of the effectiveness of the civil justice expense and delay plans be conducted. This comprehensive analysis is being conducted by the RAND Corporation, and is scheduled to be completed by December 1995. The Judicial Conference, after considering the results of the independent study, will make specific recommendations regarding case management principles and techniques in its final report on December 31, 1996.

Although empirical findings are not yet available, anecdotal reports, as well as a number of the advisory group reports and court plans, indicate that the Act has had a beneficial impact on the federal courts. As mandated by the statute, the advisory committees for each district analyzed the condition of their civil and criminal dockets, examined the reasons for cost and delay in civil litigation, and formed recommendations for reducing this cost and delay. The process has led to an increased level of communication between the members of the bar, the litigants, and the courts. This communication is continuing through the annual assessment process that each court must conduct in consultation with its advisory group. This ongoing dialogue is an important legacy of the Act.

APPENDIX I

to

The Civil Justice Reform Act Report of the Judicial Conference of the United States

Report to Congress
December 1, 1994

PRINCIPLE AND GUIDELINES - § 473 (a) CJRA

	Systematic Differential Treatment of Civil Cases (1)	Early Involvement of Judicial Officer (2)	Discovery Case Management (3)	Encouragement of of Cost Effective Discovery (4)	Certification of Discovery Motions (5)	ADR Referral System # (6)
Alaska	x	x	x	x		x
Alabama (N)	x	x	x	x	x	x
Alabama (M)		x	x	x	x	x
Alabama (S)	x	x	x	x	x	
Arizona	x	x	x	x	x	x
Arkansas (E)		x	x	x		
Arkansas (W)	x	x	x		x	
California (E)			x	x		x
California (C)		x	x	x	x	x
California (N)+	x		x	x	x	x
California (S)*	x	x	x	x	x	x
Colorado	x	x	x	x	x	
Connecticut	x			x	x	x
Delaware*	x	x	x	x	x	x
D.C.	x	x	x	x	x	x
Florida (N)	x	x	x	x	x	x
Florida (M)	x	x	x	x	x	x
Florida (S)	x	x	x	x		x

\+ Demonstration Courts
* Pilot Courts
\# Includes Settlement Conferences

PRINCIPLE AND GUIDELINES - § 473 (a) CJRA

	Systematic Differential Treatment of Civil Cases (1)	Early Involvement of Judicial Officer (2)	Discovery Case Management (3)	Encouragement of of Cost Effective Discovery (4)	Certification of Discovery Motions (5)	ADR Referral System # (6)
Georgia (N)*	x	x	x	x	x	x
Georgia (M)	x	x	x	x	x	x
Georgia (S)	x	x	x	x	x	x
Guam		x	x	x	x	
Hawaii		x	x	x	x	
Idaho		x	x	x	x	x
Illinois (N)	x	x	x	x	x	
Illinois (C)		x	x		x	x
Illinois (S)	x		x	x	x	x
Indiana (N)		x	x	x	x	x
Indiana (S)		x	x	x	x	x
Iowa (N)	x	x	x		x	x
Iowa (S)	x	x	x		x	x
Kansas	x	x	x	x		x
Kentucky (E)		x		x		x
Kentucky (W)	x	x	x		x	x
Louisiana (E)		x	x	x		x
Louisiana (M)	x	x	x	x	x	x

\+ Demonstration Courts
* Pilot Courts
\# Includes Settlement Conferences

PRINCIPLE AND GUIDELINES - § 473 (a) CJRA

	Systematic Differential Treatment of Civil Cases (1)	Early Involvement of Judicial Officer (2)	Discovery Case Management (3)	Encouragement of of Cost Effective Discovery (4)	Certification of Discovery Motions (5)	ADR Referral System # (6)
Louisiana (W)	x	x	x	x	x	
Maine	x	x	x	x	x	x
Maryland	x	x	x		x	x
Massachusetts	x	x	x	x	x	x
Michigan (E)	x	x	x	x	x	x
Michigan (W)+	x		x	x		x
Minnesota	x	x	x	x	x	
Mississippi (N)	x	x	x	x	x	x
Mississippi (S)	x	x	x	x	x	x
Missouri (E)	x	x	x	x		x
Missouri (W)+	x		x	x	x	x
Montana	x	x	x	x	x	x
Nebraska		x		x		x
Nevada	x	x	x		x	x
New Hampshire	x	x	x	x	x	
New Jersey	x	x	x	x	x	x
New Mexico	x	x	x	x	x	x
New York (N)	x	x		x	x	x

\+ Demonstration Courts
• Pilot Courts
\# Includes Settlement Conferences

PRINCIPLE AND GUIDELINES - § 473 (a) CJRA

	Systematic Differential Treatment of Civil Cases (1)	Early Involvement of Judicial Officer (2)	Discovery Case Management (3)	Encouragement of of Cost Effective Discovery (4)	Certification of Discovery Motions (5)	ADR Referral System # (6)
New York (S)*	x	x	x	x	x	x
New York (E)	x	x	x	x		x
New York (W)	x	x	x	x		x
N. Carolina (E)	x	x	x	x	x	x
N. Carolina (M)	x	x	x		x	x
N. Carolina (W)	x	x	x	x	x	x
N. Dakota	x	x	x	x	x	
Northern Mariana Islands	x	x	x	x		x
Ohio (N)+	x	x	x	x	x	x
Ohio (S)		x	x	x	x	x
Oklahoma (N)	x	x	x	x	x	x
Oklahoma (E)	x	x	x	x	x	x
Oklahoma (W)*	x	x	x	x	x	x
Oregon	x	x	x	x		x
Pennsylvania (E)*	x	x	x	x	x	x
Pennsylvania (M)	x	x	x	x	x	x
Pennsylvania (W)	x	x	x		x	x
Puerto Rico	x	x	x	x	x	x

\+ Demonstration Courts
* Pilot Courts
\# Includes Settlement Conferences

PRINCIPLE AND GUIDELINES - § 473 (a) CJRA

	Systematic Differential Treatment of Civil Cases (1)	Early Involvement of Judicial Officer (2)	Discovery Case Management (3)	Encouragement of of Cost Effective Discovery (4)	Certification of Discovery Motions (5)	ADR Referral System # (6)
Rhode Island	x	x	x		x	x
S. Carolina	x	x		x	x	x
S. Dakota	x	x	x	x		x
Tennessee (E)		x	x	x	x	x
Tennessee (M)		x	x	x		x
Tennessee (W)*	x	x	x	x	x	x
Texas (N)	x	x	x	x	x	x
Texas (S)*	x	x	x	x	x	x
Texas (E)	x	x	x	x		x
Texas (W)	x	x	x	x		x
Utah*	x	x	x	x	x	x
Vermont		x	x		x	x
Virgin Islands			x	x	x	x
Virginia (E)			x	x		
Virginia (W)	x	x	x			
Washington (E)		x	x			x
Washington (W)		x	x	x	x	x
W. Virginia (N)+	x	x	x	x	x	x

\+ Demonstration Courts
* Pilot Courts
\# Includes Settlement Conferences

	Systematic Differential Treatment of Civil Cases (1)	Early Involvement of Judicial Officer (2)	Discovery Case Management (3)	Encouragement of of Cost Effective Discovery (4)	Certification of Discovery Motions (5)	ADR Referral System # (6)
W. Virginia (S)	x	x	x	x	x	x
Wisconsin (E)*	x	x	x	x	x	x
Wisconsin (W)		x	x	x		x
Wyoming	x	x	x	x	x	x
Totals:	72	86	89	81	72	80

\+ Demonstration Courts
* Pilot Courts
\# Includes Settlement Conferences

TECHNIQUES

	Joint Discovery Plan at Initial Pretrial Conference (1)	Power to Bind Parties on Topics Scheduled for Discussion (2)	Requests for Extensions to be Signed by Attorney and Party (3)	Neutral Evaluation Program (4)	Power to Bind Parties at Settlement Conference (5)
Alaska	Due to the variations in Pretrial Conference requirements and the details of discovery case management plans among courts, this technique does not lend itself to quantification in a chart of this type.	x	x	x	x
Alabama (N)		x			x
Alabama (M)		x		x	x
Alabama (S)					
Arizona		x		x	x
Arkansas (E)		x	x		x
Arkansas (W)					x
California (E)					
California (N)+				x	
California (C)					x
California (S)*		x		x	x
Colorado		x			x
Connecticut		x		x	x
Delaware					
D.C.		x		x	x
Florida (N)		x			x
Florida (M)		x	x		x
Florida (S)		x			

\+ Demonstration Courts
* Pilot Courts
\# Includes Settlement Conferences

TECHNIQUES

	Joint Discovery Plan at Initial Pretrial Conference (1)	Power to Bind Parties on Topics Scheduled for Discussion (2)	Requests for Extensions to be Signed by Attorney and Party (3)	Neutral Evaluation Program (4)	Power to Bind Parties at Settlement Conference (5)
Georgia (N)*	Due to variations in Pretrial Conference requirements and the details of discovery case management plans among courts, this technique does not lend itself to quantification in a chart of this type.				x
Georgia (M)		x		x	x
Georgia (S)		x			x
Guam		x	x		x
Hawaii		x	x		x
Idaho		x	x	x	
Illinois (N)		x			x
Illinois (C)					
Illinois (S)					x
Indiana (N)		x		x	x
Indiana (S)				x	
Iowa (N)		x			x
Iowa (S)					x
Kansas		x			x
Kentucky (E)					
Kentucky (W)		x		x	x
Louisiana (E)			x	x	x
Louisiana (M)		x	x	x	x

\+ Demonstration Courts
* Pilot Courts
\# Includes Settlement Conferences

	TECHNIQUES				
	Joint Discovery Plan at Initial Pretrial Conference	Power to Bind Parties on Topics Scheduled for Discussion	Requests for Extensions to be Signed by Attorney and Party	Neutral Evaluation Program	Power to Bind Parties at Settlement Conference
	(1)	(2)	(3)	(4)	(5)
Louisiana (W)	Due to variations in Pretrial Conference requirements and the details of discovery case management plans among courts, this technique does not lend itself to quantification in a chart of this type.	x			
Maine		x			
Maryland					
Massachusetts		x			x
Michigan (E)				x	
Michigan (W)+					
Minnesota		x	x		x
Mississippi (N)		x		x	x
Mississippi (S)		x		x	x
Missouri (E)				x	
Missouri (W)+		x		x	x
Montana		x			x
Nebraska					
Nevada		x	x		x
New Hampshire		x	x	x	x
New Jersey		x			
New Mexico					
New York (N)		x			x

\+ Demonstration Courts
* Pilot Courts
\# Includes Settlement Conferences

TECHNIQUES

	Joint Discovery Plan at Initial Pretrial Conference	Power to Bind Parties on Topics Scheduled for Discussion	Requests for Extensions to be Signed by Attorney and Party	Neutral Evaluation Program	Power to Bind Parties at Settlement Conference
	(1)	(2)	(3)	(4)	(5)
New York (S)*	Due to variations in Pretrial Conference requirements and the details of discovery case management plans among courts, this technique does not lend itself to quantification in a chart of this type.	x			
New York (E)		x		x	x
New York (W)		x	x	x	x
N. Carolina (E)					x
N. Carolina (M)		x	x		x
N. Carolina (W)		x			x
N. Dakota		x			x
Northern Mariana Islands		x			x
Ohio (N)+		x		x	x
Ohio (S)		x		x	x
Oklahoma (N)					x
Oklahoma (E)		x			x
Oklahoma (W)*		x			
Oregon					
Pennsylvania (E)*		x			x
Pennsylvania (W)		x		x	x
Pennsylvania (M)		x		x	x

\+ Demonstration Courts
* Pilot Courts
\# Includes Settlement Conferences

TECHNIQUES

	Joint Discovery Plan at Initial Pretrial Conference (1)	Power to Bind Parties on Topics Scheduled for Discussion (2)	Requests for Extensions to be Signed by Attorney and Party (3)	Neutral Evaluation Program (4)	Power to Bind Parties at Settlement Conference (5)
Puerto Rico	Due to variations in Pretrial Conference requirements and the details of discovery case management plans among courts, this technique does not lend itself to quantification in a chart of this type.			x	
Rhode Island		x		x	x
S. Carolina				x	x
S. Dakota		x			x
Tennessee (E)		x		x	x
Tennessee (M)		x			x
Tennessee (W)*		x		x	x
Texas (N)			x		x
Texas (S)*		x			x
Texas (E)		x	x		
Texas (W)					
Utah*		x			
Vermont		x		x	x
Virgin Islands					x
Virginia (E)					
Virginia (W)					
Washington (E)		x		x	x
Washington (W)					

\+ Demonstration Courts
* Pilot Courts
\# Includes Settlement Conferences

TECHNIQUES

	Joint Discovery Plan at Initial Pretrial Conference	Power to Bind Parties on Topics Scheduled for Discussion	Requests for Extensions to be Signed by Attorney and Party	Neutral Evaluation Program	Power to Bind Parties at Settlement Conference
	(1)	(2)	(3)	(4)	(5)
W. Virginia (N)+	Due to the variations in Pretrial Conference requirements and the details of discovery case management plans among courts, this technique does not lend itself to quantification in a chart of this type.	x			
W. Virginia (S)		x	x	x	x
Wisconsin (E)*		x		x	x
Wisconsin (W)		x		x	
Wyoming		x			x
Totals:		64	16	36	64

\+ Demonstration Courts
* Pilot Courts
\# Includes Settlement Conferences

APPENDIX III

to

The Civil Justice Reform Act Report
of the Judicial Conference of the United States

Report to Congress
December 1, 1994

ALTERNATIVE DISPUTE RESOLUTION DEFINITIONS

Nonbinding Arbitration -- Litigants present their case to one or three arbitrators selected by the court or the parties from a roster maintained by the court. Presentations are generally less formal than a trial, and the rules of evidence are suspended. The arbitrator issues a non-binding decision, which, if accepted by the parties, terminates the case, with no right to appeal. Parties who choose not to accept the decision may proceed to trial *de novo* or settlement.

Early Neutral Evaluation (ENE) -- Early in the case history, litigants present summaries of their case to an outside neutral who is expert in the subject matter. The neutral evaluator helps parties identify issues in the case. This process enhances communication and provides litigants with a more realistic understanding of the likely outcome of the case.

Mediation -- Litigants meet with an outside neutral who is usually an attorney with expertise in the mediation process and may also have case subject-matter expertise. In courts with established court-based mediation programs, the mediator is selected from the court's roster of approved neutrals. The mediator hears presentations from the parties in a joint session, then meets individually with the parties to explore their underlying interests and to help them reach an agreement on the outcome of the case.

Non-binding Summary Jury and Bench Trial -- Summary jury and bench trials are designed for trial-ready cases headed for protracted trials. In cases referred to either of these processes, the court conducts an abbreviated trial, either before a regularly empaneled jury or before a district or magistrate judge. The jury or judge offers a non-binding verdict, which is used for subsequent settlement negotiations. In summary jury trials, the lawyers are generally permitted to question the jurors about their decision.

Settlement Week -- The court designates a specific time period during which it suspends normal trial activity and, aided by volunteer attorney neutrals, devotes itself to mediation of pending cases.

Mini-Trial -- An attorney for each party presents an abbreviated version of the case to business representatives with full authority to settle. A neutral, either an attorney or a judge, usually presides. Following the presentations, the parties' representatives meet to negotiate settlement. If the parties agree, the neutral presider may serve as facilitator during these negotiations and may offer an advisory opinion.

Judicial Settlement Conferences -- Upon the request of either the judge or parties, the parties meet with a judge or magistrate judge and to attempt to reach settlement. Depending on court rules and party preferences, that judge may be the same one to whom the case was assigned. The judge may meet with the parties jointly and individually, assisting them in identifying the legal and factual issues in the case and facilitating the trading of settlement offers.

APPENDIX IV

to

The Civil Justice Reform Act Report of the Judicial Conference of the United States

Report to Congress
December 1, 1994

CJRA RELATED TRAINING

Audience	Nature of Program or Publication	Date
Chief deputy clerks	Two 3-hr. sessions on case flow management techniques	National workshop, 1/92
Court-room deputies	A 3-hr. session on case management techniques	National workshop, 12/91 National workshop, 1/92
Magistrate judges	Settlement techniques	Three-day workshop, 6/92
District judges on the bench 3-6 years	Three days on complex civil case management, two days on criminal case management	Five-day workshop, 7/92
Clerks of court and district court executives	Half-day session of differentiated case management	National workshop, 11/92
Judges, court staff, attorneys, researchers	Dissemination of all CJRA plans and reports through WESTLAW	Begun in 1992, to be completed in 1994
District of Montana	Differentiated case management	Two-day workshop, 7/92
Deputies in charge	Three-hour session on case management	National workshop, 7/93
Magistrate judges	One-hour presentation on complex civil and criminal case management	National program, 7/93
Magistrate judges	One-hour presentation, followed by discussion on settlement and ADR issues	National program, 7/93
District judges	One-hour presentation on settlement conference techniques	Three national programs in 1993
District judges	One-hour presentation on simplifying complex criminal trials	Three national programs in 1993

Audience	Nature of Program or Publication	Date
District judges	One-hour round table discussion on case management problems	Three national programs in 1993
District and magistrate judges	Two-day conference on alternative dispute resolution	November 1993
District and magistrate judges; court administrators	*Judges' Deskbook on Court ADR*: Discusses issues court should address in establishing ADR programs and questions judges should ask when deciding whether to refer a case to ADR.	Prepared (with CPR) for 11/93 ADR conference, subsequently distributed to all district and bankruptcy courts
District judges	Special case mngt. problems encountered in pre- and post-trial phases of criminal cases involving Indian law	Federal Indian Law workshop, May, 1994
District court judges and staff	Implementation of ADR programs	September 1994
District and magistrate judges	Science and technology manual: Management of cases with complex scientific evidence	Forthcoming fall 1994
New court employees	*How Civil Cases Move Through The District Courts*, a videotape that tracks a civil case from filing through entry of judgment and discusses how deputy clerks track cases and keep judicial officers informed about deadlines	Forthcoming in early 1995