



February 10, 2016

Civil Justice Committee Meeting

Duke University Law School

MINUTES

Attending:

Committee members: David Levi, Janet Ward Black, Sheila Eley, Ed Gaskins, Rob Harrington, Calvin Hill, Anne Lloyd, Darrell Miller, Michael Mitchell, Osmond Smith

Other attendees: Evelyn Pursley, Shelby Benton, Alan Head, Charles Holton, Amanda Lacoff, Burley Mitchell, Greg Mize, Emily Portner, Will Robinson, Danielle Seale, John Wester, Jon Williams

Meeting called to order 10:35

Introductions

Mize offered a presentation based on the Conference of Chief Justices Recommendations for Civil Justice Improvements in State Courts.

Mize offered a history of the Conference's Recommendations for Civil Justice Improvements and the origin of the Recommendations.

Judge Bailey in Miami used some innovations to deal with a backlog of foreclosures.

Annual meeting in July, the Chief Justices Conference hope to approve the Recommendations.

Landscape of Civil Litigation in State Courts did data-driven study of how courts are being used. Final dataset is 5% of total civil caseload nationally. Of 980,000 cases 45% in limited jurisdiction courts.

64% contract, 16% small claims, 7% tort, 1 % real property,

Of those contract cases: 39% Debt collection, 27% LL/Tenant; auto cases largest component of tort.

From 1992 to today, more dismissals in general: 4% of dispositions jury or bench trial. Down from 6%

Median Judgment Amounts: Real property 12,789; Tort 6000; Small Claims 3000; Contract 2,272; Other 2,000; .2% of cases exceeded 500K.

Disparity exists in representation between plaintiffs and defendants.

Mize: “one size fits all” modality for civil adjudication is not acceptable, is not doing the job. Procedural routines are geared towards getting a case to trial. Need to adjust to fact that most cases are not going to trial. Therefore, case management. Time and most torts mean that persons are foregoing the remedy because of cost and time.

Need to make the courts place persons want to go get their dispute resolved.

Categories: Exercise ultimate responsibility, provide effective case management, provide superior access, overcome fiscal and cultural barriers to change. (p. 2 of the draft report)

Courts need to effectively communicate to litigants the requirements for reaching just and prompt case resolution.

Mize recommends a three pathway approach: streamlined, complex, and general, not based on amount in controversy, not based on tort, contract, etc., but case characteristics: (i.e. witnesses, documents to support claim, expert witnesses?) Ideally a question set of 5 to 10 questions: Like Turbo Tax.

Texas is experimenting with a mandatory set of rules for cases less than 100,000 dollars including time limits for the participation.

Levi raised the issue of how to track, “how many witnesses” will lead to overestimation, maybe “motion practice.” Utah has a triage system.

Smith asked who does the triage: Mize says different courts do it different ways. Pathway determinations not done by judge in most systems. Tracking is technology assisted.

Utah has software to do this. Bailey in Miami has developed a business process.

M. Mitchell wonders whether motion practice is perhaps more expensive than a bench trial or summary trial.

Landscape suggests 70% of cases will be in a streamline pathway.

Firm trial date with recommended time to disposition of 6-8 months being used in Utah.

Charles Holton notes that jury selection process in NC is “one size fits all” and causes delays.

Need to avoid politicization of case assignment. Assignment should be based on case management skills, training, specialized knowledge, etc.

Courts need “landscape” studies to determine what recommendations in report are advisable for implementation in jurisdiction.

Streamline, General and Complex, tracking should have single assignment system.

Some discussion of something like the federal 6 month list in NC court.

Levi raised concerns that when the judge runs the case, some lawyers think it is an imposition on the lawyer and how he or she wants to run the case.

Williams says there is some triage is small claims jurisdiction, assignment of case to small claims, automated process if mis-filed because more in issue.

Rather than radical change, an elaboration of existing system.

Williams notes there could be some gaming of slotting process between District and Superior Court. Questions should be what kind of complexity is in the case, not just amount in controversy.

Mize suggested that some high-dollar cases can go into streamline.

Family court triage is already happening. One judge one case, and good management.

Williams observed that of 400K civil matters filed, 50% are small claims (670 magistrates), 30% domestic, civil District (non domestic) 15%, civil Superior 5%.

Hill says assigning to one judge helps. In other areas assigning to a judge initially may prolong case.

Domestic is the pathways that cause the biggest problem, and most delays, followed by Civil Superior (but not business Court).

Broke at 11:50

Reconvened at 12:15

B. Mitchell says reform will have to be undertaken with the existing court staff. Some group will have obligation and reward for moving cases.

It will require personnel, will require more deputy clerks, etc. Resource issues. Fast track may be enabled by technology.

B. Mitchell not inclined to think that the kiosk, etc. technology going to be adopted by legislature. Also, need to have the bar on board with change.

Holton comments: Superior Court and Small Claims/District Court. Superior Court 2.1 special appointment process deals with this case assignment, single judge issue. Thinks rotation system is a problem. Jury selection process is too slow. Multiple days for basic business dispute. NC fallen behind in that area.

Holton noted the imbalance in representation in small claims and district court. Need to communicate to participants more clearly about what's going to happen and what to do. Self-help only goes so far --need representation (not necessarily a full lawyer, a paralegal, a legal student)

Wester: Troubled of fact that defendants do not have representation. Wants that message to get through. Also troubled by the rotation system. Court system needs to be predictable and reliable to attract business North Carolina. 2.1 could be the rule rather than the exception.

Some skepticism that clinics can provide a solution.

Harrington: pilot programs in family court, etc. Standardize the pilot programs. Need resources for the judicial system, i.e. clerks. Poorer states have clerk support for their judges. Standardization and staff and other support.

Lloyd commented that from the business perspective, inconsistency from jurisdiction to jurisdiction is baffling. Rural/urban divide is an issue too.

Levi suggested that maybe a pilot program is a natural experiment to see how the uniform system works.

Wester and B. Mitchell observed the success of linking up the business community with judicial system in creating the business court. Maybe a model for how to move change. Economic development committee use family court as matter of business development.

Black is not sure that business court argument works all the way down the structure of the NC judiciary.

Some discussion of where the business community is with respect to reform outside of business court, in the system as a whole.

Need consensus that NC judicial system is not offering consistent and efficient judicial system for the citizens.

The committee discussed relationships with the legislature, and what kind of legislative approvals may be necessary. May require a partnership between the courts and the legislature.

Legislators come to town on April 25th.

Levi suggested that we may want to have a government lawyer, the heads of the big litigation departments, and the district attorneys and clerks of courts to help persuade legislature on need for certain reforms. May want to coordinate with the Equal Access to Justice about getting legislative coordination.

Brunstetter and Daughtry may be a good persons reach out to the legislature. Could get surrogates to come to meetings from the existing legislators.

Minutes approved from last meeting unanimously.

Adjourned 1:30pm