CIVIL JUSTICE REFORM ACT REPORT

DEVELOPMENT AND IMPLEMENTATION OF PLANS BY EARLY IMPLEMENTATION DISTRICTS AND PILOT COURTS

PREPARED BY THE
JUDICIAL CONFERENCE OF THE UNITED STATES

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A. Introduction

Section 103(c) of Pub.L. 101-650 (the Civil Justice Reform Act of 1990) requires that the Judicial Conference prepare a report by June 1, 1992, on the civil justice delay and expense reduction plans developed and implemented by the United States district courts. The report is intended to deal specifically with so-called "early implementation district courts." Under the terms of the Act, a district court that implements a plan by December 31, 1991, may qualify as an early implementation court. A district so designated may apply to the Judicial Conference for additional resources, including funds for technological and personnel support and information systems, necessary to implement its plan.

The Act also provides for the designation of "demonstration" courts and "pilot" courts. In section 104 of the Act, Congress designated five district courts to "experiment with" and demonstrate various methods of reducing cost and delay in civil litigation. The United States district courts for the Western District of Michigan and the Northern District of Ohio were designated to demonstrate systems of differentiated case management that provide for the assignment of cases to appropriate processing tracks. The United States district courts for the Northern District of California, the Northern District of West Virginia, and the Western District of Missouri were designated to demonstrate various methods of alternative dispute resolution (ADR). Under section 104(a)(2) of the Act, a demonstration court may also qualify as an early implementation district court if it implements a civil justice expense and delay reduction plan by December 31, 1991.

Ten pilot courts designated by the Judicial Conference are required under section 105 of the Act to include in their plans the six principles and guidelines of litigation management and cost and delay reduction identified in section 473(a) of title 28, United States Code. The following United States district courts have been designated by the Judicial Conference as pilot courts: 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. The pilot courts are considered early implementation courts because they are required under section 105(b) of the Act to implement their plans by December 31, 1991.

In addition to including in their plans the principles and guidelines identified in 28 U.S.C. § 473(a), the pilot courts must also "consider" including the techniques for litigation management enumerated in 28 U.S.C. § 473(b). Other courts, including the

demonstration courts, must consider including the principles, guidelines, and techniques set out in section 473(a) and (b), but are not required to include them in their plans.

B. Progress to Date

A total of thirty-four district courts implemented plans by December 31, 1991, and therefore qualified for designation as early implementation districts. Each plan is supported by the report of an advisory group appointed under section 478 of title 28, United States Code. The 34 early implementation courts include 10 pilot courts, 4 demonstration courts, and 20 other courts. Summaries of the advisory group reports and the plans adopted by the courts are attached to this report as Appendix I. The plans themselves comprise Appendix II. Each plan has been reviewed by a committee of judges within each circuit as required under section 474 of title 28, United States Code.*

The plans were also reviewed by a subcommittee of the Judicial Conference's Committee on Court Administration and Case Management. The subcommittee focused its efforts on reducing the expense of litigation as well as delay. In addition, the subcommittee examined each plan to ensure that the requirements of 28 U.S.C. § 473(a) and (b) had been satisfied.

The recommendations of the subcommittee will be considered by the full committee at its meeting in June of 1992. The committee will then submit recommendations to the Executive Committee of the Judicial Conference for approval.

C. Procedure Used by Advisory Groups

The statute assigns several specific responsibilities to the advisory groups, including an analysis of the condition of the civil and criminal dockets; examination of the causes of cost and delay; and formulation of recommendations for reducing cost and delay. The advisory groups' work and their written reports provided the materials that most districts used to fashion their cost and delay reduction plans. To support their recommendations to the courts, many advisory groups conducted extensive inquiries using a variety of methods.

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*The specific suggestions made by the review committees are described in subsection D. of this section. Any changes made subsequent to circuit committee review are not included in the appendices.

Data collection was essential to the work of the advisory groups. In addition to using the data and analyses provided by the Federal Judicial Center and the Administrative Office in a memorandum sent to the advisory groups in March 1991, several groups collected data through the use of mail questionnaires, telephone surveys, personal interviews, and open forums.

Judges and court personnel were an important source of information for the advisory groups. Several groups made an effort to speak with the district judges, magistrate judges, and bankruptcy judges on the court as well as key court personnel, law clerks, probation officers, and U.S. marshals. All groups at least solicited input from judicial officers in the district.

Many advisory groups also consulted attorneys and litigants who had litigated cases in the court. Most were surveyed through mailed questionnaires, which frequently sought information about the extent and causes of cost and delay in civil litigation.

Some advisory groups called on local bar associations to provide forums for discussion and to review draft reports and plans. Finding public input important, several groups placed "notice" newspaper advertisements and sent letters to various lawyer associations.

Some groups had the assistance of state court cost and delay reduction efforts and the data and methods employed in those studies. One example of many is the Southern District of New York, which sought the assistance of the New York-based Modern Court Committee in suggestions for modernization of the court.

The advisory group members themselves were a source for much information. Most members were federal practitioners who knew from experience the workings of the various courts and the outcomes and effects of the rules employed by a particular court. A few groups sought the assistance of outside consultants - for example, in using surveys - but most relied on the expertise of the group's members.

Several reports did not contain complete information about data collection methods. Exhibit A provides an account of the major data collection methods used by those courts that included this information in their reports.

D. Review Procedures

Section 474 of the Act requires that a circuit committee review each advisory group report and civil justice expense and delay reduction plan. Section 474(a) 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 the review committee is to make suggestions for additional action or modifications to the plans as the committee deems appropriate.

Section 474(b) also requires review of each report and plan by the Judicial Conference of the United States. The Judicial Conference may request the district to take additional action if the Conference determines that the district has not met statutory requirements or has not responded adequately to the condition of the civil docket or the recommendations of the advisory group.

The reviews by the circuit committees for each of the 34 districts that have adopted plans have been completed and are discussed below. The Federal Judicial Center developed a checklist to assist the circuit review committees with their tasks. Most, but not all, committees used the checklist. The Court Administration and Case Management Committee of the Judicial Conference has begun the review on behalf of the Judicial Conference.

After careful review of the advisory group reports and plans within their circuits, the review committees in the First, Second, Third, Fourth, Eighth, and Tenth Circuits approved the plans without suggesting modifications. The reviews conducted by these committees included the reports and plans of the following district courts: the District of Massachusetts; the Southern District of New York; the Eastern District of New York; the Eastern District of Pennsylvania; the District of New Jersey; the District of the Virgin Islands; the District of Delaware; the Eastern District of Virginia; the Northern District of West Virginia; the Southern District of West Virginia; the Eastern District of Arkansas; the Western District of Oklahoma; the District of Kansas; the District of Utah; and the District of Wyoming.

Other circuit review committees made specific suggestions or discussed the plans at length.

The committee for the Fifth Circuit reviewed the reports and plans of the Southern and Eastern Districts of Texas. No formal suggestions were made. Informally, however, the circuit review committee discussed two issues: 1) the Southern District of Texas' failure to address non-statutory contingent fees; and 2) the Southern District of Texas' provisions for controlling discovery. The plan of the Southern District of Texas was amended subsequently to provide for stricter controls on discovery as a consequence of the review committee's discussion.

The Sixth Circuit's committee reviewed the reports and plans of the Western District of Tennessee, the Western District of Michigan, and the Northern District of Ohio. No formal suggestions were made to any of the courts. The review did discuss

in detail, however, all sections of the reports and plans that did not clearly meet the requirements of the Act.

The Seventh Circuit's committee reviewed the reports and plans of the Southern District of Illinois, the Northern District of Indiana, the Southern District of Indiana, the Eastern District of Wisconsin, and the Western District of Wisconsin. The committee suggested that the Northern District of Indiana reconsider the advisory group's recommendation that the Court establish a simple uniform order governing trial. The committee also suggested that the Judicial Conference consider adopting an admissions fee to fund reimbursement of court-appointed attorneys.

The committee for the Ninth Circuit reviewed the reports and plans of the Eastern District of California, the Northern District of California, the Southern District of California, and the districts of Idaho, Montana, and Oregon. The committee made the following general comments: 1) that most plans lacked a specific implementation schedule; and 2) that some districts discussed the six elements of 28 U.S.C. § 473(a) in the advisory group report but not in the expense and delay reduction plan. With regard to the latter comments, the review committee was concerned that a misleading impression might result if the two documents are evaluated separately.

The Ninth Circuit review committee also offered the following suggestions and comments with regard to individual plans:

The review committee noted that in the Eastern District of California the plan did not specifically state that the court had considered and rejected differential case management (DCM). The committee also requested that the court provide a time table for implementation of its plan. Subsequently, the district adopted an implementation schedule and amended the plan to respond to the suggestions of the review committee.

The review committee noted that in the Northern District of California the court had not appended to its plan details of its aggressive early intervention program scheduled to begin on July 1, 1992. In a letter from Magistrate Judge Wayne Brazil dated April 3, 1992, the district outlined its expected amendments to the plan, which will include the details of the early intervention program. The amendments will be made before July 1, 1992.

The review committee recommended to the court in the Southern District of California that its decision to give judicial officer authority to place limits on discovery be included in an addendum to the plan. Second, the court was asked to explain how magistrate judges would be able to assist in early judicial intervention when the report of an independent consultant concluded that magistrate judges were being used to their

fullest capacity in criminal cases. Third, the review committee noted that the plan did not contain a requirement that discovery motions be certified.

The review committee questioned the validity of the District of Montana's plan to refer all civil cases automatically to the magistrate judges. The committee also requested clarification on the plan's peer review provision.

The review committee stated that the plan for the District of Oregon should include a requirement for certification of discovery motions. The committee was unaware that existing local rules required such certification. On April 23, 1992 the district amended its plan to reflect the existing requirement of certification of discovery motions.

The review committee for the Eleventh Circuit reviewed the reports and plans for the Southern District of Florida and the Northern District of Georgia. The committee made the following suggestions and comments:

The committee asked the Southern District of Florida to consider placing limits on the length and number of depositions. The court was also asked to provide for greater use of early pretrial scheduling conferences to narrow the issues and limit discovery.

The committee asked the Northern District of Georgia to reexamine its local rule dealing with document disclosure. The committee also questioned: 1) whether the district's treatment of ADR met the statutory mandate; and 2) whether setting a trial for a month certain met the statutory mandate of early firm trial dates.

II. Overview of Contents of Plans

A. Changes Adopted in Court Procedures

In adopting their expense and delay reduction plans, the courts effected numerous changes in civil case processing. The following text is intended to cover some of the major case management concepts, ADR, and changes found in the plans. Exhibit B constitutes a comprehensive list.

1. Alternative Dispute Resolution (ADR)

Under 28 U.S.C. § 473(a)(6), the cost and delay reduction plans of the pilot courts must provide "authorization to refer appropriate cases to alternative dispute resolution programs that (A) have been designated for use in a district court or (B) the

court may make available, including mediation, minitrial, and summary jury trial." All other courts are to consider and may include in their plans authorization to refer cases to ADR.

The Act also asks 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 non-binding conference conducted early in the litigation." 28 U.S.C. § 473(b)(4). In practice, early neutral evaluation is generally included in the ADR family.

Although change and innovation have characterized the field of ADR, several types of programs and procedures are now well-developed and in use in state and federal courts. Some of these, such as summary jury trials and minitrials, can be used by individual judges on an ad hoc basis. Others, such as court-annexed arbitration, require centralized management and greater staff and monetary resources. In some jurisdictions, the local bar association or private companies may provide an alternative, such as mediation, to which the court can refer cases.

Settlement conferences, though not always included under the heading of ADR, have long provided an alternative to trial. These conferences may be offered informally by individual judicial officers or may become institutionalized in mandatory programs such as settlement weeks.

The remainder of this subsection describes the ADR programs that existed in the 34 courts that are the subject of this report prior to passage of the Civil Justice Reform Act. Changes made subsequent to passage of the Act are also described. The descriptions are based solely on review of the reports and plans. Local rules or other documents were not consulted.

Prior to passage of the Civil Justice Reform Act, the 34 courts varied greatly in their use of alternative dispute resolution procedures. Six of the courts offered no methods other than the traditional litigation path while three or four offered a choice of court-managed programs such as arbitration, mediation, and summary jury trial.

The great majority of the 34 early implementation courts fell between these extremes, providing one or two procedures for assisting dispute resolution. Nearly all of these courts offered some form of settlement assistance, ranging from individual judge encouragement of settlement to routine referral to settlement judges or magistrate judges.

Clearly the most common alternative dispute resolution practice in the past, as reflected in the 34 advisory group reports and cost and delay reduction plans adopted,

has been reliance on the individual judge, rather than court-wide formalized programs, and on the consent of parties, rather than mandatory participation.

In response to the Civil Justice Reform Act, most of the 34 early implementation districts have provided for greater use of alternative dispute resolution mechanisms. (Exhibit C constitutes a list of ADR programs that existed in the 34 courts before and after passage of the Civil Justice Reform Act.) The most common approach has been to strengthen an existing practice by including it in the local rules or by adding requirements. For example, a number of courts that have encouraged settlement in the past will now hold settlement conferences in every case, will hold them earlier, and will require attendance by parties or a representative with authority to make binding decisions.

Several courts have responded to the Act by expanding existing programs to additional divisions or by extending an existing program to additional cases. One court, for example, will expand its magistrate judge mediation program from one division to the entire district. Another has revised its local rules to bring more cases into its arbitration program.

A very common response among the early implementation districts has been to incorporate into the plan or local rules language encouraging discussion and use of alternative dispute resolution mechanisms. The plans in many districts, for example, 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.

It is not clear from many of the plans whether procedures are in place to facilitate such referrals. For example, where referral is to a method such as mediation, the judge and parties generally need a set of guidelines for selecting the mediator, for conducting the mediation session, and so on. In several districts, the advisory groups recommended that the court look to the local bar association to set up such programs or to train and provide neutral representatives.

A number of courts, and in particular several that had provided no alternatives in the past, have established substantial new programs. Two of the pilot courts, for example, offered no alternative mechanisms prior to passage of the Act but will provide a full array of court-annexed procedures in the future, including early neutral evaluation, mediation, settlement conferences, minitrials, summary jury trials, and arbitration (if authorized). Four other districts that had also offered no alternative dispute resolution programs will now provide such alternatives.

In addition, several courts that already had well-established ADR programs will be adding new programs. For example, two courts that have used mandatory arbitration will now provide court-annexed voluntary mediation programs as well. The three or four courts that offered a full array of ADR programs in the past will continue to do so, although in one instance it appears that a mandatory arbitration program will now become voluntary.

Some of the new programs will be experimental. In one of the new mediation programs, for instance, the court will assign only two thirds of the eligible cases to the program, reserving the other third as a control group against which to measure the effects of mediation. In addition to such formal experimental designs, a number of courts view their new programs as experimental in the sense that the courts' experience with the programs will determine whether they are revised or maintained.

Three courts declined to adopt any form of ADR, though they had no pre-existing programs in place. While endorsing the concept of ADR, one court noted a lack of judicial resources and a practicing bar too small to provide a sufficient number of neutral representatives. In the other two, the court and the advisory group concluded that no ADR methods were needed in the district. One of these courts, however, decided to publish a pamphlet describing non-court ADR options available in the district.

Two courts declined to add any new forms of ADR to their existing programs, both of which involve routine scheduling of settlement conferences with judicial officers. Both courts argued that existing programs were working well and no new programs were needed.

One of the pilot courts, after lengthy consideration of the various alternative methods for dispute resolution, adopted mandatory arbitration. Subsequently, the General Counsel of the Administrative Office of the U.S. Courts issued an opinion stating that no courts other than the ten authorized by statute are permitted to adopt mandatory arbitration. The court notes in its plan that it will implement the arbitration program only if and when given authorization to do so, and the plan requests the Judicial Conference to seek such authorization.

The two most common alternative dispute resolution programs in the 34 early implementation districts are the traditional one of settlement conferences with a judicial officer and court-annexed mediation with either a judicial officer or an attorney mediator. Each of these two forms of ADR can be found in about half of the early implementation districts. Less commonly used are summary jury trials, minitrials, or early neutral evaluation.

Each of the early implementation districts has fashioned a response to the Act's requirement that all district courts consider authorizing alternative dispute resolution programs. Nearly all of them have provided such authorization, some with modest programs, some with a wide variety of methods for resolving disputes outside the traditional channels.

2. The Systematic, Differential Treatment of Civil Cases

Section 473(a)(1) of title 28, United States Code, requires of the pilot and two demonstration courts (The Western District of Michigan and the Northern District of Ohio), and recommends to all other courts, the consideration of a management system offering the concept of the " systematic, differential treatment of civil cases...", more commonly known as differentiated case management (DCM). 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 melds 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 the establishment of case processing "tracks" keyed to serve broad case types. Each track carries with it a specific set of procedures and case event timelines based on estimated resources available and judicial time needed for disposition. The typings are usually based upon case complexity and/or the usual needs of particular types of cases. Track designations can be as simple as "expedited, standard, and complex." Regardless of their designation, the tracks are designed to streamline the use of judicial and court resources.

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

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

Of the 34 courts that have submitted plans, 26 have adopted some form of DCM. While the approaches to DCM differ from court to court, they 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 the broad areas of case characteristics that are assigned to them (e.g., "administrative" - to include cases emanating from agencies or subject to a statutory hearing or disposition scheme). Designations as to complexity may be employed alone or in conjunction with case types or characteristics. Eight of the 26 subject courts chose the former option, while ten adopted a combination of both complexity and other designations. Two 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 11 track designation approaches.

A total of 16 courts designed or were in the process of designing standardized rules, procedures, and orders keyed to specific case tracks. In four of these courts, the least complex, or most expedited, track was 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

Two of the 26 courts that adopted DCM decided not to use formalized "tracks" for case management. The remainder established tracks numbering from two to six. Three and six track systems were the most favored, representing eight and seven of the subject courts, respectively. Four courts chose two tracks, three courts chose four tracks, and two courts chose five.

c. Assignment of Cases to Tracks

The methods of assigning cases to particular tracks vary from court to court. Nine courts will rely on judges alone to make the decision, usually through the vehicle of an early case management conference. In other courts, the decision will be made by a judge in conjunction with a clerk of court (two courts); with staff attorneys (1 court); with parties (one court); and through pleadings (one court). Three plans specified that

the "court" should make the case assignment, one court designated the clerk of court, and one left the designation to the parties.

In those plans not dependant on an early judicial track assignment decision, greater reliance was placed upon the specificity of track characteristics to facilitate clerical or party selection of tracks. In these instances, procedures for appeal from an initial track assignment were usually established.

3. Discovery Management

The area of discovery and the management of the discovery process have been identified by numerous commentators and advisory groups as the source of high litigation costs, delay, or both. Of the six case management guidelines and principles set out in 28 U.S.C. § 473, three concern discovery. The work of the advisory groups and the plans submitted by the courts reflect the importance of discovery as a critical element in case management.

a. Discovery Plans, Voluntary Discovery Exchanges, and Discovery Motion Certification

As the chart at Exhibit B indicates, all 34 pilot and early implementation courts adopt the use of the "discovery/case management conferences" recommended in subsection 473(a)(3) of the Act. The conferences are used to formulate a case management strategy to guide the litigation to final disposition. Many plans require the discussion of settlement possibilities; the setting of deadlines for completion of various pre-trial tasks; motions scheduling; consideration of ADR options; and the formulation of trial time estimates. Many courts require that the case management plan be jointly submitted by counsel for plaintiff and defendant. The use of pre-trial conferences of various kinds (case management; status; scheduling; final pre-trial) for case management planning constitutes a standard procedural feature of all 34 courts operating under the aegis of Act.

All courts submitting plans under the Act encourage the use of cost-effective discovery techniques (see Exhibit B). Most plans encourage voluntary exchanges of discovery information between litigants, phased discovery, and limits on the extent of discovery. Some courts also limit the time and length of depositions. Twenty-three courts have adopted requirements consistent with section 473(a)(5) of the Act, which calls for certification, prior to the filing of a discovery motion, that the moving party has made a good faith effort to resolve the dispute with opposing counsel (see Exhibit B).

b. Mandatory Disclosure

The plans of 21 courts require mandatory disclosure of certain discovery information. Generally, the plans call for the parties' early release (usually within a short period after the defendant's first appearance in the case) of "core" case information prior to any other formal discovery activity. The rationale for this practice is similar to that of "staged" or telescoped discovery: to reduce costs and minimize delay through the prompt release of sufficient information to facilitate early evaluation of the case.

"Core" case information, as used in the plans, refers generally to:

1) The name, address, and telephone numbers of each individual likely to have information that bears significantly on any claim or defense;
2) A copy of, or description by category and location of, all documents and tangible things in the possession or control of the party that are likely to bear significantly on any claim or defense;
3) A computation of damages; and
4) Insurance agreements that may be used to satisfy all or part of the judgment.

The high percentage of courts adopting mandatory disclosure provisions is noteworthy because the Civil Justice Reform Act neither requires nor suggests their use. Section 473(a)(4) of the Act calls for the "encouragement of cost-effective discovery through voluntary exchange of information among litigants and their attorneys and through cooperative discovery devices." The plans submitted, however, go much further than this requirement.

One possible explanation for the interest shown in mandatory disclosure is that the proposed amendments to Rule 26, Federal Rules of Civil Procedure, would require mandatory disclosure of the information listed above. Several courts have explicitly fashioned their mandatory disclosure provisions after proposed Rule 26.

The mandatory disclosure provisions that appear in the plans are listed in Exhibit D. The list contains only courts that have included mandatory disclosure as part of their cost and delay reduction plans. The list does not include courts that merely encourage voluntary disclosure or courts that had adopted mandatory disclosure provisions prior to the passage of the Civil Justice Reform Act.

4. Additional Plan Features

This section is intended to highlight some of the additional concepts developed by courts and their advisory groups to reduce cost and delay in federal litigation. Some of the concepts may be incorporated into the model cost and delay reduction plans developed by the Judicial Conference.

a. Court Management Policies

An individual judge can do little to reduce the number of cases filed in the court or to obtain the resources needed to handle the caseload. The court as a whole, however, can formulate policies to govern the court's business generally. The court management policies 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 pre-trial 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) Establish a panel of litigants and attorneys to monitor the performance of alternative dispute resolution programs;
7) Form a multi-agency advisory committee on criminal case management; and
8) Adopt uniform pretrial procedures throughout the court system.

b. Case Management Techniques

Case management is the core function of the adjudicative process. Judges have the power and responsibility to control the adversary process in specific cases, including the duration and nature of courtroom proceedings, 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 by one or more courts.

1) Conduct settlement conferences three weeks out of every year; include in the program all track II (standard) cases in which discovery has been completed and that 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; and
7) Impose costs as a sanction in cases where the court is not notified of settlement prior to the week of trial.

c. 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 case discovery management initiatives (e.g., the certification of discovery motions, the filing of joint discovery plans, limits on the number of discovery tools employed, etc.) 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; and
5) Use mandatory disclosure of core case information as a prelude to phased discovery techniques.

d. Information/Education

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 depends on at least three factors: cohesive, determined, and consistent judicial leadership; adequate resources to support management tools; and long-term, broad-based information and education programs. The latter factor is the least understood, but perhaps the most important in achieving long-term change. 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 Civil Justice Reform Act 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 the public on the Civil Justice Reform Act, 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; and
9) Establish a resource center to aid in cooperative research among appointed counsel.

B. Recommendations for Action by Congress

Section 102(2) of the Act recognizes that Congress, as well as the courts, the litigants, and the litigants' attorneys, "share responsibility for cost and delay in civil litigation and its impact on access to the courts, adjudication of cases on the merits, and the ability of the civil justice system to provide proper and timely judicial relief for aggrieved parties." Section 102(3) states the "the solutions to problems of cost and delay must include significant contributions ... by the Congress...." In general, the advisory groups agreed with these statements. Nearly every advisory group report made recommendations for Congressional action or cited as causes of excessive cost

and delay conditions that can only be remedied through Congressional action. In some instances the plans adopted by the courts included specific recommendations for action by Congress.

The topics noted in advisory group reports and court plans that require congressional action can be divided into seven categories: 1)judicial vacancies; 2) "federalization" of criminal prosecutions; 3) shortages of courtroom and office space; 4) criminal procedural requirements; 5) assessment of the impact on the judiciary of proposed legislation; 6) personnel needs; and 7) miscellaneous concerns.

1. Judicial Vacancies

In 17 of the 34 reports and court plans, the lengthy delay in filling judicial vacancies was cited as a significant impediment to expeditious civil case processing. Two additional districts noted that while judicial vacancies were not yet a problem, certain judges were about to assume senior status. The advisory groups and courts expressed concern that they would be required to function with less than a full complement of judges for an extended period.

While most advisory groups and courts simply stated that judicial vacancies were a problem and encouraged Congress and the Executive Branch to fill vacancies promptly, several courts made specific recommendations that might be implemented to remedy the problem. One district, the Eastern District of Pennsylvania, suggested that Congress hold hearings to address the process of authorizing new judgeships and filling vacancies. Another district, the Southern District of Florida, sent several members of its advisory group to meet with Senator Mack to discuss the detrimental effects of judicial vacancies. The district's advisory group report urges the Executive Branch, the Senate, the American Bar Association, and the FBI to review their procedures to expedite the process.

The courts realize that the problem cannot be addressed solely by Congress. They nonetheless urge that action be taken.

2. "Federalization" of Criminal Prosecutions

Twelve advisory groups and courts expressed concern over the increasing "federalization" of crimes formerly prosecuted in the state courts. In their view, increased drug and firearm prosecutions in federal court are affecting the civil docket.

Many advisory groups and courts expressed particular concern over pending legislation that would "federalize" any crime committed with a handgun that traveled in interstate commerce. The courts obviously recognize the importance of reducing

violent crime in this country, but fear that such legislation will severely impede the processing of civil cases.

In the opinion of many advisory groups and courts, drug charges involving small quantities of narcotics should be prosecuted in state court. Federal prosecutions should be limited to cases involving large drug distribution networks and conspiracies that cross state lines.

Statistics also showed that individual prosecutorial policies of U.S. Attorneys produced varying effects upon the civil docket.

3. Criminal Procedural Requirements

Various criminal procedural requirements placed upon the courts by Act of Congress have a significant impact on the civil docket. Sixteen advisory groups and courts mentioned the requirements of the Speedy Trial Act, the sentencing guidelines, and mandatory minimum sentences as sources of delay in civil litigation.

Because of the Speedy Trial Act, federal judges must place a priority on criminal cases, especially with regard to bench time. Many advisory groups and courts concluded that setting early, firm trial dates for civil cases was difficult because criminal cases must be heard first. One advisory group recommended that individual judges be excused from trying criminal cases for a period of two months every year to allow them to try civil cases.

Many advisory groups and courts suggested 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. The advisory groups and courts in the District of Idaho and the Southern District of West Virginia recommended repeal of the sentencing guidelines and mandatory minimum sentences. Other advisory groups and courts joined the Western District of Michigan in calling for review and revision of these sentencing procedures.

4. Shortages of Courtroom and Office Space

Five courts indicated that they are experiencing a shortage of courtroom and office space. Some courts such as the District Court for the Virgin Islands are presently constructing additional space, but other courts are awaiting appropriations to do so.

It is difficult to try or settle cases if courtroom and office space is unavailable. Lack of space also limits the use of visiting judges, who might otherwise be of great assistance in deciding cases. Jury rooms, holding cells, and library resources are also lacking in some districts.

5. Assessment of the Impact of Proposed Legislation on the Judiciary

Six advisory groups and courts recommended that Congress give fuller consideration to the impact of proposed legislation on the Judiciary. The District of Idaho recommended that Congress prepare judicial impact statements "prior to the enactment of legislation which substantially impacts upon the federal courts." This sentiment was echoed in other reports and plans. A Judicial Impact Office has been established in the Administrative Office of the U.S. Courts and is currently providing judicial impact statements to Congress.

6. Personnel Needs

Another common recommendation for Congressional action was the authorization of additional Article III judgeships, magistrate judgeships, and law clerkships. Eight districts requested additional magistrate judges to implement their plans. Three districts expressed the view that magistrate judges should have two law clerks rather than one. Four courts cited the need for additional Article III judgeships. Several courts recommended authorization of additional law clerks for Article III judges.

Although the Judicial Conference takes initial action on personnel programs affecting the Judiciary, authorization of Article III judgeships and funding for the programs must come from Congress.

7. Miscellaneous Concerns

The advisory group and the court in the Northern District of Georgia called for the elimination of diversity jurisdiction for resident plaintiffs and a general increase in the jurisdictional amount in other diversity actions. The advisory groups and courts in the Western District of Oklahoma and the Southern District of Illinois also recommended an increase in the jurisdictional amount for diversity cases. One court, the District of Idaho, specifically recommended against an increase in the jurisdictional amount.

Based on the opinion of the General Counsel of the Administrative Office of the U.S. Courts, the advisory group and the court in the Northern District of Georgia

concluded that legislation might be needed to implement their non-binding court-annexed arbitration program.

The advisory group and the court in the Southern District of Indiana recommended the passage of legislation allowing the assessment of prejudgment interest (to accrue from the time the complaint is filed), to encourage defendants to settle cases sooner.

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

The advisory group and the court in the Southern District of Illinois also recommended that Congress increase the salaries of judges and court staff to attract and retain highly qualified individuals.

The advisory groups and the courts in the District of Oregon and the Western District of Michigan recommended increased funding to compensate and reimburse attorneys representing indigent parties. The District of Oregon also expressed the opinion that cases filed under the Endangered Species Act and the Americans with Disabilities Act will increase the backlog of civil cases.

C. Recommendations for Action by the Judicial Conference of the United States and Others within the Judiciary

In devising their plans, various courts and advisory groups stated that the Judicial Conference of the United States, the Administrative Office of the U.S. Courts, and the Federal Judicial Center could assist in reducing expense and delay in civil litigation. The courts and advisory groups made specific recommendations, which are set forth below. The recommendations will be referred to the appropriate entity within the Judiciary for consideration and possible action.

In the Southern District of Indiana, the advisory group and the court noted that the district's sizable prisoner caseload was being handled effectively by a pro se law clerk. The advisory group and the court opined that without the assistance of this law clerk, prisoner cases would begin to back up, resulting in cost and delay in the processing of civil cases (including prisoner petitions). The advisory group and the

court expressed the view that the pro se law clerk positions would be more beneficial to the courts in general if the positions were made permanent and if the potential for higher pay existed. The court and advisory group recommended that the Judicial Conference consider changing the tenure and salaries of pro se law clerk positions.

In the Northern District of West Virginia, the advisory group noted that narcotics charges involving minimal amounts of drugs were being filed in large numbers in the district. The filings were impeding the court's ability to decide civil cases expeditiously. The advisory group therefore recommended that the Judicial Conference adopt a resolution endorsing Recommendation A of Chapter 2 of the Report of the Federal Courts Study Committee (April 2, 1990). The report recommends that the U.S. Attorney's Office refer to state prosecutors those cases involving minimal amounts of drugs with no interstate or international connections. The Judicial Conference in September 1990 endorsed this recommendation of the Federal Courts Study Committee.

In the Southern District of West Virginia, the advisory group and the court perceived the need for an additional law clerk position to assist the magistrate judge at Charleston. The advisory group noted that the civil justice expense and delay reduction plan recommended to the court would increase the workload of the magistrate judges. The court and the advisory group recommended that the Judicial Conference authorize another law clerk position to the chief judge's office, and that the new position be assigned to the magistrate judge at Charleston.

The advisory group in the Eastern District of Arkansas recommended that the court hire an independent consultant to review each judge's practices and advise the court regarding information management and office efficiency. In its expense and delay reduction plan, the court resolved instead that it would rely upon the substantial resources of the Administrative Office (AO) to "keep itself informed of the latest technological advances regarding information, management and office efficiency and take advantage of such advances where appropriate."

In the Eastern District of California, the advisory group and the court concluded that inadequate law clerk staffing could contribute to delay in civil litigation. It was therefore recommended that the Judicial Conference consider authorizing a third law clerk for district judges and a second law clerk for magistrate judges in individual cases upon a showing of need. The staffing changes sought by the advisory group and the court would require additional funding by Congress.

In the District of Idaho, the advisory group and the court expressed the view that the Judicial Conference should revise its formula for determining the allocation of pro se law clerks. At present, the determination is based upon the number of prisoner

filings in a district. The court in Idaho would prefer that the Judicial Conference look instead to the percentage of prisoner cases on the civil docket. A new allocation formula for the pro se law clerks has been developed and will be presented to the Judicial Resources Committee of the Judicial Conference this month.

In the Southern District of Indiana, the advisory group and the court expressed the opinion that court personnel can play an important role in reducing cost and delay in civil cases. If, however, the salaries and official descriptions of the positions are inflexible, the goals of the court may be frustrated. The advisory group and the court recommend to the Administrative Office that each judge and magistrate judge have the ability to capitalize on the strengths of his or her employees by redefining job descriptions and pay scales as appropriate.

In the District of New Jersey, the advisory group and the court recommended that the Statistical Branch of the Administrative Office should develop a "median disposition time" statistic for individual categories of cases. The recommendation is based upon the concern that under the present system, court statistics may become skewed by limited categories of cases that consume substantial resources and require extended time periods for disposition. The court opined that development of a new statistical system would provide a more accurate picture of the federal courts nationwide.

In the Western District of Tennessee, the advisory group and the court concluded that judges visiting from outside the district could assist in reducing cost and delay in civil litigation. Courtroom space for the judges, however, is limited. The court resolved to participate in long range planning with the Administrative Office to meet future space and courtroom requirements.

In the District of Alaska and the Eastern District of California, the courts recommended that the Judicial Conference consider revising the case weighting system to produce a more accurate depiction of the civil case docket. Both courts handle a high volume of unique cases that are difficult to characterize, such as litigation involving Native Americans in Alaska and habeas corpus death penalty cases in the Eastern District of California. The Federal Judicial Center is currently conducting a judicial time study to revise the case weighting system.

In the Northern District of California, the advisory group expressed the view that the court should be given credit for judge time spent in conducting settlement conferences. The advisory group resolved to work with the Federal Judicial Center to achieve this result. Judicial workload statistics are under the jurisdiction of the Judicial Conference's Committee on Judicial Resources. The Federal Judicial Center will assist the Committee in responding to this recommendation.

D. Recommendations for Amendments to the Federal Rules of Civil Procedure

In devising their plans, various courts and advisory groups concluded that civil justice expense and delay could be reduced in part by amending the Federal Rules of Civil Procedure. The courts and advisory groups made specific recommendations, which are set forth below. The recommendations will be referred to the appropriate entity within the Judiciary for consideration and possible action.

Rule 4(j) of the Federal Rules of Civil Procedure requires that the summons and complaint be served upon the defendant within 120 days after the filing of the complaint. In the Eastern District of Pennsylvania, the advisory group and the court recommended that the period from filing to service be shortened because it delays the disposition of civil cases.

Under rule 12, Fed.R.Civ.P., an answer to a complaint must generally be served within 20 days. If, however, the opposing party serves a motion to dismiss, the time for serving the answer is tolled until the court rules upon the motion. In the Northern District of Georgia, the advisory group and the court were of the view that the answer should be served within 20 days regardless of whether a motion to dismiss is pending. The advisory group and the court recommended that rule 12 be amended to eliminate the tolling provision. This change is not included in the proposed amendments to the civil rules submitted in May of 1992 to the Standing Committee on Rules of Practice and Procedure and the Advisory Committee on Civil Rules.

The advisory group in the Southern District of Illinois recommended amendments to Rule 68, Fed.R.Civ.P. The 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 rule only addresses offers of judgment and does cover non-judgment settlement offers. The advisory group recommends that the rule be amended to cover all parties and all settlement offers. No amendment to the rule of this nature has been proposed to date.

The advisory group in the District of Oregon expressed the general view that the Federal Rules of Civil Procedure should be amended to increase the court's authority to regulate, limit, and control discovery. While the proposed amendments to the civil rules do not address the court's concerns entirely, the proposed amendments to rule 37 would grant the courts power to sanction parties for failure to voluntarily disclose certain discovery information under proposed amended rule 26.

The advisory groups and courts in the Southern District of Texas, the Northern District of West Virginia, and the Eastern District of Wisconsin expressly cited the proposed amendments to rule 26 as a means to reduce expense and delay in civil litigation. Under the proposed amendments, parties will have a duty to disclose, without awaiting formal discovery requests, certain basic information that is needed in most cases to prepare for trial or make an informed decision about settlement. The proposed rule requires all parties: 1) early in the case to exchange information regarding potential witnesses, documentary evidence, damages, and insurance; 2) at an appropriate time during the discovery period to identify expert witnesses and provide a detailed written statement of the discovery that may be offered at trial through specially retained experts; and 3) as the trial date approaches, to identify the particular evidence that may be offered at trial. It should be noted that many of the civil justice expense and delay reduction plans adopted by the courts to date incorporate the voluntary disclosure requirements of proposed amended rule 26.

III. Implementation of the Act in the Demonstration Courts

Section 104 of the Act instructs the Judicial Conference to conduct demonstration programs and to study the experience of the five courts named as demonstration districts. Congress specifically designated the courts that would serve as demonstration districts. This section describes the programs adopted by these five courts. The statute permits, but does not require, the demonstration districts to be early implementation districts. Four of the five courts chose to seek early implementation status and adopted expense and delay reduction plans by December 31, 1992.

Under section 104(b)(1) of the Act, two of the demonstration districts, the Northern District of Ohio and the Western District of Michigan, must "experiment with systems of differentiated case management that shall provide specifically for the assignment of cases to appropriate processing tracks that operate under distinct and explicit rules, procedures, and timeframes for completion of discovery and for trial."

Under section 104(b)(2) of the Act, the other three districts, the Northern District of California, the Western District of Missouri, and the Northern District of West Virginia, are to "experiment with various methods of reducing cost and delay in civil litigation, including alternative dispute resolution, that such district courts and the Judicial Conference shall select."

As required by the Act, the Judicial Conference has reviewed and approved the program designs and implementation plans in three of the demonstration districts. Exhibit E depicts the implementation status of the demonstration districts.

Section 104(d) of the Act requires the Judicial Conference to "study the experience of the courts under the demonstration program" and to report to Congress in 1995 on the "results" of these programs. The study, which will be conducted by the Federal Judicial Center in consultation with the Administrative Office of the U.S. Courts, will assess whether the demonstration programs have achieved their stated goals and what effect the programs have had on the courts, the bar, and litigants.

The demonstration programs vary considerably in their details but seek common goals: to foster early case evaluation by the parties, to control discovery, to use judicial resources effectively, and to encourage use of alternative dispute resolution procedures. A variety of methods are used, from the early "meet and confer" requirements in the Northern District of Ohio and the Northern District of California to the mandatory use of ADR in the Western District of Missouri.

Brief descriptions of the goals, requirements, and procedures of the demonstration programs are set out below.

A. The Northern District of Ohio

The differentiated case management program in the Northern District of Ohio has several goals: to reduce unnecessary time spent between case events, to provide discovery controls, to encourage use of ADR, and to establish firm trial dates.

To meet these goals, the court has adopted a program that provides individualized case management through five management tracks. The "expedited," "standard," and "complex" tracks are defined by their limits on case duration and discovery. Cases on the expedited track, for example, must be resolved within nine months of filing while cases on the complex track have twenty-four months for completion. Each track also specifies the timing and scope of discovery, ranging from 100 days and 15 interrogatories for expedited cases to tailored discovery for complex cases. Two tracks are reserved for specific types of cases, the first for the court's mass torts cases, which have been a large part of the docket for several years, and the other for the "administrative" cases, which require little judicial involvement. (See Exhibit F for a more detailed description of the case management tracks.)

Initial track assignment is made by a judicial officer, based on information provided by parties when submitting initial pleadings. To encourage early case evaluation, the court requires counsel to discuss this assignment and a number of other matters, such as the scope and timing of discovery, prior to an initial case management conference, and to submit stipulations to matters agreed upon and briefs on areas of disagreement.

The conference, which is held within sixty days of filing and is attended by both counsel and parties, is used to plan the management of the case. A firm trial date is not set, however, until a status conference is held midway between the initial case management conference and the date for completing discovery. At any time the court or the parties may seek referral of the case to one of the court's ADR programs (early neutral evaluation, arbitration, mediation, or summary jury or bench trial).

To ensure that case progress will not be delayed by pending motions, the court holds regularly scheduled motions days. In addition, the court requires that magistrate judges issue reports and recommendations on dispositive motions within 30 days of the reference date and that judges decide non-case-dispositive motions within 30 days and dispositive motions within 60 days of hearing. The court also provides that cases may be reassigned to any available judge when the assigned judge cannot hear it within one week of the scheduled trial date.

B. The Western District of Michigan

The Western District of Michigan's demonstration program formalizes a pre-existing *de facto* practice of differentiated civil case management. The program has several goals: to increase uniformity among judicial officers, to enhance predictability in case handling, to make effective use of litigants and attorneys in case management, and to maximize judicial resources.

When the program begins on September 1, 1992, the court will assign cases to one of five tracks, each with its own requirements concerning disclosure/discovery, degree of judicial involvement, referral to ADR, and length of time to trial. Cases on Track 1, the court's shortest track, will be scheduled for completion within six months of defendant's first answer, while cases on Track 5, the longest track, will be permitted two years for resolution. Judge involvement is likely to be low in cases on the first track and will increase on each track, with close judicial monitoring and frequent conferences likely for Track 5 cases. (See Exhibit F for a more detailed description of the case management tracks.)

To avoid rote assignment of cases to management tracks, the assignment will be made after discussion between a judicial officer and the parties in an initial case management conference held by telephone within two weeks of defendant's first answer. A large number of matters will be discussed during this conference, including the nature of pre-discovery disclosures, numerical limits on discovery tools, deadlines for discovery and motions, and referral to one of the court's ADR programs (arbitration, summary jury trial, mediation, or minitrial). If a track assignment is made, a firm trial date will be set.

To ensure that case disposition is not delayed by tardy motions rulings, the court's program provides for a stay of judicial proceedings, upon motion of one or more parties, when a dispositive or non-case-dispositive motion is left undecided for more than 60 days. To ensure that cases will be tried when scheduled, the court has revised its trailer calendar and will encourage trials on consent by magistrate judges. On the court's fastest track, which is voluntary, the case may be tried by any available judge, including a magistrate judge.

C. The Northern District of California

The demonstration program in the Northern District of California currently has two components, the court's pre-existing early neutral evaluation program and a new case management pilot program scheduled to take effect July 1, 1992. The court is conducting a study of the early neutral evaluation program and will revise the program if the study identifies any problems. The court is also assessing the value of adopting a court-annexed mediation program. If such a program is needed, the court will implement it in early 1993 and will include it in the demonstration program.

The new component of the demonstration program - the case management pilot program - is designed to address three of the major causes of cost and delay: excessive reliance on motions and formal discovery, inattention to cases in their early stages, and insufficient involvement of clients in managing their cases. To address these problems, the pilot program provides for early exchange of core information and for discussion between parties about the scope of discovery and the costs of litigation. Certain types of cases, such as prisoner, social security, and bankruptcy cases, are exempt from the program.

The pilot program requires that all cases subject to the program suspend formal discovery until after the first case management conference, unless all parties stipulate otherwise. Within 100 days of filing parties must make all disclosures and must then meet to identify issues, discuss evidence, consider settlement and ADR, and develop and file a proposed case management plan. The proposed case management plan must include recommended limits on each discovery tool and dates for discovery completion, dispositive motions, final pretrial conference, and trial. Within 130 days of filing, the court will hold the initial case management conference and will issue a case management order to govern the case.

Cases that are subject to the pilot case management program may also be assigned to the court's early arbitration or early neutral evaluation programs. Cases subject to both the pilot case management and arbitration programs are to comply with the provisions of both programs. In cases assigned to both the pilot program and early

neutral evaluation, the judge may postpone the initial case management conference for a short time to permit parties to capitalize on the benefits of early neutral evaluation.

D. The Western District of Missouri

The demonstration program in the Western District of Missouri took effect by general order on January 1, 1992. The program, titled "the early assessment program," is designed to encourage parties to assess their case at an early stage.

Certain types of cases, such as bankruptcy, social security, and prisoner pro se cases, are exempt from the program. One of three eligible cases is randomly and automatically assigned to the program. The parties in another third of the eligible cases are informed about the program and permitted to participate if they choose, while the remaining third follow the court's regular procedures. Because of the experimental nature of the program, parties are not permitted to opt out of their assignment except for good cause shown.

For cases assigned to the program, counsel and the parties must meet with the program administrator (a qualified attorney) within 30 days of completion of responsive pleadings to discuss the management of the case. At this early assessment meeting, parties must select one of the ADR options provided by the court or work with the program administrator to design an appropriate ADR procedure. The court provides arbitration, mediation, early neutral evaluation, and magistrate judge settlement conferences. If parties cannot agree on an ADR procedure, the program administrator assigns one. The initial ADR session must be held within 90 days of the early assessment meeting.

At the early assessment meeting the program administrator also works with the parties to identify their discovery needs. If additional discovery is needed or if the parties have selected early neutral evaluation, the program administrator helps the parties devise a discovery plan. If appropriate, the program administrator may initiate mediation at this conference.

E. The Northern District of West Virginia

The Northern District of West Virginia has built its demonstration program around the court's three year old settlement week program. The program took effect by general order on January 1, 1992. Its goal is to institutionalize the pre-existing settlement week program, which has been well-received by the bar, and to integrate it with the pretrial process, particularly the scheduling of discovery.

The program relies in part on a case tracking system and in part on a new local rule patterned after proposed amended Rule 26, Fed.R.Civ.P. One track, made up of cases such as student loan and prisoner cases, is managed by the clerk's office. All other cases are assigned initially to the standard track and are governed by the new local rule on discovery, which requires initial disclosure of certain types of information within 30 days after service of answer. Discovery is barred during this period and once commenced must be completed within 180 days after service of answer. The rule also establishes deadlines for disclosure of plaintiff's and defendant's expert witnesses. Altogether, the maximum amount of time for completion of discovery and disclosures is 240 days after service of answer.

If a case is so complex or discovery so extensive that the standard track deadlines cannot be met, the case may be reclassified as complex upon motion by the judge or parties or upon stipulation by the parties and approval by the judge. Complex cases are managed according to discovery deadlines established at an initial case management conference. Initial disclosures must be made at this conference, but other provisions of the disclosure rule are imposed only where the court finds them applicable.

Upon completion of discovery, all cases on the standard and complex tracks are referred to one of at least three yearly settlement week sessions, where they are mediated by trained volunteer mediators. The purpose of the mediation session is to facilitate settlement discussions and to move the case to resolution. Cases that do not settle are scheduled for a prompt final pretrial conference and given a firm trial date.

IV. Conclusion

The Judiciary has made a conscientious effort to meet the requirements of the Civil Justice Reform Act. As of December 31, 1991, 34 of the 94 federal district courts had adopted plans to reduce expense and delay in civil cases. Each plan represents the concerted effort of litigants, attorneys, federal judges, and the public to sol problem. The Judicial Conference is most appreciative of the work of the advisory group members nationwide, lawyers and non-lawyers alike, who volunteered their time to initiate this important, remedial program.

It is too early to determine whether the goals of the Act will be achieved. It is evident, however, that certain possible causes of expense and delay identified in the Act were also found by the advisory groups and courts to be areas of concern. Further, the Judiciary and the public have already derived tangible benefits from the Act. A lively debate has begun between the judges, the practicing bar, and the public at large. New lines of communication have been opened.

Experience shows that the parties to this debate do not always agree. In some instances, the perceptions of lawyers differ from the perceptions of judges. Similarly, the guidelines, principles, and techniques enumerated in the Act cannot always be embraced, given the individual nature of each court.

On one issue the parties agree, and that is, that the debate is healthy and must continue. In accordance with the requirements of the Act, each court will review its plan on an annual basis, in consultation with the court's advisory group. Modifications to the plans will be made, if necessary, to ensure that the goals of the Act are addressed effectively.

Data Collection Methods

District	Judge Intervws	Judge Survey	Attorney Survey	Audit Clerk	Clk/Per Intervws	AO/FJC Statist	Open Forums	Attorney Intervws	Literature Review	Consult.	Litigant Survey	Litigant Intervws
Alaska	x	x	x	x	x	x						
Arkansas-E	x	x	x	x	x	x	Publ./Bar Hrg.				x	
CA-E	x		x		x			x	x			
CA-N	x					x	Publ. Hrg.	x	x			
Delaware	x	x	x	x	x	x						
Florida-S	x		x	x		x	Publ.Hrg.				x	
Georgia-N	x		x	x		x				x		
Ill-S	x		x	x	x	x			x	x		
Indiana-N	x				x	x		x	x			
Indiana-S	x		x		x		State Bar Mtg.	x				
Kansas				x		x						
MA		x		x	x	x		x	x	x		
MI-W	x			x	x	x	Publ. Hrg.	x		x		x
Montana	x		x	x		x						
New Jersey						x						
New York-E	x		x			x	Publ. Hrg.	x		x		
New York-S	x			x		x		x	x	x		
Ohio-N					x					x		
Oklahoma-W	x		x		x	x		x			x	x
Oregon				x		x		x	x			
PA-E	x		x				Publ. Hrg.				x	
Tennessee-W	x		x	x	x	x	CLE/Bar/Publ	x		x	x	
Texas-E	x			x	x	x		x				
Texas-S	x		x	x		x	Workshop/Bar	x	x		x	
Utah			x			x				x	x	
VA-E					x	x	Bar Organiztns		x			
Virgin Islands			x	x								
WI-E	x	x	x		x	x	Bar Mtgs	x	x	x	x	x
WI-W			x	x		x	Publ. Hrg.	x	x			
WV-S			x	x		x						
WV-N				x		x						
Wyoming	x		x		x	x		x			x	

Exhibit A

PRINCIPLE AND GUIDELINES
§ 473 (a) CJRA

Systematic Differential Treatment Civil of Cases (1)	**Early Involvement of Judicial Officer** (2)	**Discovery Case Management** (3)	**Encouragement of Cost Effective Discovery** (4)	**Certification of Discovery Motions** (5)	**ADR Referral System** (6)
Alaska	Alaska	Alaska	Alaska	California (N)+	Alaska
California (N)+	Arkansas (E)	Arkansas (E)	Arkansas (E)	California (S)*	California (E)
California (S)*	California (S)*	California (E)	California (E)	Delaware*	California (N)+
Delaware*	Delaware*	California (N)+	California (N)+	Georgia (N)*	California (S)*
Florida (S)	Florida (S)	California (S)*	California (S)*	Idaho	Delaware*
Georgia (N)*	Georgia (N)+	Delaware*	Delaware*	Illinois (S)	Florida (S)
Illinois (S)	Idaho	Florida (S)	Florida (S)	Indiana (N)	Georgia (N)*
Kansas	Indiana (N)	Georgia (N)*	Georgia (N)*	Indiana (S)	Idaho
Massachusetts	Indiana (S)	Idaho	Idaho	Massachusetts	Illinois (S)
Michigan (W)+	Kansas	Illinois (S)	Illinois (S)	Montana	Indiana (N)
Montana	Massachusetts	Indiana (N)	Indiana (N)	New Jersey	Indiana (S)
New Jersey	Montana	Indiana (S)	Indiana (S)	New York (S)*	Kansas
New York (E)	New Jersey	Kansas	Kansas	Ohio (N)+	Massachusetts
New York (S)*	New York (E)	Massachusetts	Massachusetts	Oklahoma (W)*	Michigan (W)+
Ohio (N)+	New York (S)*	Michigan (W)+	Michigan (W)+	Pennsylvania (E)*	Montana
Oklahoma (W)*	Ohio (N)+	Montana	Montana	Tennessee (W)*	New Jersey
Oregon	Oklahoma (W)*	New Jersey	New Jersey	Texas (S)*	New York (E)
Pennsylvania (E)*	Oregon	New York (E)	New York (E)	Utah*	New York (S)*
Tennessee (W)*	Pennsylvania (E)*	New York (S)*	New York (S)*	Virgin Islands	Ohio (N)+
Texas (E)	Tennessee (W)*	Ohio (N)+	Ohio (N)+	W. Virginia (S)	Oklahoma (W)*
Texas (S)*	Texas (E)	Oklahoma (W)*	Oklahoma (W)*	W. Virginia (N)+	Oregon
Utah*	Texas (S)*	Oregon	Oregon	Wisconsin (E)*	Pennsylvania (E)*
W. Virginia (N)+ W. Virginia (S)	Utah*	Pennsylvania (E)*	Pennsylvania (E)*	Wyoming	Tennessee (W)*
Wisconsin (E)*	W. Virginia (N)+	Tennessee (W)*	Tennessee (W)*		Texas (S)*
Wyoming	W. Virginia (S)	Texas (E)	Texas (E)		Texas (E)
	Wisconsin (E)*	Texas (S)*	Texas (S)*		Utah*
	Wisconsin (W)*	Utah*	Utah*		Virgin Islands
	Wyoming	Virgin Islands	Virgin Islands		W. Virginia (N)+
		Virginia (E)	Virginia (E)		W. Virginia (S)
		W.Virginia (N)+	W.Virginia (N)+		Wisconsin (W)
		W.Virginia (S)	W. Virginia (S)		Wisconsin (E)*
		Wisconsin (E)*	Wisconsin (E)*		Wyoming
		Wisconsin (W)	Wisconsin (W)		
		Wyoming	Wyoming		
Total: 26	Total: 28	Total: 34	Total: 34	Total: 23	Total: 32

Exhibit B

\+ Demonstration Courts
* Pilot Courts

TECHNIQUES
§ 473 (b) CJRA

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)
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.	Alaska Arkansas (E) California (S)* Florida (S) Idaho Indiana (N) Kansas Massachusetts Montana New Jersey New York (E) New York (S)* Ohio (N)+ Oklahoma (W)* Pennsylvania (E)* Tennessee (W)* Texas (S)* Texas (E) Utah* W.Virginia (N)+ W.Virginia (S) Wisconsin (E)* Wisconsin (W) Wyoming Total: 24	Alaska# Arkansas (E) Idaho Texas (E) W. Virginia (S) Total: 5	Alaska California (N)+ California (S)* Idaho Indiana (N) Indiana (S) New York (E) Ohio (N)+ Tennessee (W)* W.Virginia (S) Wisconsin (E)* Wisconsin (W) Total: 12	Alaska Arkansas (E) California (S)* Georgia (N)* Illinois (S) Indiana (N) Kansas Massachusetts Montana New York (E) Ohio (N)+ Pennsylvania (E)* Tennessee (W)* Texas (S)* Virgin Islands W. Virginia (S) Wisconsin (E)* Wyoming Total: 18

+ Demonstration Courts
* Pilot Courts
# Applies only after the first request has been granted

EXHIBIT C

ADR in the Early Implementation Districts

As Reflected in the CJRA Advisory Group Reports and Court Plans

DISTRICT	PRE-EXISTING PROGRAMS	NEW PROGRAMS
AK	Structured settlement conferences	None. Court endorsed concept of ADR but declined advisory group's recommendations to establish ADR programs.
AR-E	None	None. Advisory group and court agreed ADR is not needed. Court will encourage use of ADR procedures independent of the court and will prepare a brochure informing counsel and parties of these options
CA-N	Mandatory early neutral evaluation Mandatory arbitration Settlement conferences Summary jury trial Summary bench trial Special masters	Will continue all previous programs Court is studying whether to add a court-annexed mediation program. Court has pre-existing ADR brochure Court will hire ADR administrator
CA-E	Binding voluntary arbitration Settlement conferences ENE pilot project	Local rule amended to prompt greater use of voluntary arbitration by making it nonbinding Will continue ENE pilot project Court will provide settlement conference at earliest opportunity in case Panel of attorneys established to monitor use of any ADR programs adopted by the court, which may include ENE and others

DISTRICT	PRE-EXISTING PROGRAMS	NEW PROGRAMS
DE	Settlement encouraged	Strengthen settlement efforts by requiring parties to certify at Rule 16 conference that settlement has been discussed Parties must discuss voluntary mediation and binding arbitration at Rule 16 conference (programs as such do not appear to be in place or planned)
FL-S	None	Court approved court-annexed voluntary mediation and appointed a committee to establish it and to study other forms of ADR
GA-N	Settlement conferences	Will continue to use settlement conferences If funding and statutory authority are received, the court will establish: • Nonbinding, mandatory arbitration • Appointment of special masters in complex cases, paid by government and with authority to enter binding decisions
ID	Unknown	Court will establish voluntary court-annexed arbitration and ENE programs Court will experiment with a settlement week program using attorney mediators ADR brochure will be prepared to inform bar and litigants of available options
IL-S	Settlement conference Summary jury trial	Will expand settlement efforts by holding settlement conference (essentially a mediation conference) in every case except such cases as prisoner, social security, etc. Will order SJT where appropriate Other ADR forms will be studied ADR brochure will be prepared and two educational sessions held for bar

DISTRICT	PRE-EXISTING PROGRAMS	NEW PROGRAMS
IN-N	Voluntary early neutral evaluation in one division, with attorney evaluators Magistrate judge mediation Settlement conference	Will expand voluntary early neutral evaluation to one judge in each of two additional divisions Will continue magistrate judge mediation Mandatory disclosure adopted, which will move parties to earlier settlement posture Will study use of minitrial and SJT and use cautiously in exceptionally costly cases Will discuss use of arbitration, mediation, minitrial, and SJT at case management conference (an arbitration program as such does not appear to be in place or planned)
IN-S	Judicial officers actively encourage settlement	Will continue settlement efforts by discussing settlement at every conference and by using a variety of methods such as informal early neutral evaluation with a magistrate judge Will discuss ADR, including mediation, arbitration, ENE, minitrial, and SJT, at case management conference, but court declined to adopt advisory group's proposed detailed ADR rule which would have established ADR programs Clerk will add ADR descriptions to practitioner's handbook and will prepare ADR brochure
KS	Mandatory mediation with magistrate or voluntary mediation with attorney mediator chosen from court-maintained list (Wichita only)	Expand mediation program to all divisions but without mandatory provision Judge may encourage parties to consider mediation, minitrial, SJT, or other ADR forms; parties and court should be creative in developing procedures for the particular case
MA	Unknown	Judges will facilitate settlement and encourage use of voluntary mediation, SJT, or minitrial at every conference (a mediation program as such does not appear to be in place; the advisory group encouraged the court to use the Boston Bar Association mediation program)

Idaho: 9th Circuit

- core information
- expert witness information including:
  - qualifications
  - opinion
  - data relied on by expert
  - exhibits to be used
  - lists of previous testimony by expert

Illinois (Southern): 7th Circuit

- self-executing disclosure of core information
- duty to disclose is on-going
- disclosure is a pre-requisite to discovery

Indiana (Northern): 7th Circuit
Comparison District

- three different experiments requiring different judges to require disclosure of different levels of core information
- lists of special damages must be included in the computation of damages
- authorizations to release medical reports
- a short statement of expert witness testimony

Massachusetts: 1st Circuit

- core information
- contracts if applicable
- expert witness reports
- medical records in personal injury case
- disclosure is a pre-requisite to discovery

Montana: 9th Circuit

- core information
- pre-requisite to discovery

New York (Eastern): 2nd Circuit
Comparison District

- 18 month experiment beginning February 2, 1992
- core information
- documents relied on in drafting the pleadings
- sanctions pursuant to Fed. R. Civ. P 37(b) will apply for failures to disclose
- expert witness testimony
- pretrial disclosure
  - witnesses
  - any testimony to be presented by deposition
  - identify documents to be used as exhibits

New York (Southern): 2nd circuit
Pilot Court

- standardized discovery in prisoner pro se cases will be established

Oklahoma (Western): 10th Circuit
Pilot Court

- core information
- prior to status/scheduling conference
- continuing obligation
- sanctions will apply to failures to disclose

Pennsylvania (Eastern): 3rd Circuit
Pilot Court

- self-executing disclosure of core information
- pre-requisite to discovery

Texas (Southern): 5th Circuit
Pilot Court

- experiment with disclosure of core information under proposed Fed. R. Civ. P. 26 in a limited number of cases

Texas (Eastern): 5th Circuit

- disclosure applies to cases in three of the six tracks
- core information
- pretrial disclosure
  - witnesses
  - any testimony to be presented by deposition
  - identify exhibits

Virgin Islands: 3rd Circuit

- self-executing disclosure of core information
- duty to supplement

West Virginia (Northern): 4th Circuit
Demonstration Court

- disclosure of core information
  fashioned after proposed Fed. R. Civ. P. 26

Wisconsin (Western): 4th Circuit

- expert witnesses disclosure at preliminary pretrial conference
  - qualifications
  - substance of testimony

Wisconsin (Eastern): 7th Circuit
Pilot Court

- mandatory interrogatories aimed at core information
- simple cases are exempt
- expert witness testimony

Wyoming: 10th Circuit

- core information

Implementation Status of the Demonstration Districts

District	Demonstration Program	Implementation Date	Implementation Method	Cases Subject to Program
OH-N	Differentiated Case Management	1/1/92	New local rules	All civil cases filed on or after 1/1/92. Judge may refer pre-1992 cases with notice to parties
MI-W	Differentiated Case Management	9/1/92	The Plan and orders in individual cases	All civil cases filed on or after 9/1/92
CA-N	Early Neutral Evaluation	Pre-existing Program	Pre-existing general order	Evenly-numbered cases of certain casetypes and not in arbitration program
	Case Management Pilot Program	7/1/92	General order	All civil cases except such cases as social security, prisoner petitions, etc.
MO-W	Early Assessment Program	1/1/92	General order	Excepting cases such as prisoner and social security, one-third of all civil cases are randomly assigned to program
WV-N	Settlement Week	Pre-existing Program	General order	All civil cases except such cases as social security, prisoner petitions, etc.
	Discovery Controls	1/1/92	New local rule	

Exhibit F

The Differentiated Case Management Demonstration Programs

in the

Western District of Michigan

and the

Northern District of Ohio

This exhibit provides additional details about the two differentiated case management programs established under Sec. 104 of the Civil Justice Reform Act of 1990.

The Northern District of Ohio

The Northern District of Ohio implemented a differentiated case management program on January 1, 1992. Based on information provided by the parties with their initial pleadings, the court assigns cases to one of five management tracks, each with its own limits on case duration and the extent of discovery. Track assignments may be changed at an initial case management conference held within sixty days of filing.

The five case management tracks and their requirements are as follows:

Expedited Track

completed within nine months from filing; discovery period of no more than 100 days; 15 interrogatories and one deposition per party; highly suited to ADR; example: contract case with 2 parties, limited documentary evidence, and the main issue is interpretation of a contract

Standard Track (most cases will be on this track)

completed within 15 months from filing; discovery period of no more than 200 days; 35 interrogatories and 3 depositions per side; moderate to high ADR suitability; example: employment case with discrete factual issues, little documentary evidence, and few legal issue

Complex Track

completed within 24 months of filing; pretrial schedule and scope will be determined by case complexity; example: products liability case with several defendants, voluminous; some ADR suitability; example: products liability case with several defendants, voluminous documentary evidence, numerous fact and expert witnesses, and numerous procedural and legal issues

Administrative Track

referred to magistrate judges; suitable for summary disposition; little or no discovery; examples: social security, student loan, habeas corpus, and foreclosures

Mass Torts Track

Procedures will be adapted to the special needs of the case, following the procedures recommended for asbestos cases, which are set out in the court's manual on these cases.

The Western District of Michigan

The differentiated case tracking program in the Western District of Michigan is scheduled to take effect on September 1, 1992. The program provides five case management tracks, each with its own timeframe for case resolution and its own requirements regarding discovery and alternative dispute resolution. Cases will be assigned to a track by agreement of the judicial officer and the parties after an initial case management conference held by telephone within two weeks of defendant's answer.

The five tracks and their requirements are as follows:

Track I: Super Fast Track

"purely voluntary" track; trial within 6 months of defendant's first appearance; little judge involvement; disclosure; few issues or parties; trial date unlikely to be changed or discovery postponed; ADR unlikely; status conferences rare and by telephone; trial by any judicial officer, including magistrate judge, if assigned judge unavailable

Track II: Fast Track

trial in 6-9 months; few parties or issues; status conference 30 days after defendant's appearance; low judge involvement; limits on interroga-tories and depositions; disclosure encouraged; selective use of ADR (no minitrial or summary jury trial); settlement conferences with required attendance by representatives with authority to bind; encouraged to waive trial by Article III judge; no extensive management orders

Track III: Standard Track

trial in 9-12 months; more parties and issues; status conference with judicial officer 30 days after defendant's first appearance, for which parties may submit joint case management plan; case management order issued; regular use of ENE (no minitrial or summary jury trial); disclosure encouraged; limits on interrogatories, depositions, and witnesses; may order phased discovery; scheduled on trailer docket

Track IV: Complex Track

trial in 1-2 years; if longer than 18 months, judicial officer must certify necessity; multiple parties and complicated issues; close judicial monitoring through periodic status conferences, discovery management order, and case management order; deadlines for motions; judge may order staged or bifurcated resolution; settlement conferences initiated by court; summary jury trial or minitrial encouraged; assistance from magistrate judge; set on trailer docket

Track V: Highly Complex Track

more than 2 years to resolve; certification by judge to be on this track; many parties; much discovery; close judicial monitoring through periodic status conferences, discovery management order, and case management order; deadlines for motions; judge may order staged or bifurcated resolution; settlement conferences initiated by court; use of ADR, attended by representatives with authority to bind parties; assistance from magistrate judge; special master if necessary

DISTRICT	PRE-EXISTING PROGRAMS	NEW PROGRAMS
MI-W	Mandatory arbitration Mediation Summary jury trial Minitrial	All will continue under court's differentiated case management program, though it appears that arbitration will become voluntary rather than mandatory
MT	Routine scheduling of settlement conference, usually with magistrate judge Various judges refer cases on occasion to non-court mediation	Existing settlement program encoded in new local rule Court will prepare a list of mediators, which may be consulted by parties seeking mediation Court finds no need for ADR programs at this time but will continue to assess need
NJ	Mandatory arbitration	Arbitration program expanded to include more cases Case may be exempted from arbitration by agreeing to use mediation, minitrial, or SJT Each judge and magistrate judge will experiment with ADR by referring two complex cases to mediation and two complex cases to SJT Bar called on to hold ADR educational seminars and to train mediators
NY-E	Mandatory arbitration Settlement conferences	Mandatory arbitration continued Experimental court-annexed voluntary mediation program with attorney mediators Experimental court-annexed voluntary ENE program with attorney evaluators Presumption of settlement conference in every case Special masters where warranted Will hire ADR administrator

DISTRICT	PRE-EXISTING PROGRAMS	NEW PROGRAMS
NY-S	Referral to American Arbitration Association	Two-year experimental court-annexed mediation program for expedited track cases and sample of other cases Discuss feasibility of settlement or ADR at case management conference, including voluntary court-annexed binding and nonbinding arbitration for standard and complex track cases (arbitration program as such does not appear to be in place or planned) Will hire ADR administrator
OH-N	Unknown	New local rules permit the following voluntary programs: • early neutral evaluation • arbitration • mediation • summary jury trial • summary bench trial • any other ADR form, including extra-judicial ADR Court will establish panel of attorneys to serve as neutrals for these programs Court will hire ADR administrator
OK-W	Magistrate judge settlement conference program Mandatory arbitration SJT	Will continue mandatory arbitration program and mandatory settlement conference program Will add court-annexed voluntary mediation with attorney mediators Summary jury trial will be ordered only where justified
OR	Settlement judges Voluntary mediation	Existing programs will be continued No new programs adopted. Will monitor other courts' experience, particularly with arbitration

DISTRICT	PRE-EXISTING PROGRAMS	NEW PROGRAMS
PA-E	Mandatory arbitration Mandatory mediation	Advisory group and court agree additional programs are not needed at this time. Rules permit judicial officers to suggest other forms of ADR where appropriate
TN-W	Settlement conference	Will continue to rely on settlement conferences In early 1992, court will develop early neutral evaluation program using attorney evaluators Court may use minitrial, SJT, or mediation with attorneys or retired judges (mediation program does not appear to be in place or planned) Court requests advisory group to study other ADR methods, including arbitration, and make recommendations
TX-E	Mandatory mediation	Plan provides that judges may refer cases to court-annexed mediation program, voluntary minitrial, SJT, or any other ADR developed in the district
TX-S	None	The plan permits voluntary referral to the following ADR procedures: • mediation • minitrial • summary jury trial • arbitration • any other method approved by the court Court will appoint standing ADR panel to prepare list of ADR providers
UT	Settlement conference with judge other than assigned judge	Court declined advisory group's detailed ADR recommendations Court will experiment for a limited time with voluntary mediation, arbitration, minitrial, and SJT to see if there is demand; form and staffing of programs to be determined

DISTRICT	PRE-EXISTING PROGRAMS	NEW PROGRAMS
VA-E	None	None. Advisory group and court agreed ADR is not needed
VI	None	Court-annexed, voluntary mediation
WV-N	AD hoc settlement week program	Settlement week program institutionalized; mandatory disclosure adopted to move cases more quickly into settlement posture
WV-S	Informal early neutral evaluation at case management conference	Court-annexed mandatory mediation with attorney mediators, held in two week sessions every six months (essentially a settlement week program)
WI-E	None	Mandatory settlement conference with judicial officer for cases subject to disclosure At Rule 16 conference, discuss referral to ENE, mediation, arbitration, or a master; look to Milwaukee Bar Assoc. for model and mediators
WI-W	Magistrate judge mediation	Magistrate judge will continue to serve as mediator Clerk/magistrate judge will begin pilot project to identify cases eligible for ENE and will use ENE in selected cases Clerk/magistrate judge will provide attorneys and litigants information about ADR available in the district, including ENE, arbitration, and magistrate judge mediation (no indication that an arbitration program is in place or planned)

WY	Voluntary referral to magistrate judge for settlement conference	Enhance existing settlement conference program by requiring earlier conferences Standing local rules committee should amend current local rules to provide procedures • to require parties to report their settlement efforts at the initial pretrial conference • to permit referral of settlement conferences to senior judges or attorneys • to permit the court to mandate ADR in appropriate cases Court will explore other forms of ADR

Notes to the table

- Please keep in mind when using this table that it is based solely on information found in the CJRA advisory group reports and cost and delay reduction plans. Local rules and other documents were not consulted in preparing the table. In some instances, the plan encourages use of an ADR method but does not reveal an administrative structure for providing that form of ADR. These instances are noted in the table.
- CJRA pilot courts appear in bold.

Exhibit D

Mandatory Disclosure Profiles
Civil Justice Reform Act Plans

Alaska: 9th Circuit

- favorably disposed towards some form of automatic, mandatory disclosure
- will experiment with disclosure prior to the adoption of proposed Fed. R. Civ. P. 26

California (Northern): 9th Circuit
Demonstration Court

- judges can volunteer to experiment with automatic disclosure and require parties to exchange core information
- the rule is explicitly based on a slightly modified version of Fed. R. Civ. P. 26

Delaware: 3rd Circuit
Pilot Court

- required in personal injury, medical malpractice, employment discrimination, and civil RICO cases
- parties must provide core information with their pleadings
- parties must also identify expert witnesses

Florida (Southern): 11th Circuit

- current local rule requires parties to exchange:
  - documents
  - witness lists

Georgia (Northern): 11th Circuit
Pilot Court

- mandatory interrogatories