

1995

Suggestions for Circuit Court Review of Local Procedures

Carl W. Tobias

University of Richmond, ctobias@richmond.edu

Follow this and additional works at: <http://scholarship.richmond.edu/law-faculty-publications>



Part of the [Civil Procedure Commons](#)

Recommended Citation

Carl Tobias, *Suggestions for Circuit Court Review of Local Procedures*, 52 Wash. & Lee L. Rev. 99 (1996)

This Article is brought to you for free and open access by the School of Law at UR Scholarship Repository. It has been accepted for inclusion in Law Faculty Publications by an authorized administrator of UR Scholarship Repository. For more information, please contact scholarshiprepository@richmond.edu.

Suggestions for Circuit Court Review of Local Procedures

Carl Tobias*

I. Introduction

During the 1980s, both the Judicial Conference of the United States, which is the policy-making arm of the federal courts, and Congress evinced increasing concern about the proliferation of local civil procedures, such as local rules and the procedures that individual judges apply. The Judicial Conference and Congress were particularly troubled by those local procedural requirements that conflicted with the Federal Rules of Civil Procedure (Federal Rules) or provisions of the United States Code.

In 1986, the Judicial Conference commissioned the Local Rules Project to collect and organize all local rules, standing orders of individual judges, and other local procedural strictures.¹ In 1989, the Local Rules

* Professor of Law, University of Montana. I am a member of the Civil Justice Reform Act Advisory Group for the United States District Court for the District of Montana and of the District Local Rules Review Committee of the Ninth Circuit Judicial Council; however, the views expressed here are my own. I wish to thank David Pimentel and Peggy Sanner for valuable suggestions, Cecelia Palmer and Charlotte Wilmerton for processing this Article, and the Harris Trust for generous, continuing support. Errors that remain are my own.

The information provided here is part of a larger project in which I have been attempting to evaluate implementation of the Judicial Improvements Acts (JIA) of 1988 and 1990. See generally Carl Tobias, *Civil Justice Planning in the Montana Federal District*, 53 MONT. L. REV. 239 (1992); Carl Tobias, *Civil Justice Reform and the Balkanization of Federal Civil Procedure*, 24 ARIZ. ST. L. J. 1393 (1992) [hereinafter Tobias, *Balkanization*]; Carl Tobias, *Improving the 1988 and 1990 Judicial Improvements Acts*, 46 STAN. L. REV. 1589 (1994) [hereinafter Tobias, *Improving*]. The suggestions derived from my assessment of the implementation that has occurred thus far seem sufficiently worthwhile to warrant publicizing them in the hope that they might receive serious consideration.

1. See COMMITTEE ON RULES OF PRACTICE AND PROCEDURE, JUDICIAL CONFERENCE OF THE U.S., REPORT OF THE LOCAL RULES PROJECT: LOCAL RULES ON CIVIL PRACTICE 1 (1989) [hereinafter, LOCAL RULES PROJECT]; see also Daniel R. Coquillette et al., *The Role of Local Rules*, A.B.A. J., Jan. 1989, at 62, 63 (presenting valuable summary of Local Rules

Project published a comprehensive report finding that judges had prescribed approximately 5,000 local rules and many additional procedures — variously characterized as general, standing, special, scheduling, or minute orders — that regulate local practice.² Quite a few of these requirements conflicted with the Federal Rules, provisions of the United States Code, or procedures used in the other ninety-three districts. Districts and individual judges had adopted and applied inconsistent procedures, despite prohibition of this practice in the Rules Enabling Act and in Federal Rule of Civil Procedure 83 (Rule 83).³

The Local Rules Project determined that the local requirements covered a broad array of procedural topics. The most widely prescribed procedures governed the pretrial process, especially pretrial conferences and discovery.⁴ A number of judges fashioned and implemented measures for tracking and attempting comparatively early in litigation to resolve routine, simple lawsuits, and numerous districts imposed presumptive numerical limitations on interrogatories.⁵

Project).

2. See LOCAL RULES PROJECT, *supra* note 1, at 1; see also Telephone Interview with Mary P. Squiers, Project Director of Local Rules Project (Feb. 21, 1992); Telephone Interview with Stephen N. Subrin, Consultant to the Local Rules Project (Feb. 15, 1992). Numerous individual judges had applied many unwritten procedures. See, e.g., U.S. DIST. COURT FOR THE DIST. OF MONT., CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLAN 3-4 (1991) (describing coequal assignment of civil cases to Article III judges and magistrate judges); U.S. DIST. COURT FOR THE DIST. OF WYO., CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLAN 13 (1991) [hereinafter WYOMING PLAN] (requiring "parties to make every reasonable and good faith effort to resolve discovery disputes before seeking assistance from the Court" and to so certify in writing).

3. See 28 U.S.C. § 2071(a) (1988); FED. R. CIV. P. 83; see also Stephen N. Subrin, *Federal Rules, Local Rules and State Rules: Uniformity, Divergence and Emerging Procedural Patterns*, 137 U. PA. L. REV. 1999, 2020-26 (1989) (describing various local procedures and stating that they were often inconsistent with Federal Rules or federal law). See generally Coquillette et al., *supra* note 1.

4. See, e.g., N.D. CAL. R. 235(7); see also Robert F. Peckham, *The Federal Judge as a Case Manager: The New Role in Guiding a Case from Filing to Disposition*, 69 CAL. L. REV. 770, 773-79 (1981) (explaining procedures governing pretrial process); cf. LOCAL RULES PROJECT, *supra* note 1, at 1-2.

5. See, e.g., BOARD OF JUDGES OF THE E. DIST. OF N.Y., CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLAN 2 (1991) (referring to earlier adoption of special procedures for treating social security cases and cases involving \$100,000 or less); WYOMING PLAN, *supra* note 2, at 2 (referring to earlier adoption of special procedures to be applied to noncomplex cases); see also Subrin, *supra* note 3, at 2021-26 (surveying local rules of discovery).

The federal judiciary and Congress responded in several ways to the complications that local proliferation presented.⁶ The Judicial Conference supported the 1985 revision of Rule 83, which requires that districts adopt local rules after providing public notice and opportunity for comment and that individual-judge standing orders be consistent with the Federal Rules and the local rules of the district in which the judge sits.⁷ The advisory committee note that accompanied the 1985 amendment asked that all districts implement processes for issuing and reviewing these orders and requested that circuit judicial councils assess all local rules for validity and for consistency with the Federal Rules and local procedures in the remaining districts.⁸

II. *The Judicial Improvements Act of 1988*

Five decades after the original 1938 Federal Rules of Civil Procedure took effect, Congress enacted the Judicial Improvements and Access to Justice Act (JIA) of 1988.⁹ The JIA's main objectives were to reduce local procedural proliferation and to restore the primacy of the Federal Rules and the importance of national rule revision.¹⁰ Congress seemingly meant for the legislation to revive and maintain significant procedural tenets — such as uniformity and simplicity — that had animated the Advisory

6. The Judicial Conference commissioned the Local Rules Project to study the problems presented by local proliferation and, upon receiving the Local Rules Project's report, issued an order asking the districts to conform local procedures to the Federal Rules and presenting many additional suggestions for treating local proliferation. See Tobias, *Balkanization*, *supra* note *, at 1399 (noting Judicial Conference's issuance of order requesting districts to conform procedures and its suggestion to number local rules in manner consistent with Federal Rules); Tobias, *Improving*, *supra* note *, at 1597 (same); see also *supra* notes 1-5 and accompanying text.

7. See FED. R. CIV. P. 83; see also FED. R. CIV. P. 83 advisory committee's note (1985 amendment). See generally David M. Roberts, *The Myth of Uniformity in Federal Civil Procedure: Federal Civil Rule 83 and District Court Local Rulemaking Powers*, 8 U. PUGET SOUND L. REV. 537 (1985).

8. See FED. R. CIV. P. 83 advisory committee's note (1985 amendment); see also Tobias, *Improving*, *supra* note *, at 1596 (discussing 1985 revision of Rule 83).

9. Judicial Improvements and Access to Justice Act of 1988, Pub. L. No. 100-702, 102 Stat. 4642 (codified in scattered sections of 28 U.S.C.).

10. See Tobias, *Improving*, *supra* note *, at 1599. See generally Linda S. Mullenix, *Hope over Experience: Mandatory Informal Discovery and the Politics of Rulemaking*, 69 N.C. L. REV. 795 (1991).

Committee on the Civil Rules when it proposed the initial Federal Rules a half-century earlier.¹¹

Congress intended to address the problem of local proliferation partly by regularizing local procedural amendment processes and opening them to public participation.¹² The JIA required that each federal district appoint a local rules committee to assist all of the district's judges in developing local procedures and that each court afford notice and opportunity for public comment when prescribing new, or revising existing, local rules.¹³ Congress correspondingly attempted to restrict proliferation by imposing an affirmative responsibility on circuit judicial councils to evaluate periodically all local procedures for consistency with the Federal Rules and by authorizing those councils to modify or abrogate any procedures found to conflict with the Federal Rules.¹⁴ Congress apparently meant for these commands to govern individual-judge procedures.¹⁵

Unfortunately, very few circuit judicial councils in the twelve United States Circuit Courts of Appeal have fully implemented the requirements relating to appellate court oversight that are found in the 1985 amendment of Rule 83 or the 1988 JIA. Several important factors, attributable to both Congress and the federal judiciary, apparently explain the incomplete effectuation of the commands.

11. See Tobias, *Improving*, *supra* note *, at 1599-1601 (discussing congressional intent); see also Paul D. Carrington, *Learning from the Rule 26 Brouhaha: Our Courts Need Real Friends*, 156 F.R.D. 295, 300-01 (1994) (discussing 1988 JIA and its concern with "the balkanizing effect of proliferating local rules").

12. See Tobias, *Improving*, *supra* note *, at 1599-1601.

13. See 28 U.S.C. §§ 2071, 2077(b) (1988 & Supp. V 1993). See generally David S. Day & Margo R. Tschetter, *The Local Rule Revision Project: The South Dakota Experience*, 38 S.D. L. REV 500 (1993).

14. See 28 U.S.C. §§ 332(d)(4), 2071(a) (1988); see also Tobias, *Balkanization*, *supra* note *, at 1401 (noting difficulties that circuit judicial councils confronted, such as determining conflict between local rules and Federal Rules). The JIA imposed a continuing obligation on the councils to review local procedures existing on the legislation's December 1, 1988 effective date and any requirements thereafter prescribed. See also Tobias, *Improving*, *supra* note *, at 1623-27 (stating that Civil Justice Reform Act (CJRA) of 1990 effectively suspended 1988 JIA); *infra* notes 40-44 and accompanying text (same); cf. Carrington, *supra* note 11, at 300-01 (discussing 1988 JIA).

15. See 28 U.S.C. § 2071 notes (1988). The JIA made the amendment process exclusive in an effort to prevent districts and judges from avoiding the requirements by denominating local procedures as something other than "local procedures," such as "standing orders." See *id.* § 2071(f); see also Tobias, *Improving*, *supra* note *, at 1600 (providing additional examination of congressional intent in passing 1988 JIA).

First, although Rule 83 and the JIA mandate review and abrogation or alteration of local procedures deemed to be inconsistent with the Federal Rules or provisions of the United States Code,¹⁶ some circuit judicial councils understandably may have been reluctant to implement rigorously these requirements.¹⁷ Circuit judges serving on those councils may have deferred to district judges in the discharge of their responsibilities to establish processes for adopting and revising local procedures and to promulgate and amend those procedures, and, when the councils fulfilled their duties, to monitor and abolish or modify any of the local procedures that the councils determined to be inconsistent.¹⁸ The circuit judges may have deferred because they believed that district judges individually and collectively know more about civil litigation at the trial court level generally and within each circuit's districts specifically.¹⁹

Second, the district judges, in complying with their obligations as council members, may have had some "conflicts of interest."²⁰ One important conflict may have involved each judge's duties (1) to implement local procedural adoption and revision processes and to prescribe and revise local procedural requirements and (2) to monitor the procedures that judges in other districts in the circuit had promulgated.²¹ It appears that few district judges in their capacity as council members wanted to analyze closely or alter procedures that the judges may have been envisioning for, or may have already adopted in, their own districts because the judges may have been less concerned about reducing inconsistency than about furthering what they believed to be the best interests of their own districts.²²

Third, a number of district judges serving on the councils may have thought that they were insufficiently familiar with local circumstances in

16. See 28 U.S.C. §§ 332(d)(4), 2071(a) (1988); FED. R. CIV. P. 83.

17. For discussion of the circuit review committees' analogous reluctance to scrutinize procedures that federal districts adopted under the CJRA, see Tobias, *Balkanization*, *supra* note *, at 1406-07. See also *infra* notes 40-44 and accompanying text.

18. See Tobias, *Balkanization*, *supra* note *, at 1406-07; see also *supra* notes 7-8, 12-15 and accompanying text.

19. See Tobias, *Balkanization*, *supra* note *, at 1406-07.

20. For additional discussion of conflicts of interest, see *id.* at 1407.

21. See *id.*, see also Day & Tschetter, *supra* note 13, at 515-16 (indicating some reluctance by local rules committee to abrogate or modify inconsistent or redundant local rules); *supra* notes 7-8, 12-15 and accompanying text.

22. See Tobias, *Balkanization*, *supra* note *, at 1407.

the districts whose procedures they were evaluating to make meaningful changes even in those requirements found to be inconsistent.²³ Other judges, out of professional or personal courtesy or respect for persons occupying the same position in the judicial hierarchy, may have deferentially examined local procedures.²⁴ Implicit and perhaps explicit in much of the above discussion is the highly sensitive nature of local procedural review. For example, numerous district judges are very protective of their prerogatives to adopt and apply local procedures.

Finally, the few councils that apparently attempted to undertake comprehensive and careful review may have been stymied by the task's onerous nature.²⁵ This may have been particularly true in appellate courts — such as the United States Court of Appeals for the Ninth Circuit — that comprise large numbers of federal districts or include districts that have many local procedures. Congressional failure to appropriate any funding to implement this aspect of the 1988 JIA additionally complicated the work of circuit councils, all of which have limited resources for accomplishing a broad range of burdensome responsibilities.

Notwithstanding these significant complications, some circuit judicial councils initiated rigorous efforts, and others made laudable attempts, to comply with the requirements that Rule 83 and the 1988 JIA imposed on them.²⁶ For example, the Ninth Circuit relied substantially on volunteer attorneys and law-student interns for help in reviewing local civil, criminal, and bankruptcy procedures.²⁷ Those who participated in the bankruptcy rule review project have made significant progress, but they have been able to do so only by relying on the work-study funds of the University of San

23. For additional discussion of insufficient familiarity with local procedures in a closely related context, see *id.* See also *supra* notes 7-8, 12-15 and accompanying text.

24. For additional discussion of deferential examination in a closely related context, see Tobias, *Balkanization*, *supra* note *, at 1407. See also Day & Tschetter, *supra* note 13, at 515-16 (expressing similar ideas about local rules committee).

25. I rely substantially here on conversations with numerous people who are knowledgeable about councils' implementation efforts and many council documents. See, e.g., sources cited *infra* notes 26, 43.

26. See Telephone Interview with David Pimentel, Assistant Circuit Executive for Legal Affairs, United States Courts for the Ninth Circuit (July 22, 1994); Telephone Interview with Andrew Tietz, Assistant Circuit Executive, United States Courts for the First Circuit (July 22, 1994).

27. See Telephone Interview with David Pimentel, *supra* note 26; see also Tobias, *Balkanization*, *supra* note *, at 1408 & n.78 (asserting that Ninth Circuit Review Committee conducted rigorous review under CJRA).

Diego School of Law to pay student researchers and by soliciting resources from the local attorney-admission funds of the various districts.²⁸

However, the Ninth Circuit committee that had been working on civil and criminal district rules was frustrated by the onerous character of the task entailed in monitoring fifteen districts' procedures and suspended its efforts to complete a comprehensive review.²⁹ A new District Local Rules Review Committee has recently been constituted under the auspices of the Chief District Judges Committee of the Ninth Circuit Judicial Council, which Chief Judge Robert Coyle of the Eastern District of California chairs.³⁰

Ninth Circuit Chief Judge J. Clifford Wallace raised the issue of funding for local procedural review with Ralph Mecham, the Director of the Administrative Office of the United States Courts, and urged that sufficient resources be allocated to permit the circuit to effectuate the 1988 statutory mandate. Mecham suggested that the Ninth Circuit seek the money as a part of its annual budget request, but the Ninth Circuit's 1995 budget request for the review project was denied. Chief Judge Wallace has renewed his plea for the necessary resources; however, those responsible for the judiciary's budget have yet to respond to this concern.

The 104th Congress has clearly and strongly indicated that it intends to reduce government spending substantially. This Congress appears particularly unlikely to provide funding for a new project whose purpose is the improvement of the federal courts; therefore, it will probably expect the federal judiciary to achieve more with fewer resources.

The Fourth Circuit Judicial Council has not undertaken, and does not presently envision commencing, a review of local procedures for consistency.³¹ Samuel W. Phillips, the Fourth Circuit Executive, suggested that the circuit council lacks sufficient resources and personnel to review all of the local procedures; such review would be a "mammoth task" because nine federal districts are situated within the Fourth Circuit.³² Phillips stated

28. See Telephone Interview with David Pimentel, *supra* note 26.

29. See *id.*

30. See *id.*

31. See Telephone Interview with Samuel W. Phillips, Circuit Executive, United States Courts for the Fourth Circuit (Jan. 18, 1995).

32. See *id.* Chief Judge Sam J. Ervin, III of the Fourth Circuit considered the feasibility of reviewing all of the local procedures within that circuit for consistency with the Federal Rules and provisions of the United States Code. However, he determined "that without the manpower or the money it is not feasible for the Fourth Circuit to undertake such a review."

that the circuit judicial council believes that any problems with the local rules would readily surface and be addressed.³³ He added that some of the districts in the Fourth Circuit may have conducted reviews of their local procedures.³⁴

A random survey of districts located within the Fourth Circuit indicates that they have implemented varying approaches, ranging across a broad spectrum from comparatively rigorous review of local procedures for consistency to no review. A number of districts have simultaneously modified their local procedures and scrutinized them for consistency in the context of implementing the Civil Justice Reform Act (CJRA) of 1990³⁵ or the 1993 Federal Rules amendments, which permitted districts to alter or decline to adopt specific procedural amendments, principally governing discovery.³⁶

The activities of the Northern and Southern Districts of West Virginia are illustrative.³⁷ Those courts appointed working groups for both districts. The working groups then attempted, in light of the changes in the Federal Rules, to undertake a complete revision of the local rules to make local rules in the two districts uniform.³⁸ Correspondingly, federal district judges in the District of Maryland and the Eastern District of Virginia expressed the belief that their local rules were consistent with federal requirements.³⁹

Letter from Samuel W. Phillips, Chief Executive, United States Courts for the Fourth Circuit, to Carl Tobias, Professor of Law, University of Montana 1 (Feb. 14, 1995) (on file with author).

33. See Telephone Interview with Samuel W. Phillips, *supra* note 31.

34. See *id.*

35. See 28 U.S.C. §§ 471-482 (Supp. V 1993).

36. See, e.g., FED. R. CIV. P. 26(a)(1) (prescribing local option for automatic, or mandatory, pre-discovery disclosure); cf. Tobias, *Improving*, *supra* note *, at 1611-15 (describing process of revising Federal Rule of Civil Procedure 26).

37. Cf. Carl Tobias, *Civil Justice Reform in the Fourth Circuit*, 50 WASH. & LEE L. REV. 89, 99-105 (1993) (discussing early implementation of CJRA in Northern and Southern Districts of West Virginia).

38. See Telephone Interview with John W. Fisher, II, Professor, West Virginia University College of Law (Jan. 20, 1995).

39. See Telephone Interview with Robert E. Payne, Judge, United States District Court for the Eastern District of Virginia, and Chair, Local Rules Committee of the United States District Court for the Eastern District of Virginia (Jan. 25, 1995); Telephone Interview with J. Frederick Motz, Chief Judge, United States District Court for the District of Maryland, and Chair, Local Rules Committee of the United States District Court for the District of Maryland (Jan. 24, 1995).

Another important reason why a number of circuit judicial councils may have implemented Rule 83 and the JIA less thoroughly than they otherwise might have was that certain aspects of the 1990 CJRA essentially suspended effectuation of the 1988 JIA.⁴⁰ For instance, the CJRA implicitly encouraged districts to adopt inconsistent local procedures for reducing expense and delay in civil litigation; the statute also created circuit review committees, in addition to the councils, and assigned the committees responsibility for overseeing implementation of the procedures.⁴¹

Some circuit judicial councils, therefore, may have been justifiably reluctant to scrutinize, much less alter, procedures that Congress apparently authorized and that Congress charged an analogous, but different, institution with reviewing.⁴² It should not have been surprising that the Sixth Circuit Judicial Council voted to suspend monitoring of local procedures under the JIA pending the receipt of additional guidance from Congress, the Judicial Conference, or case law as to whether the provisions of the CJRA take precedence over the Federal Rules.⁴³ Indeed, the Ninth Circuit's recently constituted District Local Rules Review Committee has requested the Ninth Circuit Judicial Council's views on how the committee should conduct its review in light of the CJRA.⁴⁴

III. Suggestions for Reducing Local Procedural Proliferation

The above complications do not necessarily mean that the circuit judicial councils are powerless to affect the proliferation of inconsistent local

40. See Tobias, *Improving*, *supra* note *, at 1623-27 (discussing conflicts between JIA and CJRA and CJRA's effective suspension of JIA).

41. See 28 U.S.C. §§ 473-474 (Supp. V 1993); see also Tobias, *Balkanization*, *supra* note *, at 1406-09, 1414-22 (discussing implementation of CJRA, its internal inconsistencies, and its conflicts with external requirements); Tobias, *Improving*, *supra* note *, at 1623-27 (discussing conflicts between JIA and CJRA).

42. See Tobias, *Improving*, *supra* note *, at 1623-27 (discussing conflicts between JIA and CJRA and procedures and institutions that Congress authorized). Compare 28 U.S.C. § 332 (1988 & Supp. V 1993) (prescribing circuit judicial councils) with *id.* § 474 (Supp. V 1993) (prescribing circuit review committees).

43. See United States Court of Appeals for the Sixth Circuit, Minutes of the Meeting of the Judicial Council of the Sixth Circuit 4-5 (May 4, 1994) (on file with author); see also Tobias, *Balkanization*, *supra* note *, at 1406-08 (asserting that some circuit review committees conducted rigorous oversight under CJRA); Tobias, *Improving*, *supra* note *, at 1605 & n.106 (discussing overlapping tasks of procedural revision assigned under CJRA and its effective suspension of efforts under JIA).

44. See Telephone Interview with David Pimentel, *supra* note 26.

procedures. Those councils should seriously consider instituting a modest proposal for ameliorating the difficulties enumerated: The councils ought to enlist the assistance of law professors, other volunteer attorneys, or law-student interns in each of the federal districts in their circuits.⁴⁵

The faculty, lawyers, and students could collect, analyze, and synthesize all local procedures for the purpose of identifying potential conflicts between them and the Federal Rules or the United States Code. The professors, attorneys, and students could carefully designate the local procedures that the districts had adopted pursuant to the CJRA and those that the districts and individual judges had prescribed under other authority — essentially Rule 83, the 1988 JIA, or inherent judicial power.

The councils could then systematically review for inconsistency and abrogate or modify the procedures that districts and individual judges had promulgated pursuant to authority that is not in the CJRA. Should Congress permit the CJRA to sunset as scheduled in 1997,⁴⁶ the conflicting procedures adopted under the CJRA ought to sunset as well. If Congress decides to extend the CJRA, it must harmonize the JIA and the CJRA by clearly providing how circuit councils that are attempting to implement the JIA should treat inconsistent procedures adopted under the CJRA.⁴⁷

Implementation of this limited approach would enable the circuit judicial councils to make substantial progress toward rectifying the problems that the proliferation of conflicting local procedures creates. Should Congress allow the CJRA to sunset in 1997, the circuit judicial councils could rather expeditiously complete the task of remedying or reducing any remaining inconsistencies, particularly if Congress appropriates resources for doing so. Should Congress extend the statute, Congress would have to reconcile the oversight duties that the JIA assigns councils and the apparent authority that the CJRA affords districts to adopt conflicting local procedures.

45. I am indebted to Andrew Tietz, Assistant Circuit Executive for the United States Courts for the First Circuit, for first mentioning this possibility to me and to David Pimentel, Assistant Circuit Executive for Legal Affairs for the United States Courts for the Ninth Circuit, for discussing the proposal and the Ninth Circuit's implementation efforts with me. See *supra* note 26. For additional suggestions relating to future efforts that could reduce local procedural proliferation, see Tobias, *Improving*, *supra* note *, at 1627-34.

46. See Judicial Improvements Act of 1990 § 103(b)(2), 28 U.S.C. § 471 notes (Supp. V 1993).

47. See Tobias, *Improving*, *supra* note *, at 1623-27 (discussing need for Congress to harmonize JIA and CJRA for purposes of implementation). See generally Lauren Robel, *Fractured Procedure: The Civil Justice Reform Act of 1990*, 46 STAN. L. REV 1447 (1994).