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UNITED STATES COURTS

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March 28, 1990

MEMORANDUM TO JUDGES CLARK, BARKER, NANGLE, AND ROBINSON,
AND MR. MECHAM

Judge Peckham has asked that I provide you with two interesting alternatives to the "Biden Bill" for consideration at Friday's teleconference. The first was prepared by Bob Feidler and Greg Scott, the second by Wayne Brazil.


Karen K. Siegel

Attachments

cc: Honorable Robert Peckham
Honorable Wayne Brazil

PROPOSED REVISION

March 23, 1990

[Revisions are highlighted by underlining.]

SEC. 3. AMENDMENT TO TITLE 28, UNITED STATES CODE.

(a) Civil Justice Expense and Delay Reduction Plans and Case Management Training.--Title 28, United State Code, is amended by adding at the end of part I the following new chapter:

"CHAPTER 23--CIVIL JUSTICE EXPENSE

AND DELAY REDUCTION

"SUBCHAPTER I--CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLANS

"Sec.

"471. Model civil justice expense and delay reduction plans.

"472. Requirement for a district court civil justice expense and delay reduction plan.

"473. Development and implementation of a civil justice expense and delay reduction plan

"474. Content of civil justice expense and delay reduction plans.

"475. Judicial Conference continuing review of civil case management.

"476. District court periodic review of civil case management

["477. Automated semiannual report on caseload processing.]

"478. Manual for litigation management.

"SUBCHAPTER II--CASE MANAGEMENT TRAINING

"Sec.

"481. Judicial case management training programs.

"SUBCHAPTER I--CIVIL JUSTICE EXPENSE AND DELAY

REDUCTION PLANS

"§ 471. Model civil justice expense and delay reduction plans

"The Judicial Conference of the United States shall develop one or more model civil justice expense and delay reduction plans. Each such plan shall provide for facilitating deliberate adjudication of civil cases on the merits, streamlining

discovery, improving judicial case management, and ensuring just, speedy, and inexpensive resolutions of civil actions.

"§ 472. Requirement for a district court civil justice expense and delay reduction plan

"(a) There shall be in effect for each United States district court, in accordance with this subchapter, a civil justice expense and delay reduction plan. [Revised]

"(b)(1) The Judicial Conference of the United States may waive the requirement under subsection (a) of this section in the case of any district court if the Judicial Conference determines that--

"(A) the expense generally experienced by litigants in connection with civil cases in such court does not exceed a reasonable level and civil cases are generally disposed of by such court on a timely basis; or

"(B) the ability of the court to process civil and criminal cases has been substantially reduced as a result of the existence of a vacancy in one or more judgeships on such court for an extended period, a substantial increase in the number or complexity of criminal cases filed in such court in relation to the judicial and other resources of such court, or any other temporary condition considered material by the Judicial Conference.

"(2) The Judicial Conference shall prescribe specific guidelines for making determinations under paragraph (1).

"(3) The Judicial Conference may delegate the authority to make determinations and grant waivers under paragraph (1), but any authority so delegated may be exercised only in accordance with the guidelines prescribed under paragraph (2).

"§ 473. Development and implementation of a civil justice expense and delay reduction plan

"(a) A United States district court required to have in effect a civil justice expense and delay reduction plan pursuant to section 472 of this title shall implement such a plan by local rule in accordance with the provisions of section 2071 of this title. The plan may be a model plan developed by the Judicial Conference of the United States or a plan developed by such court.

"(b)(1) The civil justice expense and delay reduction plan for a district court shall be selected or developed, as the case may be, after consideration of the recommendations of an advisory committee appointed by the chief judge of the court.

"(2) The advisory committee shall include the chief district court judge, a magistrate of the district court, the district court clerk, representatives of the public, and such attorneys as may be necessary to ensure that major categories of litigants in the district are represented on the advisory committee. The chief judge shall designate a reporter for the advisory committee.

"(c) The judicial council of the circuit in which a district court is located shall review and evaluate and may modify or

abrogate a civil justice expense and delay reduction plan of such court in accordance with section 2071(c)(1) of this title.

"(d) The Judicial Conference of the United States may review and evaluate any determination of a circuit judicial council under subsection (c) of this section.

"§ 474. Content of civil justice expense and delay reduction plans

"(a) Subject to subsection (b) of this section, a model civil justice expense and delay reduction plan developed pursuant to section 471 of this title and a civil justice expense and delay reduction plan in effect pursuant to section 472 of this title may include such features as the following:

"(1) A system of differentiated case management that provides for the following:

"(A) An early court assessment of each case filed in such court, considering such criteria as--

"(i) case complexity determined on the basis of the number of parties involved, the number of claims and defenses raised, the legal difficulty of the issues presented, the factual difficulty of the subject matter, and any other appropriate factors;

"(ii) the amount of time reasonably needed to prepare the case;

"(iii) the anticipated trial length; and

"(iv) the judicial resources and other resources necessary for the preparation and disposition of the case.

"(B) Allocation of the level of court supervision and resources necessary for each case consistent with the circumstances of the case.

"(C) Establishment of appropriate procedures for monitoring case progress and for ensuring compliance with deadlines established for the completion of case events.

"(D) Expeditious processing of each case by counsel and judicial system officials consistent with the necessary tasks.

"(2) A requirement that counsel for each party to a case jointly propose a discovery-case management plan for the case at the initial pretrial conference provided for under Rule 16 of the Federal Rules of Civil Procedure.

"(3) A requirement that counsel for a party to a civil case file with the complaint or answer, as the case may be, in such case--

"(A) a list of all persons that, to the counsel's knowledge or belief, have knowledge of matters relevant to the assertions contained in such complaint or answer;

"(B) all documents that, to the counsel's knowledge or belief, support the positions of the party; and

"(C) a certification that the counsel has made a good-faith effort to identify all such persons and documents before filing the complaint or answer.

"(4) A requirement that a discovery-case management conference be held in each complex case, and in each case in any other category of cases subject to such requirement as specified in the plan, within 120 days after the date on which the issues are joined.

"(5) Requirements that the judicial officer presiding at a discovery-case management conference--

"(A) explore the parties' receptivity to, and the propriety of, settlement or proceeding with the litigation;

"(B) attempt to identify or formulate the principal issues in contention and, in appropriate cases, provide for the staged resolution or bifurcation of issues consistent with Rule 20(b) of the Federal Rules of Civil Procedure;

"(C) prepare a discovery schedule and plan consistent with the complexity of the case, the amount in controversy, and the resources of the parties;

"(D) establish at the conference--

"(i) the dates or deadlines for the filing, hearing, and deciding of motions;

"(ii) the date or dates of additional pretrial conferences, including the final pretrial conference; and

"(iii) the date for trial or, in a complex case, a deadline for the commencement of the trial specified in terms of a period after completion of discovery;

"(E) in each complex case, establish a series of monitoring conferences for the purposes of establishing the focus and pace of discovery, refining issues, and developing stipulations; and

"(F) address any other appropriate matters.

"(6) A requirement that, in each complex case, each party be represented at each pretrial conference by an attorney who has the authority to bind that party regarding all matters previously identified by the court for discussion at the conference and all reasonably related matters.

"(7) Authority to permit some or all participants in a case to participate in any conference by telephone if the case is not a complex case.

"(8) Procedures for waiving any discovery case management conference in any case--

"(A) which is not complex or is otherwise suitable for expedited disposition; and

"(B) in which the court can issue, within the period specified in the plan, a standard order scheduling--

"(i) a trial date;

"(ii) discovery, including discovery deadlines; and

"(iii) dates for filing and deciding substantive and discovery motions.

"(9) Procedures for providing, on the basis of the complexity of the case, for--

"(A) identifying and limiting the volume of discovery available in order to avoid unnecessary or unduly burdensome or expensive discovery;

"(B) phased use of depositions upon oral examination, depositions upon written questions, interrogatories to parties, production of documents and things and entry upon land for inspection and other purposes, and requests for admissions;

"(C) voluntary exchange of information; and

"(D) new and more cooperative discovery devices.

"(10) Provisions that--

"(A) each discovery motion, except a motion brought by a person appearing pro se or brought pursuant to Rule 26(c) of the Federal Rules of Civil Procedure by a person who is not a party, must be accompanied by a statement that counsel for the movant

has made a reasonable, good faith effort to reach agreement with opposing counsel on the matters set forth in the motion; and

"(B) attorneys fees may be awarded against a party if the party's counsel has not made such an effort.

"(11) Procedures for resolving motions necessary to meet established trial dates and discovery deadlines, including the adoption of time guidelines for the filing and disposition of substantive and discovery motions.

"(12) Procedures for ensuring that the parties to a civil case have the opportunity to consent to trial of the case by a United States magistrate.

"(13) An alternative dispute resolution program for use in appropriate cases.

"(14) A neutral evaluation program for the presentation of the legal and factual bases of a case to a neutral court representative at a non-binding conference conducted early in the litigation.

"(15) A requirement that, upon notice by the court, representatives of the parties with authority to bind them in settlement decisions be present or available by telephone during any settlement conference.

"(16) Procedures for enhancing the accountability of each judge in a district court through--

"(A) regular reports of the judge's pending undecided motions and caseload progress to the other

judges in the judicial circuit in which such district court is located; and

"(B) to the extent provided for by the judicial council of such circuit in the discretion of the council, public disclosure of any such report.

[QUESTION: Has it been determined to omit paragraph (16). If not, please note that paragraph (16) and section 477 are essentially redundant. One or the other of these provisions should be deleted.]

"(17) Procedures for identifying, and reviewing from time to time, functions performed in a district by magistrates with a view to determining which functions within constitutional and statutory limits can best be performed by judges or by magistrates.

"(18) Procedures for judges to exchange information about their roles in adjudicating contested motions and other matters.

"(19) Such other features as the district court considers appropriate after considering the recommendations of the advisory committee referred to in section 474(b) of this title.

"(b) The features of a civil justice expense and delay reduction plan implemented under this subchapter shall be consistent with the Federal Rules of Civil Procedure.

"§ 475. Judicial Conference continuing review of civil case management

"The Judicial Conference of the United States shall review, on a continuing basis, civil case management by the United States district courts and shall develop such additional case management procedures as the Judicial Conference determines, on the basis of its review, are appropriate. The Judicial Conference may require any district court to implement any such additional case management procedure that the Judicial Conference considers necessary in the interest of effective civil case management.

"§ 476. District court periodic review of civil case management

"Each district court shall review periodically the civil management procedures for such court and revise the rules of such court as appropriate to improve court management of civil cases. The court shall perform the review in accordance with guidelines prescribed by the Judicial Conference of the United States and shall transmit to the Judicial Conference a report on each review.

[IS THE FOLLOWING SECTION TO BE IN OR OUT?]

"§ 477. Automated semiannual report on caseload processing

"(a)(1) On January 15 and July 15 of each year each United States district court shall make available to each judge in the judicial circuit of such court a report on caseload processing by each judge of that court. The judicial council of that circuit may, in the discretion of the council, direct that any such report be made available to the public.

"(2) The report shall contain, for each judge, the following information as of the first day of the month of the report:

"(A) The motions that have been under advisement for more than 90 days, stated as a total number for each 90-day period.

"(B) Data indicating the aging of the judge's caseload in each category provided for by the district court.

"(C) The number of written opinions issued by the judge during the 6-month period ending on the date of the report.

"(D) The number of bench trials completed during such period.

"(E) The number of jury trials completed during such period.

"(b) The Director of the Administrative Office of the United States Courts shall ensure that the United States district courts' automated dockets have the program capability readily to retrieve the information necessary for the semiannual report required by subsection (a) of this section.

"(c) In order to facilitate the reporting required under subsection (a), the Director shall standardize court procedures for categorizing or characterizing judicial actions, including defining what constitutes a dismissal and how long a motion has been pending.

§ 478. Manual for litigation management

"The Director of the Administrative Office of the United States Courts, under the direction of the Judicial Conference of the United States shall prepare a manual for litigation management. The manual shall contain the following:

"(1) A discussion of civil justice expense and delay reduction plans, including the rationale for using such plans, the effectiveness of the use of such plans for increasing the availability of time for trials and deliberate adjudication of cases on the merits, and the advantages of using such plans.

"(2) Basic case management procedures, a discussion of the effectiveness of such procedures, and model local rules for case management.

"(3) Other litigation management matters considered appropriate by the Judicial Conference.

"SUBCHAPTER II--CASE MANAGEMENT TRAINING

"§ 481. Judicial case management training programs

"The Director of the Federal Judicial Center shall take such action as may be necessary to expand current judicial training programs to include a new curriculum and emphasis on case management so that the accumulated learning on management and adjudicatory techniques is communicated on a regular and formal basis to all district court judges, magistrates, clerks of the district courts, and other court personnel the Director considers appropriate."

(b) Table of Contents.--Part I of the table of contents of title 28, United States Code, is amended by adding at the end thereof the following:

"23. Civil Justice Expense and Delay Reduction.....471".

SEC. 4. DEMONSTRATION PROGRAM.

(a) In General.--Except as provided in subsection (d), the Judicial Conference of the United States shall implement subchapter I of chapter 23 of title 28, United States Code (as added by section 3), as a demonstration program.

(b) Period of Demonstration Program.--The demonstration program shall be conducted during the 3-year period beginning on January 1, 1991.

(c) Purpose of Demonstration Program.--The purpose of the demonstration program is to test various case management techniques in order to determine the effectiveness of such techniques in reducing expense and delay in the processing of civil cases in United States district courts.

(d) Structure of Demonstration Program.--(1) The Judicial Conference shall identify at least two groups of not less than three and not more than five United States district courts to participate in the demonstration program. The district courts in each group shall implement a civil justice expense and delay reduction plan developed by the [Judicial Conference]/[district courts in such group].

(2) Subchapter I of chapter 23 of title 28, United States Code (as added by section 3), shall apply only to the district courts identified pursuant to paragraph (1). [Revised]

(e) Periodic Reviews by District Courts.--Section 476 of title 28, United States Code (as added by section 3), shall be implemented according to the provisions of such section and not

as a feature of the demonstration program and shall apply to all United States district courts.

SEC. 5. REPORTS.

(a) Report Requirements.--The Judicial Conference of the United States shall submit to the Committees on the Judiciary of the Senate and the House of Representatives an interim report and a final report on the demonstration program under section 4.

(b) Interim Report.--The interim report shall be submitted not later than January 1, 1992. The interim report shall contain a plan for the conduct of the demonstration program, each model civil justice expense and delay reduction plan developed by the Judicial Conference, and the district courts covered by the demonstration program.

(c) Final Report.--(1) The final report shall be submitted not later than September 30, 1993.

(2) The final report shall contain the following:

(A) The number of United States district courts that have implemented civil justice expense and delay reduction plans.

(B) The content of such plans.

(C) The number of courts implementing a model civil justice expense and delay reduction plan developed by the Judicial Conference of the United States.

(D) For each plan a discussion of how the plan addressed each of the following matters:

(i) The acquisition of initial case information.

(ii) Development of a case disposition plan and timetable.

(iii) Trial scheduling.

(iv) Use of alternative dispute resolution techniques.

(v) Notification and communication among the court and attorneys, including means by which judges and administrators within and outside the court consult concerning management and administrative issues affecting the court.

(vi) Management and monitoring of case progress.

(vii) The means for data input and case recordkeeping.

(viii) Procedures for evaluating system performance.

(E) For each plan providing for case tracking, a discussion of how the plan addressed each of the following matters (in addition to a discussion of how the plan addressed each of the matters referred to in subparagraph (D)):

(i) The creation of a case tracking record.

(ii) The number of case processing tracks.

(iii) The criteria for differentiating among cases and assigning cases to one of the tracks.

(F) An analysis of the impact of the plans on the time available to judges to address complex, novel, or difficult issues of law or fact.

SEC. 6. FIRST PERIODIC DISTRICT COURT REVIEW.

The first periodic review by United States district court pursuant to section 477 of title 28, United States Code (as added by section 3), shall be completed not later than 1 year after the date of the enactment of this Act.

SEC. 7. DISCOVERY CASE MANAGEMENT RULES.

The Supreme Court of the United States shall consider, in accordance with the provisions of chapter 131 of title 28, United States Code, whether it is desirable to amend the Federal Rules of Civil Procedure--

(1) to require counsel for each party to a case jointly to propose a discovery-case management plan for the case at the initial pretrial conference provided for under Rule 16 of such rules; or

(2) to require counsel for each party in a civil case to file with the complaint or answer, as the case may be, in such case--

(A) a list of all persons that, to the counsel's knowledge or belief, have knowledge of matters relevant to the assertions contained in such complaint or answer;

(B) all documents that, to the counsel's knowledge or belief, support the positions of the party; and

(C) a certification that the counsel has made a good-faith effort to identify all such persons and documents before filing the complaint or answer.

SEC. 8. AUTHORIZATION.

(a) Civil Justice Expense and Delay Reduction.--There is authorized to be appropriated not more than \$_____ for the implementation of subchapter I of chapter 23 of title 28, United States Code (as added by section 3), and sections 4 and 5 of this Act.

(b) Judicial Case Management Training.--There is authorized to be appropriated for the Federal Judicial Center not more than \$1,000,000 for implementation of section 481 of title 28, United States Code (as added by section 3).

CENTRAL FEATURES OF THIS VERSION OF THE BILL

1. I have tried to make this draft look as much like the original Biden bill as possible, as part of our effort to help preserve the Senator's credibility. Thus, wherever possible, I have followed his organizational structure and copied his words. I also have added some provisions in an attempt to reassure the Senator that there is real substance here, even though I have converted from mandatory to optional some of the central provisions of his legislation. I have added, for example, sections that would require lawyers to share some kinds of information and to draft and submit case management plans prior to the discovery-case management conference [§471(b)(1)(B) & (C)].

2. This version of the bill does not include any provision that would result in dividing our district courts into those whose civil dockets are sufficiently current and those whose civil dockets are not, and then imposing obligations only on the courts in the latter group.

3. This version of the bill does not provide directly for experimental or demonstration programs in any courts. Under this version of the bill, however, I would expect quite a range of "plans" to be developed, thus creating significant opportunities for assessing the effects of different management methods or approaches to the problems of cost and delay.

4. This version of the bill would compel each district court to appoint a local advisory group [§471(a)(2)], to assess the current status of the court's civil and criminal dockets [§474], and to adopt some kind of plan whose purpose would be to reduce litigant costs and to expedite disposition of civil matters [§471(a)(1), (b) and (c)].

5. Under this version of the bill there are two categories of items for district plans: (1) those items that each district would be required to include in its plan [§471(b)], and (2) those items that districts would be permitted to include in their plans [§471(c)]. "Tracking" systems would be permitted but not required.

6. This version of the bill includes a requirement that district judges conduct, by phone or in person, a discovery-case management conference in all but exempted categories of cases. Each district court would have the power to determine which categories of cases would be exempted from this requirement [§471(b)(1)].

7. This version of the bill reflects the view that the problems of cost and delay are the responsibility of the entire legal community (courts, lawyers and clients) and imposes specific duties on lawyers to help generate cost-effective case development plans for individual cases [§471(b)(1)(C)].

8. This version of the bill prescribes in some detail the subjects that judges must address at the discovery-case management conferences [§471(b)(1)(E)]. In so prescribing, the bill would modify in some measure Rule 16. To this extent, this version of the bill trenches on territory traditionally left to the rule-making process under the Rules Enabling Act. The Judicial Conference's Committee should decide whether, in the political circumstances faced here, it is necessary and acceptable not to use the normal rule-making process for considering and imposing the duties set forth here. In considering this important question, please note that under this version of the bill the responsibility to assess the effects of all the provisions of this statute, and the power to modify or abandon any of the rules or procedures adopted under it, would be placed in the Judicial Conference of the United States (not in Congress). See §473(b) and §478.

SUBCHAPTER I - CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLANS

§ 471. Civil justice expense and delay reduction plans.

- (a)(1) On or before the expiration of the 12-month period following the date of the enactment of this Chapter, each United States district court shall develop a civil justice expense and delay reduction plan in accordance with this Chapter. Such plans shall address all civil proceedings, but need not provide that all categories of cases be managed in the same ways. Each United States district court shall develop its plan with a view toward facilitating deliberate adjudication on the merits in appropriate cases, streamlining discovery, improving judicial case management, and renewing its commitment to the just, speedy, and inexpensive resolution of civil disputes.
- (2) The civil justice expense and delay reduction plans shall be developed by each district court after consulting a planning group or similar advisory committee with membership from the bench, the public, and the bar. Such groups shall be appointed by the chief district court judge of the district and shall include the chief district court judge of the district, such additional district judges as the chief judge may deem appropriate, a bankruptcy judge, a magistrate in the district, the district court clerk, public representatives, lawyers who represent the Federal, State and local governments in the district, and lawyers practicing in law firms of diverse sizes, in corporations and for public interest groups so that each of the major categories of litigants in the

district shall be represented. Such groups shall also include a person designated by the chief district court judge as the reporter.

- (3) Each United States district court shall implement its civil justice expense and delay reduction plan by local rule in accordance with the provisions of section 2071 of this title.
- (b) Each civil justice expense and delay reduction plan shall include the following:
- (1) a requirement that within 120 days after the complaint is filed a discovery-case management conference shall be held (in person or by telephone, as the assigned judge orders) in all cases except those exempted, by category, under the terms of the plan.
 - (A) In all cases except those exempted under the terms of the plan, the district judge to whom the case is assigned shall, prior to the conference, determine whether, in order to secure the values reflected in Rule 1, the district judge or a magistrate should preside at the conference. If the district judge determines that a magistrate should preside over the conference, the clerk's office shall notify the parties which magistrate has been assigned no less than 14 days prior to the conference.
 - (i) District court plans may provide that magistrates shall preside over discovery-case management conferences, and any other monitoring or pretrial conferences, for certain categories of cases, subject to a decision in individual matters by the assigned judge that he or she shall preside over the conference.
 - (B) No fewer than 21 days before the conference, each party shall send to all other parties a list of persons with knowledge relevant to the subject matter of the litigation and copies of all documents that lend support to any position that party contemplates taking in the action. By stipulation, counsel may exchange descriptions of categories of documents in lieu of copies of the documents themselves at this juncture. The court may exclude at trial any evidence offered by a party that was not promptly disclosed to adversary parties as required by this rule.
 - (C) No fewer than 12 days before the conference, lead counsel for each party shall meet and confer, in

person or by telephone, for the purpose of discussing possibilities for settlement and preparing a case development plan that will equip the parties to resolve the case by settlement, motion, ADR, or trial in as cost-effective a manner as possible. In this plan, counsel shall address whether there is some limited discovery that is necessary before meaningful settlement negotiations can be conducted and, if so, shall identify that discovery and explain why it is needed for this purpose. In addition, counsel's case development plan shall identify the discovery that will need to be done if the case cannot be settled after concluding the limited discovery that is to be conducted for purposes of facilitating settlement negotiations. With respect to all remaining discovery, counsel's plans shall suggest appropriate limitations, controls, and schedules. The plans also shall suggest how motions could be used to set the case up for disposition as expeditiously as possible. Counsel shall file their case development plans with the court no fewer than 5 calendar days before the discovery-case management conference.

- (D) Lead counsel, or counsel with the same full breadth of authority as lead counsel, shall participate (in person or by telephone, as ordered by the assigned judge) in the discovery-case management conference.
- (E) At the discovery-case management conference, the presiding judicial officer shall:
 - (i) explore the parties' receptivity to settlement and identify any information that is necessary to obtain (informally or through discovery) in order for the parties to conduct meaningful settlement negotiations,
 - (ii) consider whether one or more ADR procedures might be appropriate for part or all of the case,
 - (iii) fix the dates by which other parties must be joined and any amended pleadings filed,
 - (iv) identify the principal issues, and, in appropriate cases, provide for the staged or bifurcated resolution of them,
 - (v) discuss the discovery needs of the case and

enter an order setting forth a discovery plan and schedule that is tailored to the particular case, attempting to eliminate unnecessary discovery costs and impose appropriate limits on discovery; this order shall fix a discovery cut-off date.

- (vi) fix the dates by which all substantive and discovery motions must be filed and heard,
 - (vii) fix the date for the next case management or monitoring conference and specify what counsel are to have accomplished and filed prior thereto,
 - (viii) fix a date for trial [even in complex cases]
 - (ix) decide whether to enlist the services of a magistrate and, if so, specify the tasks to be referred and the scope of the magistrate's authority.
- (2) procedures for managing those categories of cases that are exempted from mandatory discovery-case management conferences.
- (A) the plans may establish different management procedures for different categories of exempted cases (e.g., it might be appropriate to have one management procedure for student loan cases, another for social security cases, and yet another for habeas corpus petitions).
 - (B) each case management procedure shall insure that a judicial officer has early contact with each case and, early in the pretrial life of each case, fixes dates for the events necessary to resolve the matter expeditiously.
- (3) a requirement that the court will not entertain any discovery motion, except those motions brought by a person appearing pro se and those brought pursuant to Rule 26(c) of the Federal Rules of Civil Procedure by a person who is not a party, unless counsel for the moving party has filed with the court, at the time of filing the motion, a statement showing that a reasonable good faith effort has been made to reach agreement with opposing counsel on the matters set forth in the motion.
- (4) a requirement that each district court consider, with inputs from its advisory group, whether establishing one

or more ADR programs would enable parties to reduce the expense of resolving certain kinds of disputes or would expedite their disposition. The ADR procedures and programs that each district court should consider include, but are not limited to, early neutral evaluation, arbitration, mediation, mini trials, non-binding summary jury or bench trials, and panels of special masters to assist with discovery, case management and/or settlement.

- (5) a requirement that, upon notice by the court, representatives of the parties with authority to bind them in settlement decisions be present or available by telephone during any settlement conference.
 - (6) procedures for the periodic publication of pending undecided motions and caseload progress for each individual judge.
- (c) Each civil justice and delay reduction plan may include the following:
- (1) a system of differentiated case management designed to--
 - (A) make an early assessment of each case filed according to criteria including--
 - (i) case complexity, including the number of parties involved, the number of claims and defenses raised, the legal difficulty of the issues presented, and the factual difficulty of the subject matter;
 - (ii) amount of time needed to prepare the case;
 - (iii) anticipated trial length; and
 - (iv) judicial and other system resources required for the preparation and disposition of the case;
 - (B) assign cases on this basis to appropriate processing tracks that operate under distinct procedures and timeframes that are appropriate for the types of cases assigned to the different tracks;
 - (C) apply the necessary level of court supervision and resources to each case consistent with its management requirements;

- (D) establish appropriate mechanisms to monitor case progress and assure observance of deadlines for completion of case events; and
 - (E) assure the expeditious processing of each case by counsel and judicial system officials in accordance with the tasks required.
- (2) To effectuate the early assessment of each case as set forth in paragraph (1), above, in each district's differentiated case management system--
- (A) cases may be classified on intake or at some other specified juncture early in the pretrial period, e.g. at the initial Rule 16 conference or promptly after the case is at issue.
 - (B) counsel shall have the opportunity to indicate within a specified short time period that a different track would be more appropriate;
 - (C) disputes over the track assignment shall be raised first with the assigned judge; and
 - (D) cases shall be reassigned to a different track if warranted.
- (3) In any such tracking system, district courts may establish a policy that deadlines for completing discovery may be extended only by order of the court for good cause shown and that all requests for extensions of such deadlines shall be signed by the attorney and the party making the request.
- (4) In any such tracking system, district courts may establish procedures for making the discovery process track-specific, so that, with respect to each processing track in the district's tracking system, consideration is given to--
- (A) identifying and limiting the volume of discovery available to avoid unnecessary or unduly burdensome or expensive discovery;
 - (B) phasing discovery into two or more stages, including the phased use of depositions upon oral examination under Rule 30 of the Federal Rules of Civil Procedure, depositions upon written questions under Rule 31 of the Federal Rules of Civil Procedure, interrogatories to parties under Rule 33 of the Federal Rules of Civil Procedure, production of

documents and things and entry upon land for inspection and other purposes under Rule 34 of the Federal Rules of Civil Procedure, and requests for admissions under Rule 36 of the Federal Rules of Civil Procedure;

- (C) developing means for the voluntary exchange of information; and
 - (D) encouraging new and more cooperative discovery devices.
- (5) In adopting plans pursuant to this Chapter, district courts may, with inputs from their advisory committees, establish presumptive timeframes (either for all civil cases except those exempted, or for each differentiated management track) within which:
- (A) all substantive and discovery motions should be filed and heard;
 - (B) discovery should be completed;
 - (C) settlement conferences or ADR proceedings should be concluded; and
 - (D) trial should be commenced.
- (d) Within 12 months after enactment of this Chapter, each district shall be required to report its plan to the Judicial Council for its circuit and to the Judicial Conference of the United States. The Judicial Conference may order individual districts to reconsider their plans or to add to them. The Judicial Conference may delegate authority to review and order any appropriate adjustments in district court plans to the Judicial Councils of the several Circuits.

§ 472. Model plans

- (a)(1) Within 180 days of enactment of this Chapter, the Judicial Conference of the United States and the Federal Judicial Center shall develop, in consultation with the individuals and groups from whom membership of the district court planning groups or similar advisory committees as set forth in section 471(a)(2) is drawn, two or more model civil justice expense and delay reduction plans in accordance with the criteria set forth in section 471(b) and (c).
 - (2) Such model plans shall be accompanied by a report explaining how they accomplish the purposes of this Chapter.
 - (3) The model plans and the accompanying report shall be made available to each district court to use in developing its specific plan.
 - (4) The model plans and the accompanying report shall also be submitted to the Senate and House Judiciary Committees.
- (b) If, at the expiration of the 12-month period following the date of the enactment of this Chapter, a district court has failed to develop a civil justice expense and delay reduction plan, the Judicial Conference of the United States, or, at its election, the Judicial Council in that court's Circuit, shall compel that court either to adopt one of the model plans developed pursuant to ¶(a), above, or a plan that the Judicial Council concludes is suitable to the circumstances in that district court.

§ 473. Report by the Federal Judicial Center

- (a) On or before the expiration of the 24-month period following the date of the enactment of this Chapter, the Federal Judicial Center shall report to the Congress with respect to the establishment and implementation of civil justice expense and delay reduction plans transmitted by the district courts to the Judicial Conference of the United States. Such report shall include, among other things, information showing the number of United States district courts implementing plans under section 471 and the number implementing a model plan under section 472. The report also shall describe the contents of the plans that have been implemented and shall indicate how the provisions of the various plans are intended to achieve the goals of this Chapter.

- (b) It shall be the function of the Federal Judicial Center to study on a continuing basis the effects of the various procedural reforms adopted pursuant to this Chapter. Based on findings generated by such studies and on information and opinions gathered from other sources, it shall be the function of the Judicial Conference of the United States, working on an on-going basis through its Advisory Committees and the procedures contemplated in the Rules Enabling Act as recently recodified in 28 U.S.C. § 401 et seq., to determine whether procedures or rules established under this Chapter should be continued, modified, supplemented, extended, or abandoned. Each United States district court shall make available to the Judicial Conference of the United States, through the Administrative Office of the United States Courts, and to the Federal Judicial Center, such data and other information that the Administrative Office and the Federal Judicial Center determine to be necessary to enable the Conference and the Center to carry out their functions under this Chapter.

§ 474. Backlogs in District Courts.

- (a) Before developing its civil justice expense and delay reduction plan pursuant to this Chapter, each district court, with the advice and assistance of its advisory group, shall assess the current state of both its civil and criminal dockets. Each such assessment shall include, along with matters described in paragraph (b), below, identification of trends in filings and in demands on the court's resources. The district courts and their advisory groups shall use these assessments to help determine what their expense and delay reduction plans should contain.
- (b) The Judicial Conference of the United States shall prescribe a minimum list of kinds of information that each district court shall be required to generate as part of the self-assessment contemplated here. Such information should include, among other things, profiles that show the age and stage of pretrial development (e.g., whether discovery has been completed or when discovery is scheduled to be closed) of each judge's weighted civil and criminal caseload. Such profiles should show, by case type, the percentage of cases that remain unresolved after 12 months, after 24 months, and after 36 months. Each such self-assessment also should include a comparison of annual civil and criminal filings to annual civil and criminal terminations; this comparison should be by categories of cases and should take into account appropriate weighting criteria. These self-assessments also should include a description of the current case management practices of each judge and magistrate, including an account of whether individual judges use different management

approaches in different kinds of cases and, if so, why and with what apparent effects.

- (c) Each district court shall send a copy of the self-assessment it has made pursuant to this Chapter to the Judicial Conference (through the Administrative Office) and to the Federal Judicial Center at the time the district court submits its civil justice expense and delay reduction plan.

§ 475. Automation.

- (a) For purposes of enabling each district court to implement the provisions of this Chapter, the Administrative Office of the United States Courts shall automate each court's docket.
- (b) The Administrative Office shall ensure that such automation enables each court to generate a quarterly report listing all pending submitted motions before each judge that remain unresolved for more than 60 days. Such automation also shall enable each district court to generate data about the status of the caseload (criminal and civil) of each judge, including ages of different categories of cases.
- (c) To facilitate reporting the data contemplated in this Chapter, the Administrative Office shall standardize court procedures for categorizing cases and characterizing judicial actions, including defining what constitutes a 'dismissal' and how long a case or a motion has been under submission.

§ 476. Manual for litigation management.

The Judicial Conference shall take such action as may be necessary to prepare a Manual for Litigation Management. Among other things, the manual shall provide commentary on the civil justice expense and delay reduction plans and explain the rationale behind various decisions underlying such plans. It shall be the purpose of such manual to set forth the basic management tools as well as to provide commentary on what experience has taught about the effective use of such tools.

§ 477. Authorization

- (a) For the purpose of enabling the Administrative Office of the United States Courts to provide automated systems to implement the civil justice expense and delay reduction plans in accordance with section 471, there is authorized to be appropriated such sums, not to exceed \$50,000,000, as may be necessary.
- (b) For the purpose of assisting financially the United States district courts to develop plans required by this Chapter,

carrying out the study required by section 473(b), carrying out the provisions of section 474, carrying out the provisions of section 476, and other provisions of this subchapter, there is authorized to be appropriated such sums, not to exceed \$10,000,000, as may be necessary.

§ 478. Judicial Conference review

Upon completion of the 5-year period following the date of enactment of this Chapter, the Federal Judicial Center, based on its continuing study in accordance with section 473(b), shall prepare a report on the effectiveness of the civil justice expense and delay reduction plans in reducing litigation transaction costs and delays and in otherwise securing the just, speedy and inexpensive resolution of civil actions. Such report shall be submitted to the Judicial Conference of the United States and to the Senate and House Judiciary Committees. The Judicial Conference of the United States, working through its Advisory Committees pursuant to 28 U.S.C. § 401, et seq., shall review this report and shall determine whether procedures or rules established under this Chapter should be modified, supplemented, extended, or abandoned.

SUBCHAPTER II--CASE MANAGEMENT TRAINING

§479. Judicial case management training programs

The Federal Judicial Center shall take such action as may be necessary to expand current judicial training programs to include a new curriculum and emphasis on case management so that the accumulated learning on management and adjudicatory techniques is communicated on a regular and formal basis to all district court judges, magistrates, clerks of the district courts, and other court personnel whom the Center may designate.

§480. Authorization

For the purpose of enabling the Federal Judicial Center to carry out the provisions of section 479, there is authorized to be appropriated such sum, not to exceed \$5,000,000, as may be necessary.

SEC. 4. TABLE OF CONTENTS.

Part I of the table of contents of title 28, United States Code, is amended by adding at the end thereof the following:

"Civil Justice Reform..... 471."

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