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UNITED STATES COURTS

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April 16, 1990

MEMORANDUM TO THE MEMBERS OF THE SUBCOMMITTEE ON THE BIDEN BILL

Attached are three items for Tuesday's 4:30 p.m. ET  
teleconference:

1. A revision dated April 12, 1990, of the Feidler/Scott April 6 draft;
2. A "Minimum Acceptable Provisions" draft prepared by Bob Feidler and Greg Scott;
3. An alternative prepared by Judge Barker; and
4. An alternative prepared by Magistrate Brazil.

*Karen*  
Karen K. Siegel

Attachments

cc: Honorable Charles Clark  
Honorable Wayne D. Brazil  
Mr. L. Ralph Mecham  
Mr. James E. Macklin, Jr.

THIS DRAFT REVISES THE APRIL 6 DRAFT  
TO REFLECT COMMENTS MADE DURING THE APRIL 9 CONFERENCE CALL

For the Teleconference on April 17, 1990

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

(a) Civil Justice Expense and Delay Reduction Plans and Case Management Training.--(1) 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. Advisory groups.
- "478. Automated semiannual report on caseload processing.
- "479. 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**

"(a) 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 the disposition of civil cases on the merits, streamlining

discovery, and improving judicial case management with a view to ensuring just, speedy, and inexpensive resolution of civil actions while retaining the independence of a judge to meet the unique needs of individualized cases.

"(b) In developing each model plan under subsection (a), the Judicial Conference shall consult with an advisory group appointed in accordance with section 477 of this title.

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

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

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

"(a) Each United States district court shall implement a civil justice expense and delay reduction 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) The civil justice expense and delay reduction plan for a court shall be selected or developed, as the case may be, after consideration of the recommendations of an advisory group appointed in accordance with section 477 of this title.

"(c)(1) Pursuant to procedures which the Judicial Conference of the United States shall prescribe, the chief judges of the

United States district courts in a circuit, meeting as a group--

"(A) shall review each civil justice expense and delay reduction plan developed by a district court located in such circuit; and

"(B) may modify or abrogate any such plan that does not meet the requirements of section 474(a)(1) of this title.

"(2) A chief judge of a district court may designate any other judge of that court to perform the responsibilities of the chief judge under paragraph (1) of this subsection.

"(d) The Judicial Conference of the United States may review and evaluate any action taken under subsection (c) of this section.

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

"(a) Consistent with the Federal Rules of Civil Procedure, each civil justice expense and delay reduction plan in effect pursuant to section 472 of this title--

"(1) shall include the features described in subsection (b); and

"(2) may include such types of features as those described in subsection (c).

"(b) The required features referred to in subsection (a)(1) are provisions for the following:

"(1) Individualized and case-specific court management of civil cases as [required by?]/[provided in?] Rule 16 of

the Federal Rules of Civil Procedure. [QUESTION: Is the reference to Rule 16 redundant with the introductory clause in subsection (a), namely, "Consistent with the Federal Rules of Civil Procedure, . . . ."?]

"(2) Early involvement of a judicial officer in [planning?]/[overseeing?] the progress of the case, [controlling?]/[monitoring?] discovery, and scheduling necessary events, including completion of discovery and commencement of trial.

"(3) An ongoing program for training all judicial officers, clerks of court, and courtroom deputy clerks in case management techniques.

"(c) The types of features referred to in subsection (a)(2) are the following:

"(1) [NOTE: The language of this paragraph was ordered stricken from the mandatory list at the April 9 teleconference. Was it intended that the paragraph be moved to the hortatory list? Because this provision seems to be important to Sen. Biden's staff, it is reinserted here in the hortatory list so that the committee may make an express choice on the language rather than have staff assume too much of what may have been intended.] Individualized and case-specific court management of civil cases through 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, in an appropriate case, counsel for each party exchange, within a specified period after issue is joined in the 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 the party's complaint or answer, as the case may be;

"(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.

"(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 complaint is filed.

"(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 that is consistent with the complexity of the case, the amount in controversy, and the resources of the parties and includes--

"(i) deadlines for completion of discovery, subject to extension by order of the court for good cause shown or upon the court's finding that the extension will not cause a delay in the commencement of trial; and

"(ii) if appropriate, deadlines for completion of intermediate steps in discovery;

"(D) establish at the conference--

"(i) the dates or deadlines for the filing and hearing 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) Provision for some or all participants in a case to participate in any conference by telephone or some other appropriate arrangement 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) Provision in an appropriate case, as determined on the basis of complexity, 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, 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) Such other types of features as the district court considers appropriate after considering the recommendations of the advisory group referred to in section 473(b) of this title.

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

"The Judicial Conference of the United States--

"(1) shall review, on a continuing basis, civil case management by the United States district courts;

"(2) may develop and implement such additional case management procedures, studies and demonstration projects,

and standards for the review required by section 476 of this title as the Judicial Conference determines appropriate; and

"(3) may waive the applicability of any provision of this subchapter to a court participating in a demonstration project carried out pursuant to paragraph (2) to the extent that such provision is inconsistent with the demonstration project.

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

"Each district court shall review biennially the civil case management procedures for such court and revise the rules of such court as appropriate to improve court management of civil cases. In performing the review, the court shall consult with an advisory group appointed in accordance with section 477 of this title.

**"§ 477. Advisory group**

"(a) Each advisory group required by this subchapter shall include the following:

"(1) At least one district court judge.

"(2) At least one United States magistrate.

"(3) At least one district court clerk.

"(4) Such representatives of the public as the advisory group appointing official considers appropriate.

"(5) Such attorneys as the advisory group appointing official determines necessary to ensure that major categories of United States district court litigants are represented on the advisory group.

"(b) The advisory group appointing official--

"(1) in the case of an advisory group referred to in section 471 of this title, shall be the Chairman of the Judicial Conference of the United States; and

"(2) in the case of an advisory group for a court under section 472 or 476 of this title, shall be the chief judge of such court, who should consult with other judges of the court in the exercise of the appointing authority.

**"§ 478. Automated semiannual report on caseload processing**

"(a)(1) On January 15 and July 15 of each year each United States district court shall prepare a report on caseload [processing?]/[activity?] by each judicial officer of that court and shall make the report available to [each judge?/judicial officer? in the judicial circuit of such court?]/[the judicial council of the circuit in which the district court is located?].

"(2) The semiannual report for a court shall contain, for each judicial officer of such court, information relevant for understanding the performance of such judicial officer's responsibilities during the reporting period. The Judicial Conference of the United States shall prescribe the information to be included in the semiannual report for a court.

["(3) The judicial council of a circuit may, in the discretion of the council, direct that a semiannual report for a district court in such circuit be made available to the public.?"]

"(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 prescribed by the Judicial Conference for the semiannual report pursuant to subsection (a) of this section.

"(c) In order to facilitate the preparation of semiannual reports under subsection (a) of this section, the Director shall standardize court procedures for categorizing or characterizing judicial actions/activity, including defining what constitutes a dismissal and how long a motion has been pending.

**"§ 479. 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 such plans, 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 conduct a comprehensive training program on case management for the purpose of communicating, on a regular and formal basis, the accumulated learning on techniques for efficiently managing and disposing of civil actions to all district court judges, magistrates, clerks of the district courts, and other court personnel the Director considers appropriate."

(2) 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".**

(b) Implementation.--(1) Initial implementation of sections 471 through 474 of title 28, United States Code (as added by subsection (a)), shall be accomplished as follows:

(A) The Judicial Conference of the United States shall complete the preparation of the model plan or plans required under section 471 of such title not later than September 30, 1991.

(B) Each court covered by section 472 of such title shall develop or select a civil justice expense and delay reduction plan not later than July 1, 1992.

(C) Action on each civil justice expense and delay reduction plan pursuant to section 473(c) of such title shall be completed not later than September 30, 1992.

(D) The first civil justice expense and delay reduction plan developed or selected for a court covered by section

472 of such title shall take effect not later than October 1, 1992.

(2) The first periodic review pursuant to section 476 of title 28, United States Code (as added by subsection (a)), shall be completed not later than December 31, 1991.

#### **SEC. 4. REPORTS.**

(a) Report Requirement.--The Judicial Conference of the United States shall transmit to the Committees on the Judiciary of the Senate and the House of Representatives an interim report and a final report on the implementation of subchapter I of chapter 23 of title 28, United States Code, as added by section 3(a).

(b) Interim Report.--The interim report shall be submitted not later than October 1, 1993.

(c) Final Report.--The final report shall be submitted not later than January 1, 1995, and shall be sufficiently detailed for Congress to assess the scope and success of the implementation of subchapter I of chapter 23 of title 28, United States Code.

#### **SEC. 5. 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.

(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.

DRAFT MINIMUM ACCEPTABLE PROVISIONS  
For the Teleconference on April 17, 1990

**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--ADMINISTRATION OF CIVIL JUSTICE**

**"Sec.**

- "471. District court civil justice expense and delay reduction plan.
- "472. Civil justice advisory groups.
- "473. Objectives and content of civil justice expense and delay reduction plans.
- "474. Review of civil justice expense and delay reduction plans.
- "475. Judicial Conference continuing review of civil case management.
- "476. Automated semiannual report on caseload [processing?]/[activity?].
- "477. Manual for litigation management.
- "478. Judicial case management training programs.

**"§ 472. District court civil justice expense and delay  
reduction plan**

"(a) Each district court shall conduct, on a continuing basis, a review of the administration of civil justice [by?]/[in?] the court.

"(b) Each United States district court [may?]/[shall?]/[should?] implement[, by local rule promulgated in accordance with the provisions of section 2071 of this title,] a civil justice expense and delay reduction plan for the purpose of achieving the objectives set out in section 473(a) of this title. [QUESTION: Is the procedure required by this bill

incompatible with the local rulemaking process provided for in 28 U.S.C. 2071?] ]

**"§ 472. Civil justice advisory groups**

"(a) Each district court shall consult with and consider the recommendations of an advisory group in the continuing review under subsection (a) of section 471 of this title and the development of the civil justice expense and delay reduction plan under subsection (b) of such section.

"(b) The chief judge of each district court shall appoint an advisory group for the purpose of subsection (a) of this section. The advisory group shall include the following:

"(1) At least one district court judge.

"(2) At least one United States magistrate.

"(3) At least one district court clerk.

"(4) Such representatives of the public as the chief judge considers appropriate.

"(5) Such attorneys as the chief judge determines necessary to ensure that major categories of United States district court litigants are represented on the advisory committee.

**"§ 473. Objectives and content of civil justice expense and delay reduction plans**

"(a) The objectives of each civil justice expense and delay reduction plan developed under section 471 of this title are as follows:

"(1) To ensure just, speedy, and inexpensive resolution of civil actions.

"(2) To facilitate the disposition of civil cases on the merits.

"(3) To streamline discovery. [NOTE: This point is S.2027 language that is not particularly meaningful. Is the following better: "To ensure that the extent and scheduling of discovery promotes just resolution of the issues in civil cases."?]

"(4) To improve judicial case management.

"(5) To ensure the independence of each judge to meet the unique needs of individualized cases.

"(b) Each district court and the advisory committee appointed for such court in accordance with section 472 of this title should consider including in the district court civil justice expense and delay reduction plan provisions for the following:

"(1) Implementation of a system of differentiated case management using the provisions of the Federal Rules of Civil Procedure.

"(2) Early involvement of a judicial officer in overseeing/planning the progress of each civil case.

"(3) Early entry of scheduling orders, including provisions for completion of discovery and commencement of trial.

"(4) Monitoring/Control of discovery.

"(5) Resolution of disputes through methods other than adjudication.

"(6) Facilitation of settlement.

"(7) Use of United States magistrates, including consensual trials by magistrates.

"(8) An ongoing program for training all judicial officers, clerks of court, and courtroom deputy clerks in case management techniques.

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

"(a)(1) Pursuant to procedures which the Judicial Conference of the United States shall prescribe, the chief judges of the United States district courts in a circuit, meeting as a group--

"(A) shall review each civil justice expense and delay reduction plan developed by a district court located in such circuit; and

"(B) may modify or abrogate any such plan that does not meet the requirements of section 474(a)(1) of this title.

**[QUESTION: Should this reviewing group include attorneys regularly engaged in litigation in the district courts in the circuit? If so, who should determine the number of such attorneys to be included in the group and who should be empowered to appoint the attorney members? Presumably, the attorney members would participate as members without a vote as the group would have the authority to alter local court rules (the civil justice expense and delay reduction plans).]**

"(2) A chief judge of a district court may designate any other judge of that court to perform the responsibilities of the chief judge under paragraph (1) of this subsection.

"(b) The Judicial Conference of the United States may review the determinations and actions of a district judges group under subsection (a) of this section.

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

"The Judicial Conference of the United States--

"(1) shall review, on a continuing basis, civil case management by the United States district courts;

"(2) may develop and implement such additional case management procedures, studies, and demonstration projects, as the Judicial Conference determines appropriate; and

"(3) may waive the applicability of any provision of this subchapter to a court participating in a demonstration project carried out pursuant to paragraph (2) to the extent that such provision is inconsistent with the demonstration project.

**"§ 476. Automated semiannual report on caseload [processing?]/[activity?]**

"(a)(1) On January 15 and July 15 of each year each United States district court [and each United States Court of Appeals?] shall prepare a report on caseload [processing by?]/[activity of?] each judicial officer of that court and shall make the report available [to each judge?/judicial officer? in the

judicial circuit of such court?]/[to the judicial council of the circuit in which such court is located?].

"(2) The semiannual report for a court shall contain, for each judicial officer of such court, information relevant for understanding the performance of such judicial officer's responsibilities during the reporting period. The Judicial Conference of the United States shall prescribe the information to be included in the semiannual report.

"(b) The Director of the Administrative Office of the United States Courts shall ensure that the United States district courts' automated dockets [and the United States courts of appeals' automated dockets each?] have the program capability readily to retrieve the information prescribed by the Judicial Conference for the semiannual report pursuant to subsection (a) of this section.

"(c) In order to facilitate the preparation of semiannual reports under subsection (a) of this section, the Director shall standardize court procedures for categorizing or characterizing judicial [actions?]/[activity?], including defining what constitutes a dismissal and how long a motion has been pending.

**"§ 477. Manual for litigation management**

"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 such plans, 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.

**"§ 478. Judicial case management training programs**

"The Director of the Federal Judicial Center shall conduct a comprehensive training program on case management for the purpose of communicating, on a regular and formal basis, the accumulated learning on techniques for efficiently managing and disposing of civil actions 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. Administration of Civil Justice.....471".**

**SEC. 4. IMPLEMENTATION.**

[NOTE: This section is unnecessary if subchapter I of the new chapter 23 does not require each district court to have a civil justice expense and delay reduction plan.]

Initial implementation of sections 471 through 474 of title 28, United States Code (as added by subsection (a)), shall be accomplished as follows:



[NOTE: The following paragraphs have been refined to accommodate various eventualities not accommodated in the April 6 draft.]

(1) Not later than July 1, 1992, each United States district court shall develop a civil justice expense and delay reduction plan and submit such plan for action pursuant to section 474(a)(1) of such title. If a district court's plan is abrogated pursuant to such section, then, not later than 90 days after the date of the abrogation, the district court shall develop a substitute plan pursuant to chapter 23 of such title (as added by section 3(a)) and submit the substitute plan for action pursuant to section 474(a)(1) of such title.

(2) Action on each district court civil justice expense and delay reduction plan pursuant to section 474(a)(1) of such title shall be completed not later than 90 days after the date on which the plan is submitted by such district court for action pursuant to such section.

(3) The first civil justice expense and delay reduction plan implemented by each United States district court shall take effect not later than the day after action (other than abrogation) on such plan is completed pursuant to section 474(a)(1) of such title.

#### **SEC. 5. AUTHORIZATION.**

(a) Civil Justice Expense and Delay Reduction.--There is authorized to be appropriated not more than \$15,000,000 for the

implementation of chapter 23 of title 28, United States Code (as added by section 3), except for section 478 of such title.

(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 478 of title 28, United States Code (as added by section 3).

**This draft of policy suggested by Judge Barker would replace sections 471, 472, and 473 of the "Draft Minimum Acceptable Provisions for the Teleconference on April 17, 1990" with new sections 471 and 472, as follows:**

**"§ 471. District court review of administration of civil justice**

"(a) Each district court shall conduct, on a continuing basis, a review of the administration of civil justice by the court. In conducting the review, the district court shall consult with and consider the findings and recommendations of an advisory group appointed pursuant to subsection (b) of this section. As part of each review, the district court and the advisory group shall consider the semiannual reports of judicial officer activity prepared for the court pursuant to section 475 of this title.

"(b) The chief judge of each district court shall appoint an advisory group for the purpose of subsection (a) of this section. The advisory group shall include the following:

"(1) At least one district court judge.

"(2) At least one United States magistrate.

"(3) At least one district court clerk.

"(4) Such representatives of the public as the Chief Judge considers appropriate.

"(5) Such attorneys as the Chief Judge determines necessary to ensure that major categories of United States district court litigants are represented on the advisory committee.

**"§ 472. Civil justice expense and delay reduction plans**

"(a) A United States district court shall develop and implement a civil justice expense and delay reduction plan pursuant to this subchapter whenever a majority of the judges of such court determines, on the basis of a review conducted in accordance with section 471 of this title and after consultation with the judicial council of the circuit in which such court is located, that such a plan is necessary and desirable in the interest of achieving the objectives specified in subsection (b) of this section. In developing such plan, the district court shall consult with and consider the recommendations of the advisory committee appointed pursuant to section 471(b) of this title.

"(b) The objectives of each civil justice expense and delay reduction plan developed under subsection (a) of this section are as follows:

"(1) To ensure just, speedy, and inexpensive resolution of civil actions.

"(2) To facilitate the adjudication of civil cases on the merits.

"(3) To streamline discovery.

"(4) To improve judicial case management.

"(5) To ensure the independence of each judge to meet the unique needs of individualized cases.

"(c) Each district court and the advisory committee referred to in subsection (a) of this section should consider including in

the district court civil justice expense and delay reduction plan provisions for the following:

"(1) Implementation of a system of differentiated case management using the provisions of the Federal Rules of Civil Procedure.

"(2) Early involvement of a judicial officer in [planning]/[overseeing] the progress of each civil case.

"(3) Early entry of scheduling orders, including provisions for completion of discovery and commencement of trial.

"(4) [Control?]/[Monitoring?] of discovery.

"(5) Resolution of disputes through methods other than adjudication.

"(6) Facilitation of settlement.

"(7) Use of United States magistrates, including consensual trials by magistrates.

"(8) An ongoing program for training all judicial officers, clerks of court, and courtroom deputy clerks in case management techniques.

## CIVIL JUSTICE EXPENSE AND DELAY REDUCTION

**§ 471. Assessing current conditions and formulating plans for reducing expense and delay in civil litigation.**

- (a) The Chief Judge of each district court shall appoint a representative advisory group, as provided in § 472, to assist the court in:
  - (1) assessing, in conformance with guidelines established by the Judicial Conference pursuant to § 474, the current state of the court's civil and criminal dockets and identifying trends in the nature of filings and in the demands being placed on the court's resources, and
  - (2) identifying measures that could be taken, to implement and complement Rules 16 and 26 of the Federal Rules of Civil Procedure, to reduce cost and delay in civil litigation and to improve case management.
- (b) In formulating recommendations for consideration by the district court, each advisory group shall take into account the fact that the problems of cost and delay in civil litigation must be addressed in the context of the full range of demands made on the district court's resources by both criminal and civil matters, and that all of the litigation community share responsibility for cost and delay, so that solutions recommended must include significant contributions not only by courts, but also by lawyers and clients.
- (c) In addition to completing the assessment of current conditions and trends as required by § 471(a)(1), each advisory group and district court, in carrying out its responsibilities under this statute, shall:
  - (1) review current case management practices (civil and criminal) and attempt to identify ways they might be improved, bearing in mind the importance of tailoring management commitments, as well as case development plans and schedules, to the specific needs of individual cases;
  - (2) consider whether it would be appropriate to increase management efforts by judicial officers in the early stages of certain categories of civil cases, emphasizing early identification of key disputed issues and focusing discovery and motion practice to address those issues promptly and efficiently;

- (3) consider whether it would be appropriate to require the court, early in the pretrial period in certain categories of cases, to hold a discovery-case management conference for the purpose of establishing more detailed limits and schedules for discovery and for the filing and hearing of motions, and to explore the possibility of initiating early settlement negotiations or of having the parties use an alternative dispute resolution procedure;
- (4) consider whether it would be appropriate, at least in some categories of civil cases, to require counsel, prior to the initial status or scheduling conference conducted pursuant to Rule 16, to prepare (jointly if possible) and file a plan specifying how the case could be developed most expeditiously for disposition by settlement, motion, or trial.
- (5) consider whether it would be appropriate and feasible, early in the pretrial period in certain categories of cases, for the court, working with inputs from counsel, to identify the motions that must be resolved and the information that must be acquired (through discovery or otherwise) for the case to be essentially ready for disposition, to fix a schedule and time frame for completion of these tasks, and then to provide a range of different settlement or alternative dispute resolution procedures which parties could use at the appropriate pretrial juncture to attempt to resolve their dispute without having to incur the additional expense of trying the case and without having to wait until a trial date can be secured.
- (6) consider whether it would be appropriate, in order to prepare cases efficiently for early settlement negotiations and to reduce the costs and frictions that attend formal discovery, to require the parties in certain categories of actions to exchange specified types of documents or information early in the pretrial period.
- (7) consider whether it would be appropriate to adopt a local rule under which the court would consider no discovery motion, except by a party appearing pro se, unless counsel for the movant first certified that he or she had made a reasonable, good-faith effort to reach agreement with opposing counsel on the matters addressed in the motion;
- (8) consider whether it would be appropriate and feasible in certain categories of civil cases to

enlist the services of experienced, highly regarded private attorneys, serving as special masters, to supplement the resources the court can commit to case management, focusing discovery and resolving discovery disputes, and facilitating settlement negotiations.

- (9) review the processes and programs the court uses to help parties settle civil cases and consider whether it would be appropriate and feasible to change or add to those processes and programs; in this regard, advisory groups and courts should consider which judicial officers should host settlement conferences (magistrates, the assigned judge, or a judge who would not preside at trial), whether to increase or decrease the judicial resources committed to settlement work, and whether to establish or extend alternative dispute resolution programs such as early neutral evaluation, court-annexed (non-binding) arbitration, mediation, mini-trials, non-binding summary jury or bench trials, and non-binding use of non-neutral experts.
  - (10) review the ways the court currently uses magistrates and consider whether there are better ways they could be used so as to contribute more to the goals of improving case management and reducing costs and delays in civil litigation; such review should include evaluation of the ways parties are made aware of their right to consent to have their case reassigned to a magistrate for all purposes, including trial, and should address whether additional steps should be taken to ensure that parties give full consideration to this option;
  - (11) review the ways judicial officers, clerks, and courtroom deputies are trained in case management and consider whether additional training, including periodic update sessions, should be provided;
  - (12) consider any other suggestions or measures that offer substantial promise of improving case management practices or reducing cost and delay.
- (d) Each local advisory group shall prepare a report setting forth its assessment, as required by paragraph (a)(1) of this section, describing its consideration of each subject listed in paragraph (c) of this section, and presenting and explaining the recommendations it is making. This report shall be submitted to the district court and copies shall be sent to the appropriate



consulting committee established pursuant to § 473 and to the Judicial Conference of the United States.

- (e) Each district court shall consider the report and recommendations made by its advisory group and shall decide whether to implement, as proposed or with modifications, any or all of the advisory group's recommendations. Implementation of such recommendations shall be made pursuant to the Congressionally prescribed process for adopting local rules. 28 U.S.C. §2071. None of the provisions of this section should be construed as limiting a district court's authority to identify and implement, pursuant to 28 U.S.C. § 2071, additional measures that the court believes will improve case management practices or reduce cost and delay in civil litigation.
- (f) Each district court shall send copies of any rules, procedures or programs that it adopts as part of its case management and expense and delay reduction plan to the consulting committee established pursuant to § 473, to its Circuit Council, and to the Judicial Conference of the United States. [note: 28 U.S.C. § 332(d), as amended in 1988, requires each judicial council to review local rules and to modify or abrogate any such rule that the council decides is inconsistent with the Federal Rules of Civil Procedure or Evidence].
- (g) Each consulting committee established pursuant to § 473 shall review the reports and recommendations prepared by each district advisory group and the measures implemented by each district court in response thereto. The consulting committee may suggest for the district court's consideration any additional measures or changes in existing procedures or programs that the consulting committee believes would help improve case management practices or reduce cost or delay in civil litigation in a particular district. Upon receipt of any such suggestions, the district courts shall give them due consideration and shall report their responses to the consulting committee in writing, copying the Judicial Conference.
- (h) Every three years each district court, through its Chief Judge, shall reconvene its advisory group, which shall review current conditions and trends in the court, assess the effects of rules, procedures, or programs adopted pursuant to this statute, and prepare a report and set of recommendations for consideration by the court. Copies of these reports and recommendations shall be sent to the appropriate consulting committee and to the Judicial Conference. Each district court shall give due

consideration to the reports and recommendations submitted by its advisory group and shall advise (in writing) the appropriate consulting committee, its Judicial Council, and the Judicial Conference of any modifications or additions to local rules, procedures, or programs that the court makes in response to the work of its advisory committee.

**§ 472. District advisory groups.**

- (a) Each district court's advisory group shall be appointed by the chief district judge, after consultation with the other district judges, and shall include the chief district judge, such additional district judges as the chief judge may deem appropriate, a bankruptcy judge, a magistrate, the clerk of court, such attorneys as the chief judge determines are necessary to ensure that major categories of litigants in the court are represented, such representatives of the public or client groups as the chief judge deems appropriate, and a reporter (who may be a law professor, a lawyer, or a judicial officer).
- (b) The attorney and lay members of the district advisory group shall serve at the pleasure of the Chief Judge but in no event longer than nine (9) years.
- (c) Each district court shall have authority to determine whether the reporter for its advisory group should be compensated. Compensation for such reporters shall be made in accordance with standards and limits fixed by the Judicial Conference.

**§ 473. Circuit-wide consulting committees.**

- (a) In each circuit there shall be a consulting committee that shall perform the functions set forth in § 471. The consulting committee shall be composed of the chief judge of each district court in the circuit or a district judge designated by the chief judge.
- (b) Each consulting committee shall elect a chair from its members.
- (c) Each consulting committee may retain the services of a reporter or professional consultant, who shall be compensated at a reasonable level fixed in accordance with standards and limits established by the Judicial Conference.

§ 474. Actions by the Judicial Conference of the United States.

- (a) Within four months of the effective date of this legislation the Judicial Conference shall have prepared and distributed a set of guidelines for use by the district advisory groups and the district courts in assessing the current state of civil and criminal dockets and identifying trends in the nature of filings and in the demands being placed on the court's resources. Among other things, such guidelines shall specify kinds of questions each court should ask about itself and categories of data that should be assembled in developing useful assessments. The guidelines also shall suggest means that might be used to address the relevant questions and to gather the needed data, and shall identify sources of information that should be consulted.
- (b) Within six months of the effective date of this legislation the Judicial Conference shall have developed and distributed a document that (1) describes and explains the rationales for several different approaches to individualized case management, indicating potential advantages and disadvantages of each approach and suggesting kinds of cases or circumstances to which each approach might be best suited, (2) lists and explains a range of different measures that courts might consider adopting to improve the delivery of case management services or to reduce cost and delay in civil litigation, (3) describes and explains the alternative dispute resolution procedures and programs that have been developed to help parties dispose of their cases in fair and cost-effective ways, and (4) sets forth two or more model civil expense and delay reduction plans, explaining how their components are integrated and how they could help achieve the goals of this legislation.
- (c) The Judicial Conference shall establish a procedure and a committee to review the reports and recommendations made by the district advisory groups, as well as the measures taken by the district courts pursuant to this legislation. The Conference, acting on the recommendations of the committee it establishes for this purpose, may direct a district court to reconsider the recommendations of its advisory group or the court's responses thereto, or to give due consideration to modifying or adding to existing rules, case management practices, or alternative dispute resolution programs. Each district court that is directed by the Judicial Conference to consider or reconsider any matter pursuant to this paragraph shall, within four months, respond in writing, setting forth the results and explaining the rationale of its determinations. If not satisfied, the

Judicial Conference may direct the district court to take further action.

- (d) The Judicial Conference is authorized to conduct a four-year demonstration program in up to five volunteer districts of different sizes and case mixes to experiment with and assess the relative effectiveness of different methods of reducing cost and delay and of different case management techniques. The Conference shall arrange to have each such demonstration program carefully monitored and evaluated, and shall publish, after the demonstrations have been completed, a comprehensive report. The Conference shall direct each of its committees that has a policy or rule-making responsibility in an area implicated by the demonstration programs to consider whether their results suggest policies or rules that are suitable for implementation on a national basis. In considering such matters, the Conference's committees shall bear in mind that conditions may vary dramatically between different districts and that no one single plan or set of prescriptions will be appropriately responsive to the needs of every district.
- (e) Drawing on all that is learned from the reports and recommendations of the district advisory groups, from the effects of measures adopted by district courts in response to those reports and recommendations, from demonstration programs, and from other instructive sources, the Judicial Conference shall arrange to have prepared (and periodically updated) a **Manual for Litigation Management and Cost and Delay Reduction**. This Manual shall include descriptions of and analytical commentary about a wide range of case management techniques and other measures, including alternative dispute resolution programs, that have been used to try to reduce cost and delay in civil litigation. It also shall describe and comment on the combined or interactive effects of different measures as they have been integrated into "expense and delay reduction plans" in particular districts. The Conference also shall direct each of its committees with policy or rule-making responsibilities in areas touched by this Manual to determine whether it suggests policies or rules that are suitable for implementation on a national basis.

§ 475. Training programs.

The Director of the Federal Judicial Center shall expand education and training programs to ensure that all judicial

officers, clerks of court, courtroom deputies, and other appropriate court personnel are thoroughly familiar with the most recent learning and accumulated wisdom about case management and other cost or delay reduction measures, including alternative dispute resolution programs.

**§ 476. Authorization.**

- (a) Civil Justice Expense and Delay Reduction. There is authorized to be appropriated not more than \$15,000,000 for the implementation of sections 471 through 474 of this statute.
- (b) Training in Case Management and Other Measures for Cost and Delay Reduction. There is authorized to be appropriated for the Federal Judicial Center not more than \$2,000,000 for implementation of § 475 of this statute.

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