

JAN 16 1991

FYI

**MEMORANDUM TO ALL: CHIEF JUDGES, UNITED STATES  
COURTS OF APPEALS  
JUDGES, UNITED STATES DISTRICT COURTS  
UNITED STATES MAGISTRATE JUDGES  
CIRCUIT EXECUTIVES  
DISTRICT COURT EXECUTIVES  
CLERKS, UNITED STATES DISTRICT COURTS**

**SUBJECT: Recommendations of the Judicial Conference Committee on Court  
Administration and Case Management regarding the implementation of the  
Civil Justice Reform Act of 1990**

In a memorandum dated December 20, 1990, I provided you with an overview of the requirements of the Civil Justice Reform Act of 1990 (the "Act") (Public Law No. 101-650, title I), along with the early recommendations of the Case Management Subcommittee of the Judicial Conference's Committee on Court Administration and Case Management relating to the selection of advisory groups pursuant to the Act. At that time I indicated that additional information and guidance on implementation of the Act would be forthcoming after the meeting of the full Committee on Court Administration and Case Management.

As indicated in the earlier memorandum, each court must appoint an advisory panel by March 1, 1991. The primary task of this advisory panel is to develop a case management plan. The work of the panel will be time-consuming. Plans are to be submitted and implemented by courts by December 1, 1993, with the exception of the ten designated pilot courts whose plans are to be implemented by December 31, 1991.

The Congress has yet to appropriate funds for the purpose of meeting the requirements of the Act. A supplemental appropriations request for the fiscal year 1991 to meet these needs will be submitted to the Congress shortly. However, it is unlikely that any additional funds will be made available before mid-summer.

The full committee met on January 3-4, 1991, and after considerable discussion made several policy recommendations regarding the selection of advisory groups. The following recommendations are intended to establish suggested parameters and to provide guidance to the district courts regarding selection of advisory groups.

### Advisory Groups

#### Size of Advisory Groups

While the Act is silent as to the size of advisory groups, the committee points out that the Senate and House have made it clear that, while size is left to the appointing authority, "it is anticipated that the group will be sufficiently large to accommodate the major categories of litigants in the district". *S. Rep. No. 101-416, 101st Cong., 2d Sess. 62 (1990); H.R. Rep. No. 101-732, 101st Cong., 2d Sess. 19 (1990).*

The committee advises, however, that districts guard against the appointment of advisory groups too large to be effective. It believes that a group of fewer than 10 members would not meet the intent of the Act and suggests that a group of 10 to 15 members would be optimum in most districts. The largest districts may need to consider a group of 15 to 20 members.

#### Composition of Advisory Groups

As I indicated in my earlier memorandum on this subject, Section 478(b) of Title 28 requires that an advisory group "be balanced and include attorneys and other persons who are representative of major categories of litigants. . . as determined by the chief judge. . . ." The committee suggests that one or more non-attorney members should be appointed to the advisory group. This person could be a member of a local advocacy group, such as a consumer or prisoner rights organization, or a representative from the business community such as the officer of a corporation or a representative of a business group such as the Chamber of Commerce. It is the further belief of the committee that it is critical that the advisory group be representative in order to ensure input from the community and that appointments accurately reflect the profile of litigation in the district and the major categories of litigation to the extent feasible.

### Appointment of a Reporter

The Act allows the chief judge to designate a reporter for the group, who may be compensated according to guidelines established by the Judicial Conference if implementation funds become available. The committee believes that the use of a reporter will be of critical importance to the work of the advisory groups. The committee envisions two potential functions for the reporter. The first is that of secretary, providing primarily administrative support to the advisory group. The second is that of an expert in case management to assist in the assessment and analysis of the court's dockets and the development of specific recommendations for the district's plan.

The committee has identified two options for the appointment of an advisory group reporter. The first is to utilize the clerk of court to perform these functions. The committee believes that this role is within the normal functions of the clerk and that the clerk's intimate understanding of court operations will contribute greatly to the advisory group's effectiveness. The committee strongly believes that the clerk, if not utilized as the reporter, should in any case, serve as an ex officio non-voting member of the group.

The second option is to enlist the services of a local law professor, court administrator, or other person with the appropriate expertise in civil litigation. The committee notes, however, that the Congress has not yet provided the funds to compensate a reporter. Until funds are appropriated and the Judicial Conference issues the approved guidelines, the use of any outside expert would be on a pro bono basis.

### Role of Judicial Officers on Advisory Groups

The committee considered whether judges and magistrate judges should be appointed to advisory groups. Although the Act is silent on the appointment of judicial officers and clerks to the advisory groups, the committee believes that their involvement in the work and deliberations of the group would be beneficial in order to provide insight into the operation and case management practices of the court. However, the committee believes that the involvement of judicial officers should be limited to one or two members in a non-voting capacity.

The Use of Multiple Advisory Groups Within Districts

The committee considered whether the use of more than one advisory group in districts with large or remote divisional offices would be advantageous. It was determined that a single assessment of the district would be necessary to develop an effective plan.

Manner of Adopting Plans

The committee considered the manner in which a district could adopt the expense and delay reduction plan proposed by its advisory group. It concluded that the preferable method would be through the court's existing voting practice used to adopt general orders or local rules of court.

Selection of Pilot Courts

The committee will recommend to the Judicial Conference that 10 courts serve as pilots pursuant to Section 105 of the Act under the following criteria:

1. At least five of the courts must be from large metropolitan areas pursuant to Section 105(b) of the Act.
2. The other five should include small and medium size courts.
3. Each pilot court selected should have one or more "comparable courts" to be used for comparison and evaluation purposes by the "independent organization" selected to evaluate the effects of the Act pursuant to Section 105(c).
4. To the extent possible, each geographical area of the country should be represented.
5. No more than two courts should be from the same circuit.
6. Whether a particular court desires to participate should not be a determining factor in the selection process.

7. Factors tending to skew results should be avoided.
8. Courts heavily impacted with criminal cases should be represented.
9. Courts that have problems occasioned by the district being spread over a large geographical area should be included.
10. Some statewide districts should be included.
11. The 10 pilot courts should be made up of districts that from a statistical standpoint can be perceived as having maximum, medium and minimal success in disposing of their civil cases expeditiously.

The committee made every effort to ensure that the 10 pilot courts to be recommended for consideration by the Judicial Conference represent a statistical cross section of all districts in order to ensure a valid test of the mandatory provisions of the Act. The recommended pilot courts are:

New York Southern  
Georgia Northern  
Pennsylvania Eastern  
Texas Southern  
California Southern  
Delaware  
Tennessee Western  
Oklahoma Western  
Wisconsin Eastern  
Utah

### Conclusion

The committee and its subcommittee will continue to provide courts with the necessary guidance in this area. The Administrative Office and Federal Judicial Center will provide materials and guidance for advisory groups to assist in their assessment of courts' dockets as well as training material for pilot courts and early implementation courts.

Any questions regarding these matters may be directed to Abel Mattos of the Court Administration Division at FTS 633-6221.

L. Ralph Mecham

BLowney:mg (36221) 1-11-91  
Daybook  
Subject File-PRO-8  
Reading File

\_\_\_\_\_ Macklin

\_\_\_\_\_ McCabe

\_\_\_\_\_ D. Lee

**IMPLEMENTATION OF CIVIL JUSTICE REFORM ACT OF 1990  
ADMINISTRATIVE OFFICE AND FEDERAL JUDICIAL CENTER TASKS  
DRAFT -- 12/28/90**

This memorandum itemizes (1) various tasks required by the Civil Justice Reform Act of 1990 (the "Act") for its implementation, and (2) other tasks which, though not required, may aid in the implementation of the Act. In addition, this memorandum undertakes to make a tentative allocation of responsibilities between the AO and the Center; it is reasonable to expect that in the course of implementation, the nature of the tasks and the optimum means of discharging them will undergo revision.

While the Act *authorizes* \$5,000,000 for its implementation (in addition to funds for the early implementation and demonstration districts), it does not *appropriate* any funds for its implementation, and none are included in the current budget. Some of the tasks listed in this memorandum can be performed with existing resources, but many could not unless resources are taken from activities now conducted by the AO and the FJC. This memorandum suggests that certain implementation activities (identified by #) should, because of their cost, be considered contingent on the receipt of funds specifically appropriated for that purpose. If funds are appropriated for the implementation of this Act, additional tasks will be required for their allocation, including distribution to Early Implementation and Demonstration districts (see § 106).

Implementation of the Act extends over a period of seven years ending December 1, 1997, when the statutory requirements relating to Civil Justice Expense and Delay Reduction Plans expire (§ 103(b)(2)). The tasks listed in this memorandum must be performed at different times during that period. Although it cannot always be ascertained with precision from the Act when performance will take place, this memorandum includes an estimate of the earliest fiscal year during which action will be required. (For additional details, see Appendix, p. 9.)

In this memorandum, the two right hand columns indicate the various units of either agency that are expected to be involved in the particular task. A √ indicates which agency will perform the initial or preparatory work on the task, with both agencies contributing to the final product in most cases. "Joint Task" indicates that the agencies will work on all phases of the task together. No entry indicates that the agency expects to have no role at all in the particular task.

## I. ORIENTATION AND EDUCATION AND TRAINING

### A. IMMEDIATE ORIENTATION

The courts will need orientation programs help them understand the statute and its background and the tasks they are required to perform. In reading the following paragraphs, note that:

- The special focus conferences (see 3., below) should be the culmination of the orientation phase (being preceded by the distribution or presentation of various informational materials).
- This orientation is distinct from the case management training mandated by § 480.

- This orientation is also distinct from that to be provided to early implementation, pilot and demonstration districts (see III, IV., V., below).

Tasks	AO	FJC
1. Advice to Districts -- Informational memorandum to courts outlining all implementation tasks, including in particular the appointment and organization of Advisory Groups and the appointment of a reporter. (To be distributed at the earliest feasible time by the Court Administration and Case Management Committee.) (FY 91)	<b>JOINT TASK</b> AO-CAD(PB)OJCS; FJC-RESCH, PUB	
2. Early Orientation Materials -- Orientation materials (e.g., video program panel discussion [Judges Parker, Schwarzer, Director Mecham]) explaining approach to implementation, underlying policies, and available options, to be distributed to all districts. (FY 91)	CAD(PB) LPA, OGC JD	√ SES
3. Special Focus Conferences -- Extensive focus on CJRA during regularly scheduled Conference for Clerks of Court (April 1991) and Conference for Chief District Judges (May 1991). Pre-conference distributions may include advance reading materials, analyses of anticipated problems, hypotheticals, exercises, etc. (FY 91)	CAD(PB) LPA, OGC JD	√ E&T (Clks) SES (Js)
4. # Training Local Trainers -- Training a core of about 20 trainers (mostly clerks and senior clerks' office personnel) to teach in-district programs on the CJRA and plan implementation responsibilities to relevant support staff in clerks' offices, courtrooms and chambers. This training may be combined with preparation for training of supporting personnel, mainly court room deputies, to enhance case management skills under B., below. (FY 91 ff)	CAD(PB) LPA	√ E&T, SES
5. # Circuit Workshop Add-ons -- One day add-ons to regularly scheduled circuit and regional workshops for judges, magistrate judges and clerks, focusing on elements of CJRA, roles of various players, approaches to plan preparation and content, and implementation techniques. This is not likely to be needed, if at all, until FY 92, when the bulk of the districts begin to prepare for implementation.	CAD(PB) LPA	√ E&T, SES
6. # Team Building and Plan Review Workshops -- Team building workshops for chief judges and clerks from 20 districts, to enhance the management of districts' expense and delay reduction plans. Whether this type of program will be useful depends on the manner in which the advisory groups will function and the kinds of recommendations they produce and the plans districts adopt. If such a program is considered, it should be considered in conjunction with the workshop for pilot and early implementation districts (see III. 2.; IV. 1., below). (FY 92-93)	CAD(PB) JD	√ E&T, SES



**B. Section 480 Training**

Section 480 directs the Center and the AO to "develop and conduct comprehensive education and training programs to ensure that all judicial officers, clerks of court, courtroom deputies, and other appropriate court personnel are thoroughly familiar with the most recent available information and analyses about litigation management and other techniques for reducing cost and expediting the resolution of civil litigation." Much training of this sort is already in place and the contours of any additional programs will emerge as implementation proceeds.

Tasks	AO	FJC
1. <b>Circuit and Regional Sessions</b> -- Sessions included in regularly scheduled circuit and regional workshops for district, magistrate and bankruptcy judges, focusing on the latest case management techniques. (FY 91 ff)	CAD(OB) LPA JD, MD	√ E&T, SES
2. <b># Additional Add-on or Special Focus Training</b> -- Special sessions in current programs, or even entire special focus workshops, as future circumstances require. Whether add-on sessions should be considered will depend on such things as the volume of case management training that can and should be performed, the demands of other subjects for time available at the regular workshops, and the demands of particular categories of litigation (e.g., asbestos, savings and loan, etc.) that may create special needs for management. (FY 91 ff)	CAD(OB) JD, MD	√ E&T, SES

**II. ADVISORY GROUP-RELATED TASKS**

Section 472 requires that in implementing a Civil Justice Expense and Delay Reduction Plan, each district must consider the recommendations of an "advisory group." Section 478 mandates that this group be appointed by each Chief District Judge within ninety days of the statute's enactment, i.e., by March 1, 1991, and authorizes the Chief Judge to designate a reporter for the group.

Tasks	AO	FJC
1. <b>Appointing Advisory Groups</b> -- Preparing for Chief District Judges guidance for the appointment and operation of a local advisory group, including selection of a reporter, as provided in § 478(a) - (f). (FY 91)	JOINT TASK AO-OJCS, CAD(PB), JD; FJC-RESCH	
2. <b>Advisory Group Information Packet</b> -- Preparing an advisory group resource packet containing materials to assist in performing the duties under § 472(b) and (c), carrying out the assessments and making the recommendations required by the Act. (FY 91)	JOINT TASK AO-OJCS, CAD(PB), SD, LPA; FJC-RESCH	

**III. PILOT PROGRAM**

Section 105 requires a four-year Pilot Program starting January 1, 1991. As described in § 105(b), ten district courts, to be designated by the Judicial Conference, will participate as pilot courts and must implement expense and delay reduction plans by December 31, 1991. Their plans must include for three years the "6 principles and guidelines of litigation management and cost and delay reduction identified in section 473(a)." Under Section 105(c), the Judicial Conference must submit a "Program Study Report" by December 31, 1995 that evaluates the "extent to which costs and delays were reduced as a result of the program."

Tasks	AO	FJC
1. Information Packages -- Prepare materials and forms to assist the ten selected districts in complying with Section 105(b), which requires (a) that these courts adopt expense and delay reduction plans by December 31, 1991; (b) that these plans include for three years the "6 principles and guidelines" set out in § 473(a). (FY 91)	<b>JOINT TASK</b> AO-CAD(PB), LPA; FJC-RESCH, SES	
2. One- or Two-Day Planning Workshop -- Conduct a special focus workshop for pilot districts' judicial or administrative officers on the elements of their expense and delay reduction plans, methods for evaluating performance under these plans, the promotion of team building among members of the court, and other conceptual or administrative concerns. Consider using videos to present implementation information or scenarios for discussion if adequate lead time is available. Consider scheduling this workshop as add-on to Chief District Judges Conference. (FY 91)	CAD(OB) JD, MD, COSD	√ E&T, SES
3. Selecting the "Independent Organization" to Study Pilot Courts -- Section 105(c) requires the Judicial Conference to prepare a "Program Study Report" (see 5, below) that compares the cost and delay reductions achieved by the pilot districts with those of ten districts not required to utilize the principles of § 473(a) in their plans. This comparison must be based on a "study conducted by an independent organization with expertise in the area of Federal court management." (FY 91)	√ DC CAD(OB) OGC	
4. Study Design for Program Evaluation -- Develop the study design and monitoring protocol for the study to be conducted by the "independent organization" under Section 105(c). (FY 91-92)	CAD(OB) COSD	√ RESCH
5. Judicial Conference Report -- Draft format and outline for the Program Study Report to be prepared by the Judicial Conference by December 31, 1995. Section 105(c)(2) requires that the Judicial Conference recommend either the adoption by all courts of the litigation management principles set out in § 473(a), or alternatives for more effective cost and delay reduction programs. (FY 94)	OJCS, CAD(PB)	√ RESCH

**IV. EARLY IMPLEMENTATION DISTRICTS**

Section 482(c) of the Act permits any district to elect to become an Early Implementation District (EID) by implementing a plan between June 1, and December 31, 1991. Under Section 105(a)(2), Pilot Program districts are automatically designated EIDs.

Tasks	AO	FJC
1. Planning Workshop and Informational Materials -- EIDs should receive information packages provided to Pilot districts (see III. 1., above) and may participate in planning workshops for Pilot districts, (see III. 2, above). Note that under Section 105(a), Pilot districts are also designated as EIDs, and have the same deadline as all other EIDS for implementing plans; except for the required study, therefore, the two categories of districts may be treated in the same fashion. (FY 91)	See III. 1., 2., above	
2. Judicial Conference Report -- Prepare a format and draft outline for the Judicial Conference report on the plans implemented by the EIDs, to be completed by June 1, 1992, under § 482(c)(3). Copies of the EIDs plans and reports and of the Judicial Conference report are to be distributed to Congressional committees and all district courts, under § 482(c)(4). (FY 92-93)	↓ CAD(PB & OB) OJCS	RESCH (draft format/outline only)

**V. DEMONSTRATION PROGRAM**

Section 104 mandates the operation of a "Demonstration Program" involving five specifically designated district courts for four years starting January 1, 1991. Most, if not all, of these courts already have their programs in place. Under Section 104(b), ~~three~~ <sup>2</sup> districts will operate programs in "differentiated case management that provide specifically for the assignment of cases to appropriate processing tracks. . . ." ~~Two~~ <sup>3</sup> other districts will utilize other "methods of reducing and cost and delay in civil litigation," including ADR. The Judicial Conference must study, and submit a report about, the demonstration program by December 31, 1995 (§ 104(c) and (d)). A demonstration district may also elect to be an early implementation district.

Tasks	AO	FJC
1. Study of Results -- In accordance with the Judicial Conference's obligations under Section 104(c), develop and carry out a study of the "experience of the district courts under the demonstration program." (FY 93-94)	CAD(PB)	↓ RESCH
2. Judicial Conference Report -- Prepare a draft format and outline for Judicial Conference report on the demonstration districts required by Section 104(d). The finished report must be submitted by December 31, 1995. (FY 94)	OJCS, CAD(PB)	↓ RESCH

**VI. IMPLEMENTATION BY OTHER DISTRICTS**

Section § 482 mandates that all other districts implement civil justice expense and delay reduction plans by December 1, 1993. These plans, as well as all other requirements of §§ 471 - 478, will remain effective until December 1, 1997. All plans must be reviewed by a committee of all chief district judges of a circuit and the chief judge of that circuit. The Judicial Conference must also review each plan (§ 477).

Each district court, according to § 475, must, in consultation with its advisory group, assess its civil and criminal dockets annually to determine appropriate additional measures to be taken to reduce expense and delay.

Tasks	AO	FJC
1. Model Expense and Delay Reduction Plans -- Assist the Judicial Conference to develop, as authorized in § 477(a)(1) and (2), one or more "model civil justice expense and delay reduction plans" based on the EIDs plans, and an accompanying report explaining how these models comply with § 473. (See IV. 2., above.) Distribute the model plans and report, as required by § 477(b), to all district courts and designated Congressional committees. (FY 92)	CAD(PB) COSD LPA	✓ RESCH
2. Review of District Plans -- Prepare study methodologies to assist the Judicial Conference's and circuit committees' review of local district plans required by § 474. Under §-474(a), the chief district judges of the circuit, along with the chief judge of the circuit, must as a committee review each plan and make suggestions for additions and modifications. Under § 474(b), the Judicial Conference must also review the plan, to ensure adequate response to both conditions "relevant to the civil and criminal dockets of the court" and the Advisory Group recommendations. (FY 92 ff)	✓ CAD(PB) OJCS	RESCH
3. Periodic Assessment of Court Dockets -- Develop a model to assist districts to assess annually, in consultation with the advisory group, the civil and criminal court dockets, "with a view to determining appropriate additional actions that may be taken by the court" to reduce expense and delay in litigation, as required by § 475. (FY 92 ff)	CAD(OB) COSD	✓ RESCH

**VII. DISSEMINATION OF LITIGATION MANAGEMENT TECHNIQUES**

Section 479 of the Act concerns "information on litigation management and cost and delay reduction." Section 479(a) directs the Judicial Conference to prepare a report on all districts' expense and delay reduction plans. The Judicial Conference must also, under § 479(b), continue studying, and make recommendations to the districts concerning, "ways to improve litigation management and dispute resolution services."

Tasks	AO	FJC
<p>1. Disseminating New Litigation Management Techniques -- The Judicial Conference is directed under § 479(b)(1) and (2) to study, on a continuing basis, "ways to improve litigation management and dispute resolution services" and to convey its findings to the district courts. The AO and FJC can assist the Judicial Conference in part by issuing regular updates on litigation management, ADR and other cost and delay reduction techniques (see 2., below). (FY 91 ff)</p>	<p>LPA                      OJCS                      CAD(OB)</p>	<p>√                      RESCH                      PUB                      E&amp;T                      SES</p>
<p>2. Collecting Information on Litigation Management Techniques -- The AO and FJC can assist the Judicial Conference fulfill its obligations under § 479 by collecting data regularly on the plans implemented by all districts, including the specific provisions and experience under them. Data and analyses could be made available either by periodic published reports or through a clearinghouse service (see 1., above). (FY 91 ff)</p>	<p>CAD(OB)                      COSD                      OPES</p>	<p>√                      RESCH</p>
<p>3. Integration of Litigation Management and Cost and Delay Reduction Knowledge -- Section § 479(c) mandates that the Judicial Conference produce, and revise regularly, a "Manual for Litigation Management and Cost and Delay Reduction" for use by district courts. Section 479(c)(2) requires that this manual be prepared "after careful evaluation" of the pilot and demonstration programs, and all other districts' expense and delay reduction plans (see IV.2; VI.1, above). An early preparatory step might involve developing a method for integrating all of the information to be received under the provisions of the Act. (FY 94-5)</p>	<p>CAD(PB)                      COSD,                      JD,MD</p>	<p>√                      RESCH</p>
<p>4. Format and Objectives for Litigation Manual -- Develop objectives and a format for the "Manual for Litigation Management and Cost and Delay Reduction," mandated by § 479(c). Section 479(c)(3) requires that the manual include descriptions and analyses of the most effective litigation management, cost and delay reduction, and ADR programs, as determined by the Judicial Conference, AO and FJC (see 1. and 2., above). The manual may be a follow-on from the FJC Deskbook for Litigation Management. (FY 95)</p>	<p>CAD(PB)                      COSD,                      JD, MD</p>	<p>√                      RESCH</p>

### VIII. PROVIDING JUDICIAL OFFICER CASE LOAD DATA

Section 476 requires the semiannual preparation of reports on the status of pending matters assigned to each judicial officer. Section 481 requires that each district have the capability to retrieve the information required to be reported in § 476, and mandates that uniform reporting standards be established for major data events, such as criteria for dismissal of a case and calculation of time pending for motions and trials.

Tasks	AO	FJC
1. Semiannual Report on All Judicial Officers' Dockets -- As required in § 476(a), prepare and make available to the public a semiannual report disclosing for each judicial officer the number of motions pending for more than six months, the number of bench trials pending for more than six months and the number of cases pending more than three years, identifying the names of the cases. (FY 91 ff)	✓ CAD(OB) COSD LPA	
2. Automated Data Collection Capability -- Ensure, as required by § 481(a), that each district is capable of collecting the automated case data indicated in § 476. (FY 91)	✓ COSD CAD	
<i>Districts                      given                      authority                      to                      prescribe                      standards</i> 3. Standardizing Case Data Collection -- In accordance with § 481(b), develop standards for "uniform categorization or characterization of judicial actions." Although the Act only cites two examples of data items that should be standardized, it might be desirable to make all case status definitions consistent with, or readily convertible to, AO/FJC data collection categories used in ongoing time studies and to be used in studies under the Act and other studies. (FY 91)	✓ COSD SD CAD	✓ RESCH

IX. FINAL REPORT ON EXPENSE AND DELAY REDUCTION PLANS

Section 479(a) requires that the Judicial Conference prepare, by December 1, 1994, a "comprehensive report" on all expense and delay reduction plans submitted by the districts under § 472(d).

Tasks	AO	FJC
1. Final Study of Plans -- Conduct a study, including analysis and evaluation, to assist preparation of the Judicial Conference's "comprehensive report" required by § 479(a) on the expense and delay reduction plans implemented by all districts. (FY 94)	CAD(OB) COSD	✓ RESCH
2. Judicial Conference Report -- Prepare a draft format and outline for the Judicial Conference's report on all districts' expense and delay reduction plans. (FY 94)	✓ OJCS CAD(PB)	RESCH

## APPENDIX

### IMPORTANT STATUTORY DEADLINES: CIVIL JUSTICE REFORM ACT OF 1990

DEADLINE	TASK	REFERENCES
January 1, 1991	Pilot and Demonstration Programs begin.	III. (introduction)
March 1, 1991	All districts appoint Advisory Groups.	III. 1., 2.
December 31, 1991	Early Implementation Districts implement expense and delay reduction plans.	IV. 1., 2.
December 31, 1991	Pilot Program districts implement expense and delay reduction plans.	III. 1., 2.
June 1, 1992	Judicial Conference report on Early Implementation Districts.	IV. 2.
December 1, 1993	All districts implement expense and delay reduction plans.	VI. 1., 2., 4.
January 1, 1994	Mandatory Pilot Program ends.	III. (introduction)
December 1, 1994	Judicial Conference report on all districts' expense and delay reduction plans.	IX. 1., 2.
December 31, 1995	Pilot and Demonstration Programs end.	III., IV. (introduction)
December 31, 1995	Judicial Conference Pilot Program study report.	III. 3., 4., 5.
December 31, 1995	Judicial Conference Demonstration Program report	V. 1., 2.
December 1, 1997	The requirements of §§ 471 - 478 expire.	VI. (introduction)



ADMINISTRATIVE OFFICE OF THE  
UNITED STATES COURTS

WASHINGTON, D.C. 20544

L. RALPH MECHAM  
DIRECTOR

JAMES E. MACKLIN, JR.  
DEPUTY DIRECTOR

December 20, 1990

MEMORANDUM TO: CHIEF JUDGES, UNITED STATES COURTS OF APPEALS  
JUDGES, UNITED STATES DISTRICT COURTS  
UNITED STATES MAGISTRATE JUDGES  
CIRCUIT EXECUTIVES  
DISTRICT COURT EXECUTIVES  
CLERKS, UNITED STATES DISTRICT COURTS

SUBJECT: Implementation of Civil Justice Reform Act of 1990

The Judicial Improvements Act of 1990, Public Law No. 101-650, was signed by the President on December 1, 1990. Title I of that legislation consists of the "Civil Justice Reform Act of 1990" (the "Act") which has been commonly known as the "Biden Bill." The main provisions of the Act are summarized in the attached document.

Included in the summary is a detailed discussion relating to the selection of advisory groups to develop expense and delay reduction plans which, according to the Act, must be accomplished in every district by March 1, 1991. This discussion incorporates the recommendations of the Subcommittee on Case Management of the Judicial Conference Committee on Court Administration and Case Management which met in Washington on November 19, 1990. This Subcommittee has been given the task of coordinating implementation of the Act. It will recommend to the full Committee that the Conference abrogate the 14 Point Plan which also dealt with the improvement of case management practices in the courts. The courts will be receiving more materials providing information and guidance on implementation of the Act early next year after the meeting of the Committee on Court Administration and Case Management.

The staff of the Court Administration Division is available to answer questions regarding the work of the Committee.

A handwritten signature in cursive script, reading "L. Ralph Mecham".

L. Ralph Mecham

Attachment



## Civil Justice Reform Act

The Civil Justice Reform Act requires the implementation of civil justice expense and delay reduction plans in all district courts within three years following enactment. The Act authorizes up to \$25 million in funds to be appropriated for implementation, but no funds have been appropriated by Congress. The Act designates those courts which implement their plans by December 31, 1991, as "Early Implementation District Courts." These courts may receive additional resources, such as technological and personnel support once funds for implementation are appropriated. Early implementation may take place no sooner than June 30, 1991.

Each court may develop its own plan or adopt a model plan to be developed by the Judicial Conference. The purpose of each plan must be "to facilitate deliberate adjudication of civil cases on the merits, monitor discovery, improve litigation management, and ensure just, speedy, and inexpensive resolutions of civil disputes."

The chief judge of each district court must appoint an advisory group within 90 days after enactment of the bill to assist in the development of an expense and delay reduction plan. The group must include the United States attorney (or designee) and "attorneys and other persons who are representative of major categories of litigants in such court." The chief judge may designate a reporter for the group, who may be compensated according to guidelines established by the Judicial Conference if implementation funds become available.

Each advisory group is required initially to submit a report containing an assessment of the court's workload and a recommendation that the court adopt a model plan or recommend measures, rules, and programs that would constitute the court's plan. After considering the group's recommendations, the court must implement a plan and distribute copies to the judicial council of the circuit and all chief district judges in the circuit. The chief district judges and the chief judge of the circuit then serve as a committee to review each court's plan and suggest revisions. Each plan must be reviewed by the Judicial Conference, which may request the district court to make additional revisions.

The components of each court's plan are not mandated; however, in Section 473 the Act lists six principles and six techniques of litigation management and cost and delay reduction which the courts and advisory groups must consider and may include in their plans. The principles refer to the involvement during pretrial case management of a "judicial officer," which, by definition, includes a magistrate judge.

delay in civil litigation, including alternative dispute resolution.

The Act requires that an independent organization with expertise in the area of federal court management compare the results from the ten pilot courts with ten comparable districts which were not required to adhere to the litigation management principles. The Judicial Conference must present the results of this independent study to Congress by December 31, 1995, and recommend whether some or all courts should be required to incorporate the six principles. If the principles do not prove effective, the Judicial Conference must adopt and implement alternative cost and delay reduction programs.

The district courts must assess their plans annually and, in so doing, must consult with their advisory groups. The Director of the Administrative Office is required to prepare a semiannual report, available to the public, that discloses certain information concerning the caseload of each federal district judge and magistrate judge, namely: 1) the number of motions pending for more than six months and the name of each case in which the motion has been pending; 2) the number and case names of bench trials that have been submitted for more than six months; and 3) the number and names of cases that have not been terminated within three years of filing.

### Advisory Groups

This section presents an overview of the advisory group as contemplated in the legislation and examines the bill with regard to appointment, composition, and the role and duties of the advisory group. Also included are suggestions to the courts from the Subcommittee on Case Management of the Judicial Conference Committee on Court Administration and Case Management regarding selection of advisory groups, reporters and funding.

#### 1. Appointment of Advisory Groups.

The Act provides that "[w]ithin ninety days after the date of the enactment of this chapter, the advisory group required in each United States district court...shall be appointed by the chief judge of each district court, after consultation with the other judges of such court." 28 U.S.C. § 478(a) (All references to Title 28 are included in Section 103 of the Act). The advisory group must be appointed by March 1, 1991.

#### 2. Composition of Advisory Groups.

Section 478(b) of Title 28 requires that an advisory group "shall be balanced and include attorneys and other persons who

in accordance with guidelines to be established by the Judicial Conference..." According to Congress, a reporter is to be designated by the chief judge for the advisory group "to record the group's deliberations and prepare the report required under section 472(b)." S. Rep. No. 101-416, 101st Cong., 2d Sess. 62 (1990); H. Rep. No. 101-732, 101st Cong., 2d Sess. 19 (1990). The Congress provided no further guidance on the role or compensation of the reporter in the legislative history accompanying this bill.

Section 478(f) provides that "members of an advisory group of a United States district court and any person designated as a reporter for such group shall be considered as independent contractors of such court when in performance of official duties of the advisory group and may not, solely by reason of service..., be prohibited from practicing law before such court."

### 3. Role and Duties of Advisory Groups.

Section 472(a) of Title 28 provides for the implementation and development or selection of a civil justice expense and delay reduction plan by each district court only "after consideration of the recommendations of an advisory group appointed in accordance with section 478..." The advisory group is required by § 472(b) "to submit to the court a report which shall be made available to the public" and which shall include: an assessment of the state of the court's civil and criminal dockets; the basis for its recommendation either to develop a new plan or to select a model plan; recommended measures, rules and programs; and a discussion of the principles and guidelines of litigation management and cost and delay reduction which are detailed in § 473.

Section 472(c)(2) provides that the recommendations of the advisory group also "take into account the particular needs and circumstances of the district court, litigants in such court and the litigants' attorneys." Section 472(c)(3) provides that the advisory group must "ensure that its recommended actions include significant contributions" made by these parties.

According to the legislative history, §§ 472(c)(2) and (c)(3) are intended to assure that the interests and particular needs of all players in the litigation process (district court, litigants, litigants' attorneys) are considered and that significant contributions from them are included in the advisory group's recommendations. As stated in the Senate and House reports,

[c]ontributions by one source alone will not be sufficient to address adequately the cost and delay problems. All participants in the civil justice system must shoulder responsibility for reducing costs and delays and facilitating access to the courts.

operations will contribute greatly to the advisory group's effectiveness. In addition, there are, at present, no funds available to compensate a reporter. Should funding become available, the Subcommittee will recommend guidelines for compensation of reporters at that time.

6. Guidelines for Expenditure of Funds for Advisory Group.

The Subcommittee suggests that the advisory groups be reimbursed for travel and transportation expenses in the same manner as the local rules advisory committees are reimbursed in accordance with 5 U.S.C. § 5703. See 28 U.S.C. § 2077(b). However, as is the case with compensation of reporters, no funds are presently available to fund this travel. If travel funds are necessary for your district, you may wish to wait for funds to be appropriated for that purpose before convening the advisory group.

7. Report to Subcommittee on Case Management.

The Subcommittee requests that, after appointing the advisory group by the deadline mandated in the bill, each chief judge send a list of advisory group members, providing the affiliation as well as the names of the members, to the Court Administration Division of the Administrative Office. This will enable the subcommittee to keep abreast of the progress of implementation.

L. RALPH MECHAM  
DIRECTOR

JAMES E. MACKLIN, JR.  
DEPUTY DIRECTOR

ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS  
WASHINGTON, D.C. 20544

PETER G. MCCABE  
ASSISTANT DIRECTOR  
PROGRAM MANAGEMENT

December 6, 1990

**MEMORANDUM TO:** William R. Burchill, Robert E. Feidler,  
Karen K. Siegel, Raymond A. Karam,  
Edwin L. Stoorza, Clarence A. Lee

**SUBJECT:** Biden Bill Task Force

As you will recall, the Director assigned me the responsibility of directing the Administrative Office's implementation of the Civil Justice Reform Act of 1990 (the "Biden Bill"). A meeting of representatives of all the assistant directors, the Judicial Conference Secretariat, Legislative and Public Affairs and the Office of the General Counsel was held on November 9th to discuss the establishment of a task force to implement the bill.

At the meeting it was agreed that we would establish committees to work together on various areas and the composition of the committees was established. A summary of the discussion at the meeting is attached which contains a list of committees and the offices, divisions, branches, etc., which constitute the membership of each. I have also designated a coordinator for each committee, and have designated Abel Mattos, Acting Chief of the Programs Branch of the Court Administration Division, as coordinator of the task force.

Please send Abel a list of the people whom you designate to serve on these committees by Wednesday, December 12th. We would like to have the work begun immediately.

*Deane R. Lee*  
for Peter G. McCabe

cc: Abel Mattos

## Meeting on Implementation of the Civil Justice Reform Act of 1990

Pursuant to the Director's assignment of responsibility for directing the Administrative Office's efforts in implementing civil justice reform legislation, Peter McCabe, Assistant Director for Program Management, held an organizational meeting on November 9, 1990 at which representatives of all the assistant directors, the Judicial Conference Secretariat, Legislative and Public Affairs, and the Office of General Counsel were present.

Mr. McCabe announced the formation of a task force to coordinate the A.O.'s effort and assigned Abel Mattos of the Court Administration Division to coordinate the work of the group. Mr. Mattos reviewed the draft timeline for the CJRA and identified the tasks to be completed by the Judicial Conference, AO and the FJC in implementing the CJRA. The draft "Timeline" and the memorandum regarding "Tasks to be Completed" are attached.

Mr. McCabe recommended that the group identify those individuals and/or A.O. units who should to serve on committees related to specific issues. He noted that this was a preliminary meeting intended to identify those persons and divisions with an interest or involvement in implementation of the legislation and that future meetings would include FJC representatives. Mr. McCabe emphasized that these task forces are tentative and their organization would be formalized after discussions with the Director.

Committees relating to the following tasks were organized:

### 1. Communication to the Field.

It was agreed that a 3-10 page document be prepared for dissemination to court officials explaining the CJRA. The document would address issues raised by the legislation and generally discuss what must be done by the courts. The document would emphasize the time frame of implementation and priorities for immediate action by the courts. The document will be issued after the November 19th meeting of the Case Management and Court Administration Committee.

Composition of Committee: CAD (PB), LPA, and OGC

Designated Coordinator: CAD (PB)

### 2. Impact and Funding.

Funds authorized by Congress for implementation of CJRA have not been appropriated. The meeting discussed the question of whether or not current resources are adequate and, if additional funding is required, where the funding will come from. The

development of an impact statement and/or supplemental appropriations request is goal of committee.

Composition of Committee: LPA, CAD (PB), FMD, MD, OPAA, and COSD

Designated Coordinator: OPAA

3. Advisory Committee Implementation Manual

The development of a pamphlet or manual for use by the advisory committees in each district to provide guidance to the committees in assessing the condition of their dockets was discussed.

Composition of Committee: CAD (PB), JD, SD, LPA, OGC, MD and OJCS

Designated Coordinator: OJCS

4. Model Plans

The CJRA's requirement for development of model plans by the early implementation courts was discussed with particular reference to whether or not the plan should be developed immediately. The plans are to be implemented by the pilot courts by December 31, 1991 (under the draft timeline).

Composition of Committee: CAD (PB), MD, JD OJCS, and OGC

Designated Coordinator: CAD (PB)

5. ICMS Changes - Standardization of Dictionary

The group discussed the impact implementation of CJRA would have on the ICMS systems and the changes and dictionary standardization that will be required.

Composition of Committee: CAD (AB), COSD, MD, and SD

Designated Coordinator: COSD

6. Staffing Plans

The meeting discussed the possible need to develop staffing plans for the courts to meet the staffing needs which arise from the plans.

Composition of Committee: CAD(OB), and PB

Designated Coordinator: CAD(OB)

7. Independent Analysis.

The CJRA calls for review by an independent organization of the pilot program in connection with the Judicial Conference's report to Congress. It was agreed that CAD would initiate the process of analyzing cost, starting date and candidate organizations for this study.

Designated Coordinator: CAD(PB)

8. Early Training Programs.

The CJRA requires that the AO and FJC develop and conduct case management education and training programs for the courts. An immediate need for action in this area was expressed. The committee will have to work closely with FJC.

Composition of Committee: CAD (OB), OPES, and COSD

Designated Coordinator: CAD(OB)

These minutes will be distributed to the attendees of the meeting and the FJC. It is expected that there will be maximum coordination of implementation efforts with the FJC.



UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF TEXAS

FEDERAL BUILDING

221 WEST FERGUSON STREET

TYLER, TEXAS 75702

December 4, 1990

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CHAMBERS OF

ROBERT M. PARKER

CHIEF JUDGE

December 4, 1990

3. Courts that are heavily impacted with criminal cases should be represented.

9. Some courts that... occasionally...  
Honorable Louis Charles Bechtle  
Chief Judge, Eastern District of Pennsylvania  
17613 U.S. Courthouse  
Independence Mall West  
601 Market Street  
Philadelphia, Pennsylvania 19106

statistically, and from...  
Dear Chief Judge Bechtle:

The Civil Justice Reform Act of 1990 was signed by the President on December 1, 1990. The Act requires the implementation of civil justice expense and delay reduction plans in all district courts within three years following enactment. The Act further requires the Judicial Conference to select ten districts to comprise a pilot project for evaluation of six mandatory provisions.

The task of identifying potential pilot courts has fallen to the Court Administration and Case Management Committee and its case management subcommittee. The subcommittee developed the following criteria for selection purposes.

1. At least five of the courts were required to be from large metropolitan areas pursuant to Section 105 (b) of the Act.
2. The other five should include small and medium size courts.
3. Each court selected should have one or more "comparable courts" that could be used for comparison and evaluation purposes by the "independent Organization" selected to evaluate the effects of the Act pursuant to Section 105 (c).
4. To the extent possible, each geographical area of the country should be represented.
5. No more than two courts should be from the same circuit.
6. Whether a particular court desired to participate should not be a significant determining factor in the selection process.
7. Factors that would tend to skew results should be avoided to the extent possible.

December 4, 1990

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8. Courts that are heavily impacted with criminal cases

should be represented to the attention of Diane R. Lee

of the Division Administrative Office of the

9. Some courts that have problems occasioned by the district being spread over a large geographical area should be included.

Sincerely,

10. Some statewide districts should be included.

11. The ten pilot courts should be made up of districts that statistically, and from a case management standpoint, are perceived as having maximum, medium and minimal success.

In my judgment, the last factor is probably the most important. If we limited the selection process to districts that statistically are on the lower end of the spectrum as far as termination rates, time for termination, three-year old cases, jury utilization, number of civil trials, and hours on the bench are concerned, then the results of the study may not be reflective of the impact of this legislation on other districts. It is our perception that the mere fact that increased attention will be paid to "problem areas" may produce improvement statistically for a district; and therefore, it would be easy for the Congress to conclude in three years or five years that since this legislation produced a significant degree of improvement then the mandatory provision should apply to all the courts. We need to know the impact of the Act on average courts and on courts that are considered to be having success in the area of case management. It may very well be that some of the provisions of the Act adversely impact the efficiency of some courts.

The subcommittee expressly considered whether a court's willingness to participate as a pilot should be a factor in the selection process. It was concluded that in order for the pilot to be a valid test of the impact of the Act, courts not wishing to participate in the pilot should not be excluded. Accordingly, the subcommittee decided not to seek volunteers but rather select a variety of different type courts.

The Eastern District of Pennsylvania has been preliminarily selected as a pilot court. This letter is sent with full appreciation of the fact that it will not be received gladly in some quarters. I can only assure you that we will do our best to see that the provisions of the Act receive a fair test from the perspective of the entire judiciary.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS  
FEDERAL BUILDING  
251 WEST VERMONT STREET  
TYLER, TEXAS 75702

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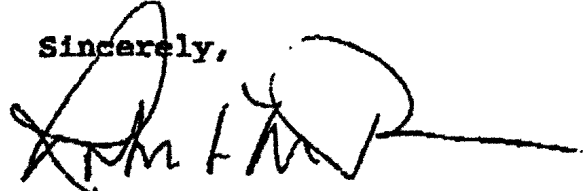
FRANKS OF  
ROBERT M. PARKER

December 4, 1990

CHIEF JUDGE

Please forward any comments to the attention of Duane R. Lee,  
Chief, Court Administration Division, Administrative Office of the  
United States Courts, 1120 Vermont Avenue, N.W., Washington, D.C.  
20544.

Sincerely,



Robert M. Parker

RMP/vs