

Agenda Item III (B)
Court Administration
and Case Management
December 1992
Action

Status of the Tentative Civil Justice Reform Act Spending
Allocation - Fiscal Year 1993

The Judiciary is facing a severe budget crisis this fiscal year, which began October 1, 1992. The Congress has funded the salaries and expenses of the Federal Judiciary at approximately \$130 million less than what is needed to maintain the current level of operations. These cuts were made despite major efforts by the Chairman and members of the Conference Budget Committee, the Director and staff of the Administrative Office, and other judges. Subsequently, the House and Senate went into conference, and the Conference Committee's version of the appropriations bill was passed by both the House of Representatives and the Senate. On October 6, 1992, the President signed the bill into law (Judiciary Appropriations Act, H.R. 5678, Public Law 102-395).

The lack of funding in fiscal year 1993 will require significant cuts in a number of Judiciary programs, including the Civil Justice Reform Act. In an attempt to deal with this shortfall, the Director of the Administrative Office formed 12 budget reduction committees (*see Budget Reduction Committees, infra*) to identify areas where funding could be reduced in the financial plan. The Administrative Office anticipates that a

fiscal year 1993 spending plan will be developed and presented to the Executive Committee of the Judicial Conference for its consideration in December 1992. In the meantime, all courts have received Civil Justice Reform Act funding at approximately 25 percent of their 1992 initial allotment levels (*see Interim Allotments, infra*). This level of funding should be adequate to allow the time necessary for the Executive Committee to finalize the 1993 spending plan. Once a spending plan is approved, staff will assess the severity of the budget situation and develop a Civil Justice Reform Act spending allocation for consideration by the Committee. After a Civil Justice Reform Act spending allocation is approved, allotments for continued support of Civil Justice Reform Act activities will be released to the courts.

FISCAL YEAR 1993 BUDGET SUBMISSION TO CONGRESS

The budget estimate submitted to Congress for fiscal year 1993 included approximately \$15.1 million for the Civil Justice Reform Act. This is a decrease in funding of approximately \$1.6 million from the amount provided in fiscal year 1992 (*see Table 1*). Some of the costs of the program are non-recurring expenses and will not be required in fiscal year 1993. For instance, the travel performed by the Advisory Committees is expected to decrease as the courts finalize their plans. In addition, the requests for office equipment by the courts is expected to

decrease because most of their needs have already been met in the past two years. The non-recurring expenses in fiscal year 1993 were calculated to be \$3,865,000. The budget estimate also included funding for the 200 positions that were made available in fiscal year 1992 (see Attachment 1 for a full discussion on fiscal year 1992 expenditures). An additional \$2,265,000 was requested in the budget estimate for the annualization of these positions in fiscal year 1993.

TABLE 1

Civil Justice Reform Act of 1990

Requested Decrease: \$-1,600,000

Civil Justice Reform Act
Summary of Request

Requirements	Positions	Request (\$000)
Annualization of Positions	N/A	2,265
Reduction for Non-Recurring Costs		
Initial Year Unit Costs		
for New Positions	N/A	(552)
Travel	N/A	(178)
Equipment	N/A	(3,135)
Total	N/A	(1,600)

BUDGET REDUCTION COMMITTEES

Twelve budget reduction committees were formed by the Director of the Administrative Office to explore possible cuts in twelve different program areas. These committees consisted of Administrative Office personnel and clerks of court. Two separate budget reduction committees examined Civil Justice Reform Act funding: the Committee on Clerks' Offices and the

Committee on Reimbursable Programs. The Budget Reduction Committee on Clerks' Offices considered reducing the amount of operation and maintenance funding needed to support the Civil Justice Reform Act. The committee suggested that the Court Administration Division perform a detailed analysis of those individual court requests in excess of \$100,000 for fiscal year 1993. The committee also proposed an across-the-board reduction in Civil Justice Reform Act budgets requested by all other courts.

The Budget Reduction Committee on Reimbursable Programs was interested in reducing the amount of funding needed to support the Civil Justice Reform Act reimbursable positions within the Administrative Office. In fiscal year 1991, the Executive Committee provided funding for a total of 11 positions within the Administrative Office to support the Civil Justice Reform Act. The Committee on Reimbursable Programs developed several cost-savings proposals to reduce the amount of funding needed for the salaries and miscellaneous expenses associated with these positions.

In July, the Court Administration Division informed Judge Robert Parker, Chairman of the Committee on Court Administration and Case Management, of the actions suggested by the budget reduction committees. It was determined that the Civil Justice

Reform Act should be subject to budget cuts like other Judiciary programs.

The findings of the budget reduction committees were reported to the Director. In addition, Judge John Gerry, Chairman of the Executive Committee, sent a letter to all judges asking for suggestions for saving money in fiscal year 1993. Using the information presented by the budget reduction committees and the judges, several budget reduction packages have been developed that offer a framework within which decisions for reducing the \$130 million budget deficit may be made. The Director sent these suggestions to Conference members and Committee Chairs for their consideration and recommendations and the Executive Committee will meet on December 14-15 to discuss options for budget reductions.

FISCAL YEAR 1993 INTERIM ALLOTMENTS

On September 28, 1992, all courts received interim allotments for the Civil Justice Reform Act at 25 percent of their initial fiscal year 1992 level, except for those courts where 25 percent of their fiscal year 1992 level exceeded 80 percent of their fiscal year 1993 Civil Justice Reform Act requests. The five courts in this category were provided funding

at 25 percent of their fiscal year 1993 requests.¹ The total amount of funds transmitted to the courts was \$822,651 (Attachment 2). A second allotment of 25 percent was allocated on December 1, 1992. The courts were told to anticipate low funding levels in fiscal year 1993 and to limit their expenditures as much as possible. In previous years, each court was restricted to the categorical limits specified in its Civil Justice Reform Act spending allocation. This restriction, however, was not placed on this fiscal year's interim allotments. Consequently, each court has been permitted to spend its interim allotment in the areas it determines to be most important in meeting its responsibilities under the Act. Courts were also advised that all spending should be in accordance with the guidelines established by the Committee on Court Administration and Case Management.

FISCAL YEAR 1993 BUDGET REQUESTS

The allocation of funds for the Civil Justice Reform Act will be distributed from among four separate categories in the financial plan: operation and maintenance, salaries of supporting personnel, automation systems, and Administrative Office support.

¹ As an example, the Eastern District of Arkansas requested \$96,100 in fiscal year 1992. Twenty-five percent of this amount is \$24,025. Since this amount exceeded 80 percent of their fiscal year 1993 request (\$11,000), they received an interim allotment of \$2,750.

Staff has analyzed the fiscal year 1993 budget submissions which contained sufficient justifications and identified several requests that appear to be outside the parameters established by the Committee or excessively costly in light of the budget crisis. A total savings of approximately \$1.65 million dollars in Civil Justice Reform Act funding will be realized if the Committee approves the recommendations made below. Staff will continue to analyze the remaining requests and eliminate those requests that do not comply with the guidelines established by the Committee (e.g., compensation rates for advisory group reporters and consultants in excess of \$35,000, purchase of copier and facsimile machines, etc.).

FISCAL YEAR 1993 SPENDING ISSUES FOR EID COURTS

(1) The Northern District of Georgia requested \$1,152,000 to appoint government paid special masters as part of its alternative dispute resolution plan. In the opinion of the General Counsel, the Federal Rules of Civil Procedure preclude the Judiciary from funding any costs for special masters, except when a magistrate judge serves as a special master as provided in Rule 53 (*Attachment 4*).

(2) The Northern District of Georgia further requested \$174,000 for the compensation and expenses of arbitrators for a court-annexed arbitration program. In a memorandum

dated July 5, 1991 (*Attachment 5*), General Counsel offered the opinion that the arbitration program created under the Civil Justice Reform Act cannot be expanded beyond the 20 courts in which it has been adopted pursuant to 28 U.S.C. § 658. If legislation recommended by the Judicial Conference is adopted to expand the court annexed-arbitration program, this issue should be revisited.

(3) The Western District of Michigan requested \$65,450 for court-wide video teleconferences for members of the bar to query judicial officers regarding Differentiated Case Management (DCM) practices. This amount includes the 12 month lease for a video-conferencing system and electronic transfer mechanisms. It is recommended that this request be denied at this time due to the budget crisis.

(4) The Western District of Michigan further requested \$27,200 for the production of four videotapes to provide attorney and litigant educational materials regarding DCM. Since there are less expensive means of disseminating this kind of information (e.g., pamphlets, brochures, etc.) and in light of the expected budget crisis, it is recommended that this request be denied at this time.

(5) The District of Delaware requested \$25,000 to develop a technologically enhanced courtroom which would utilize the

latest equipment for collating, preserving and presenting documents and other evidentiary matters. Although the court's request was described as a means of "fine tuning" its case management system, it is suggested that this request falls outside of the scope of the Civil Justice Reform Act and should be denied.

(6) The Northern District of Ohio requested \$81,984 for consultant compensation. This request included: two consultants at a cost of \$18,000 each; two statisticians at a cost of \$18,000 each; and ADR consultants at a cost of \$9,984. Based on an examination of their plan, the information provided in the budget submission, and due to the budget situation, staff believed that one consultant and one statistician should be sufficient to meet the needs of the court. Therefore, it is suggested that the Northern District of Ohio receive partial funding in the amount of \$46,000.

(7) The Northern District of Ohio further requested \$48,108 for a district-wide staff retreat. The purpose of this retreat is to ensure that judicial officers, clerk's office staff, law clerks and secretaries are kept informed of the progress of the DCM program. The agenda for the retreat, which is planned to last 1.5 days, would include the fundamentals of case flow management, the theory and

operation of DCM systems, the theory of ADR techniques and details on how these programs will operate in the Northern District of Ohio. It is suggested that the court explore less expensive ways of disseminating this information and it is recommended that this request be denied.

FISCAL YEAR 1993 SPENDING ISSUES FOR NON-EID COURTS

(1) The Middle District of Pennsylvania requested \$16,000 to reprint its local rules. The average amount of funding requested by the courts in the budget submissions for printing expenses was approximately \$5,000. This average includes courts with larger bar populations than the Middle District of Pennsylvania. On this basis, it is recommended that the request by the Middle District of Pennsylvania be reduced by \$11,000.

(2) The Western District of Washington requested \$15,000 for forms, publications and printing. This request exceeds the normal amount of funding needed for printing. On that basis, it is recommended that this request be reduced by \$10,000.

(3) The Middle District of Tennessee requested \$34,479 to publish its Civil Justice Reform Act Advisory Group report, appendices, executive summary, and plan. This request

exceeds the normal amount of funding needed for printing. On this basis, it is recommended that this request be reduced by \$29,479 to a total of \$5,000.

(4) The Northern District of New York requested \$2,400 for office equipment. This request included: two answering machines for Civil Justice Reform Act staff (\$300); one television monitor (\$600); one video/player recorder (\$500); and one video camera (\$1,000) to be used for training related to the implementation of the Act. The benefits gained by the purchase of this equipment does not offset the cost of this request. Therefore, it is recommended that this request be denied.

Staff will continue to analyze the remaining budget submissions by the courts. Once a fiscal year 1993 financial plan is approved by the Executive Committee, staff will prepare a Civil Justice Reform Act spending allocation and provide it to the Committee on Court Administration and Case Management for its consideration.

FISCAL YEAR 1993 AUTOMATION REQUESTS

In fiscal year 1993, approximately \$172,000 was requested by the EID courts and \$100,500 by the non-EID courts for automation

equipment and supplies. The automation requests by the EID courts were substantially less in 1993 than in the previous year. This is mainly the result of the following:

(1) \$2,022,900 was transferred into the Judiciary Automation Fund and made available to the EID courts in fiscal year 1992. Of this amount, \$1,544,000 was made available for additional hardware and software requirements created by the implementation of the Act, and \$478,900 was provided to the EID and non-EID courts for automation equipment and supplies; and

(2) In fiscal year 1992, the EID courts received 90 positions and supplemental allotments for equipment in the amount of \$67,500.

The funding that was made available to the EID courts in fiscal year 1992 was sufficient to satisfy most of their automation needs. In fiscal year 1993, the majority of funds requested for automation are for the purchase of additional personal computers, printers and supplies.

The amount requested by the non-EID courts (\$100,500) was comparable to the amount of funds requested in fiscal year 1992 for automation. On December 1, 1993, all non-EID courts are scheduled to submit their Civil Justice Reform Act plans and

begin implementation. As these courts move toward implementation, there will be a greater need for automation equipment.

At this time, however, the Administrative Office is unsure of the amount of automation funds that will be provided for the Civil Justice Reform Act in the 1993 spending plan. In light of the budget situation, staff recommends the following:

(a) all requests by the courts for automation equipment and supplies under the Civil Justice Reform Act be deferred until a spending plan is adopted;

(b) in the event that funding is provided through the spending plan, an AO task force draft a plan for the equitable distribution of those funds submit the plan to the Court Administration and Case Management Committee for approval; and

(c) in the event that funding is provided through the spending plan, the Committee consider reserving funds for the unanticipated automation needs of the courts in fiscal year 1993.

FISCAL YEAR 1993 PERSONNEL REQUESTS

In fiscal year 1992, 200 Civil Justice Reform Act positions were provided in the financial plan for allocation to the courts at a cost of approximately \$6.1 million. In fiscal year 1992, 90 permanent positions were allocated to the EID courts to assist with the implementation of the Act. In addition, 88 temporary positions were allocated in fiscal year 1992 to the non-EID courts to assist with the additional workload created by the advisory groups. An additional \$2.2 million was requested in the fiscal year 1993 budget submission for the annualization of the 200 positions. Therefore, the total amount of funds requested for these positions in fiscal year 1993 was approximately \$8.3 million. Since the amount of funding that will be made available in the fiscal year 1993 financial plan for personnel compensation is unknown, staff cannot guarantee that all the positions previously allocated and filled in fiscal year 1992 will continue to be funded in fiscal year 1993. The Budget Division, however, has indicated that all positions filled as of October 18, 1992 will be included in the proposed fiscal year 1993 financial plan, which is, of course, subject to approval by the Executive Committee.

On October 1, 1992, the Executive Committee imposed a personnel hiring freeze on the Judiciary as a means of dealing with the budget crisis. In accordance with the conditions of

this freeze, no new positions or vacant positions can be filled, unless a critical exception is granted by the Director of the Administrative Office.

The 1993 budget submissions contained requests for 36 additional Civil Justice Reform Act positions. These requests were received from thirteen courts (*Attachment 6*). The budget submissions, however, were submitted to the Administrative Office without adequate justification to support the requests.

For the reasons mentioned above, staff recommends the following:

(a) all requests for additional Civil Justice Reform Act positions be deferred until the hiring freeze imposed by the Executive Committee is removed and additional funding becomes available in the 1993 financial plan; and

(b) staff obtain supporting justifications from the thirteen courts requesting additional positions, evaluate their requests, and provide a recommendation to the Committee for action.

ADDITIONAL FISCAL YEAR 1993 REQUIREMENTS

A. RAND Study

The Court Administration Division will be accompanying members of the RAND study team on 16 trips to the pilot courts in fiscal year 1993. The role of the Administrative Office on these trips will be:

1. to oversee implementation of the RAND contract;
2. to assist in establishing the necessary rapport between the Administrative Office, RAND, and the pilot courts;
3. to assist the study team in defining and locating necessary data, securing survey instruments, and furthering the team's understanding of court operations and procedures;
4. to gain an appreciation of court operations and the work flow of individual pilot courts as they relate to legislative aims and plan goals of the Civil Justice Reform; and
5. to assess initial court status at the outset of the study.

The estimated travel expenses for these courts -
Administration Division is approximately \$9,000.

B. Video-Conferencing Pilot

The Court Administration and Case Management Committee selected three courts to pilot the video-conferencing experiment for prisoner civil rights and habeas corpus cases. The courts selected to participate in this experiment were: Western District of Missouri, Eastern District Texas, and Southern District of Texas. The initial cost for equipment for the three courts was estimated to be \$200,000. The amount of \$50,000 was allotted to Texas Southern to purchase equipment needed for this experiment in fiscal year 1992. Approximately \$150,000 in additional funding will be needed in fiscal year 1993 to purchase equipment in the Western District of Missouri and the Eastern District of Texas as part of this experiment.

C. Data Entry Support by the Federal Judicial Center

The Federal Judicial Center is providing data entry support for the RAND study. This effort requires the hiring an additional person to perform data entry work. The Federal Judicial Center estimates that they will have expenditures of \$24,000 for this project in fiscal year 1993.

Based on the above information, the Committee on Court Administration and Case Management approves the following requests:

(a) that \$9,000 in Civil Justice Reform Act funds be reserved for travel expenses by the Court Administration Division to oversee implementation of the RAND contract;

(b) that \$150,000 in Civil Justice Reform Act funds be reserved to purchase video-conferencing equipment by the Western District of Missouri and Eastern District of Texas; and

(c) that approximately \$24,000 be reserved in Civil Justice Reform Act funds to reimburse the Federal Judicial Center for data entry performed for the RAND study.