

292; Pub. L. 104-317, title VI, §608(a), Oct. 19, 1996, 110 Stat. 3860, provided that:

“(a) IN GENERAL.—(1) During the 5-year period beginning on January 1, 1991, the Judicial Conference of the United States shall conduct a demonstration program in accordance with subsection (b).

“(2) A district court participating in the demonstration program may also be an Early Implementation District Court under section 103(c) [set out above].

“(b) PROGRAM REQUIREMENT.—(1) The United States District Court for the Western District of Michigan and the United States District Court for the Northern District of Ohio shall experiment with systems of differentiated case management that provide specifically for the assignment of cases to appropriate processing tracks that operate under distinct and explicit rules, procedures, and timeframes for the completion of discovery and for trial.

“(2) The United States District Court for the Northern District of California, the United States District Court for the Northern District of West Virginia, and the United States District Court for the Western District of Missouri shall experiment with various methods of reducing cost and delay in civil litigation, including alternative dispute resolution, that such district courts and the Judicial Conference of the United States shall select.

“(c) STUDY OF RESULTS.—The Judicial Conference of the United States, in consultation with the Director of the Federal Judicial Center and the Director of the Administrative Office of the United States Courts, shall study the experience of the district courts under the demonstration program.

“(d) REPORT.—Not later than June 30, 1997, the Judicial Conference of the United States shall transmit to the Committees on the Judiciary of the Senate and the House of Representatives a report of the results of the demonstration program.”

PILOT PROGRAM

Pub. L. 101-650, title I, §105, Dec. 1, 1990, 104 Stat. 5097, as amended by Pub. L. 103-420, §4, Oct. 25, 1994, 108 Stat. 4345; Pub. L. 104-317, title VI, §608(b), Oct. 19, 1996, 110 Stat. 3860, provided that:

“(a) IN GENERAL.—(1) During the 5-year period beginning on January 1, 1991, the Judicial Conference of the United States shall conduct a pilot program in accordance with subsection (b).

“(2) A district court participating in the pilot program shall be designated as an Early Implementation District Court under section 103(c) [set out above].

“(b) PROGRAM REQUIREMENTS.—(1) Ten district courts (in this section referred to as ‘Pilot Districts’) designated by the Judicial Conference of the United States shall implement expense and delay reduction plans under chapter 23 of title 28, United States Code (as added by section 103(a)), not later than December 31, 1991. In addition to complying with all other applicable provisions of chapter 23 of title 28, United States Code (as added by section 103(a)), the expense and delay reduction plans implemented by the Pilot Districts shall include the 6 principles and guidelines of litigation management and cost and delay reduction identified in section 473(a) of title 28, United States Code.

“(2) At least 5 of the Pilot Districts designated by the Judicial Conference shall be judicial districts encompassing metropolitan areas.

“(3) The expense and delay reduction plans implemented by the Pilot Districts shall remain in effect for a period of 4 years. At the end of that 4-year period, the Pilot Districts shall no longer be required to include, in their expense and delay reduction plans, the 6 principles and guidelines of litigation management and cost and delay reduction described in paragraph (1).

“(c) PROGRAM STUDY REPORT.—(1) Not later than June 30, 1997, the Judicial Conference shall submit to the Committees on the Judiciary of the Senate and House of Representatives a report on the results of the pilot program under this section that includes an assessment of the extent to which costs and delays were

reduced as a result of the program. The report shall compare those results to the impact on costs and delays in ten comparable judicial districts for which the application of section 473(a) of title 28, United States Code, had been discretionary. That comparison shall be based on a study conducted by an independent organization with expertise in the area of Federal court management.

“(2)(A) The Judicial Conference shall include in its report a recommendation as to whether some or all district courts should be required to include, in their expense and delay reduction plans, the 6 principles and guidelines of litigation management and cost and delay reduction identified in section 473(a) of title 28, United States Code.

“(B) If the Judicial Conference recommends in its report that some or all district courts be required to include such principles and guidelines in their expense and delay reduction plans, the Judicial Conference shall initiate proceedings for the prescription of rules implementing its recommendation, pursuant to chapter 131 of title 28, United States Code.

“(C) If in its report the Judicial Conference does not recommend an expansion of the pilot program under subparagraph (A), the Judicial Conference shall identify alternative, more effective cost and delay reduction programs that should be implemented in light of the findings of the Judicial Conference in its report, and the Judicial Conference may initiate proceedings for the prescription of rules implementing its recommendation, pursuant to chapter 131 of title 28, United States Code.”

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

(a) The civil justice expense and delay reduction plan implemented by a district court shall be developed or selected, as the case may be, after consideration of the recommendations of an advisory group appointed in accordance with section 478 of this title.

(b) The advisory group of a United States district court shall submit to the court a report, which shall be made available to the public and which shall include—

- (1) an assessment of the matters referred to in subsection (c)(1);
- (2) the basis for its recommendation that the district court develop a plan or select a model plan;
- (3) recommended measures, rules and programs; and
- (4) an explanation of the manner in which the recommended plan complies with section 473 of this title.

(c)(1) In developing its recommendations, the advisory group of a district court shall promptly complete a thorough assessment of the state of the court’s civil and criminal dockets. In performing the assessment for a district court, the advisory group shall—

- (A) determine the condition of the civil and criminal dockets;
- (B) identify trends in case filings and in the demands being placed on the court’s resources;
- (C) identify the principal causes of cost and delay in civil litigation, giving consideration to such potential causes as court procedures and the ways in which litigants and their attorneys approach and conduct litigation; and
- (D) examine the extent to which costs and delays could be reduced by a better assessment of the impact of new legislation on the courts.

(2) In developing its recommendations, the advisory group of a district court shall take into

account the particular needs and circumstances of the district court, litigants in such court, and the litigants' attorneys.

(3) The advisory group of a district court shall ensure that its recommended actions include significant contributions to be made by the court, the litigants, and the litigants' attorneys toward reducing cost and delay and thereby facilitating access to the courts.

(d) The chief judge of the district court shall transmit a copy of the plan implemented in accordance with subsection (a) and the report prepared in accordance with subsection (b) of this section to—

- (1) the Director of the Administrative Office of the United States Courts;
- (2) the judicial council of the circuit in which the district court is located; and
- (3) the chief judge of each of the other United States district courts located in such circuit.

(Added Pub. L. 101-650, title I, §103(a), Dec. 1, 1990, 104 Stat. 5090.)

§ 473. Content of civil justice expense and delay reduction plans

(a) In formulating the provisions of its civil justice expense and delay reduction plan, each United States district court, in consultation with an advisory group appointed under section 478 of this title, shall consider and may include the following principles and guidelines of litigation management and cost and delay reduction:

(1) systematic, differential treatment of civil cases that tailors the level of individualized and case specific management to such criteria as case complexity, the amount of time reasonably needed to prepare the case for trial, and the judicial and other resources required and available for the preparation and disposition of the case;

(2) early and ongoing control of the pretrial process through involvement of a judicial officer in—

(A) assessing and planning the progress of a case;

(B) setting early, firm trial dates, such that the trial is scheduled to occur within eighteen months after the filing of the complaint, unless a judicial officer certifies that—

(i) the demands of the case and its complexity make such a trial date incompatible with serving the ends of justice; or

(ii) the trial cannot reasonably be held within such time because of the complexity of the case or the number or complexity of pending criminal cases;

(C) controlling the extent of discovery and the time for completion of discovery, and ensuring compliance with appropriate requested discovery in a timely fashion; and

(D) setting, at the earliest practicable time, deadlines for filing motions and a time framework for their disposition;

(3) for all cases that the court or an individual judicial officer determines are complex and any other appropriate cases, careful and deliberate monitoring through a discovery-

case management conference or a series of such conferences at which the presiding judicial officer—

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

(B) identifies or formulates the principal issues in contention and, in appropriate cases, provides for the staged resolution or bifurcation of issues for trial consistent with Rule 42(b) of the Federal Rules of Civil Procedure;

(C) prepares a discovery schedule and plan consistent with any presumptive time limits that a district court may set for the completion of discovery and with any procedures a district court may develop to—

(i) identify and limit the volume of discovery available to avoid unnecessary or unduly burdensome or expensive discovery; and

(ii) phase discovery into two or more stages; and

(D) sets, at the earliest practicable time, deadlines for filing motions and a time framework for their disposition;

(4) encouragement of cost-effective discovery through voluntary exchange of information among litigants and their attorneys and through the use of cooperative discovery devices;

(5) conservation of judicial resources by prohibiting the consideration of discovery motions unless accompanied by a certification that the moving party has made a reasonable and good faith effort to reach agreement with opposing counsel on the matters set forth in the motion; and

(6) authorization to refer appropriate cases to alternative dispute resolution programs that—

(A) have been designated for use in a district court; or

(B) the court may make available, including mediation, minitrial, and summary jury trial.

(b) In formulating the provisions of its civil justice expense and delay reduction plan, each United States district court, in consultation with an advisory group appointed under section 478 of this title, shall consider and may include the following litigation management and cost and delay reduction techniques:

(1) a requirement that counsel for each party to a case jointly present a discovery-case management plan for the case at the initial pretrial conference, or explain the reasons for their failure to do so;

(2) a requirement that 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;

(3) a requirement that all requests for extensions of deadlines for completion of discovery or for postponement of the trial be signed by the attorney and the party making the request;

(4) a neutral evaluation program for the presentation of the legal and factual basis of a