



March 30, 2016

Civil Justice Committee Meeting

Duke University Law School

MINUTES

Committee members: David Levi, Janet Ward Black, Sheila Eley, Ed Gaskins, Rob Harrington, George Hausen, Calvin Hill, Julian Mann, Darrell Miller, Michael Mitchell

Other attendees: Dan Becker, Shelby Benton, Scott Crampton, Jim Drennan, Cynthia Easterling, Brad Fowler, Patrick Jones, Amanda Laccoff, Dora Moore, Tom Murry, Emily Portner, Evelyn Pursley, Will Robinson, Danielle Seale, Jon Williams

Began at 10:33

Levi opened meeting. A discussion about the topics likely to be addressed in the report were listed, those are:

1. Case assignment (including rotation, and characterization)
2. Case tracking (likely three kinds, way of differentiating)
3. Electronic filing (important to legal aid as well)
4. Rules Enabling Act
5. Access to clerks, staff attorneys, etc.
6. Civil fines, forfeitures, etc.

Janet Ward Black raised the issue of the domestic court and the need for attention to it. She noted that domestic cases tend to be different and have different demands.

Some mention that electronic filing would help in family court. Hill noted that family court is amenable to a completely different process i.e. ADR.

Levi suggested that at this point in the schedule, may have to make recommendations for further study by other group around identifiable problem.

Dan Becker, State Court Administrator, Utah Administrative Office of Courts made a presentation.

Becker gave his personal background in court administration first in North Carolina and then in Utah. He then provided an overview of the Utah Court system.

Most courts are urban in Utah. Judges in bigger courts with multiple judges.

Five member Supreme Court, intermediate appellate in panels, trial court. 10 Commissioners who take care of domestic relations. Juvenile court is a separate court, appointed, same salary as district court judge.

Utah keeps juvenile and domestic court separate, because of concern domestic cases will overwhelm best interests of child in juvenile court.

Governance of Utah Courts is unique: Constitutionally established judicial council, approved in 1985.

Judicial Council is the final governing authority for judicial branch. Supreme Court has no administrative responsibilities.

Judicial Council has authority for rules of judicial administration. Supreme Court has authority for Rules of civil procedure, criminal procedure, etc.

Council meets monthly in public meetings and is divided into several smaller committees, i.e., management, planning and policy, technology, legislative liaison.

Council members are supposed to advocate on behalf on the entire system, rather than champion the agenda of one sector of the system.

More than 70% of judges have administrative assignment. Council acts as board of directors, Dan Becker is CEO, Chief Justice is "president."

8 Judicial districts, presiding judge, court executive, clerk of court in each district. Presiding judge selected by the bench. State court administrator appoints court executive for each district.

Budget has two line items: Contracts and Leases (buildings) and everything else. Lots of fiscal flexibility. Entire system is state funded, except for justice court.

Real issue is prioritizing money. How make decisions about where to allocate. If willing to make hard and unpopular decision, lots possible within existing budget.

No new funding for things accomplished by the Utah court system.

Judicial selection and retention: all merit selection system in Utah and judges stand unopposed for retention.

Judges with poor mid-term reports opt to retire or not stand for retention.

Case Management: "New Business Model" Becker went over Business goals (on slide)

Made an agreement with legislature that if the judiciary came back with a plan that would cut costs legislature wouldn't cut the budget.

New Business model:

1. Electronic court environment (mandatory except for self-represented, available 24 hours a day, 87% percent of payments done electronically, e-warrants delivered electronically, e-notices, e-services, all-digital recording for the court record, e-transcript and management system, reduce costs of transcripts)
2. Complete reorganization of office of clerk of court (objective, smaller, more professional, better organized, better trained, better compensated professional) Began working in advance of mandatory e-filing. Asked what is the staff needed for the best use of this electronic initiatives? Clerk model was outdated, little advancement, front loaded with entry level, etc. Team management in clerks's office. Case manager, and 2 assistants for every judge, analytical work for movement of cases, new classification system and salary structure and new job titles, judicial assistant requires a BA, now everyone is a generalist; replaced time in grade advancement with competency, online skills based training, 75% have bachelors degree in office. Individual teams responsible for training their judges. 10% less workforce through attrition.
3. Reinvestment of mandatory e-filing savings. 30,000 fewer visits to the courthouse after electronic environment. Put funding into increased compensation for the employees that remain. Clerical to profession staff and had compensation increased. Millions saved in storage, paper, etc. Largest court allow to repurpose 50K sq. feet. Moved work to where the people are rather than people to where the work is. I.e. default cases can be done remotely. In process of doing remote hearings with high-def, and having rules of civil procedure to be able to do those kinds of things remotely. Rules of Civil Procedure will allow remote evidentiary hearings, can be done with a docket in a couple of hours rather than have to travel.
4. Data-driven decisions and improved case management. (Want to enhance legislative and public confidence in court, post progress, especially wanted legislators to have access to what is happening, see what's happening statewide, in district, and in particular courthouse) Access and fairness survey every two years. Survey people leaving courthouse and conduct survey of their experience. 93% knew what was next in case, a series procedural fairness questions. Survey results are discussed with management team and where can be done better.

Becker went over model for civil case management:

1. Responsibility: Individual assignment of cases.

Individual assignment system assigned randomly and only one judge. General rule only that judge sees case from beginning to end.

2. Support: Team management

Team is responsible for managing case, making sure motions don't sit, making sure required docs are present, receive attention in timely way, electronically organized by judicial assistant. Former model, the team is organized around the judge, and the judge is responsible for the case. Cases are slotted into tracks: Uncontested, contested, complex cases. Trying to have court management of cases rather than judge management. Team is focused on management of cases; judges brought case manager with the team.

Better information: Judicial workspace

Electronic tool to have the judges be able to work on case on and off the bench. Give notice, electronically prepare calendars, generate orders, remotely sign, rural judges can use laptop or tablet to

access cases. I.e. electronic environment, manager for cases, and then electronic case access wherever the judge actually is. Could avoid having to have a judge having to spend time just organizing when travel. Every case that comes in the door assigned to a judge.

How to process cases that require no processing? Judge's management team makes assessment of what proposed action should be. Clerk can take action on a default judgment of some kinds. Certain kind of case and dollar amount can go to case manager, and then clerk.

No charge for efilng, attorneys go through third party vendor for efilng services, \$300 per year for access, no Pacer fee. Changes have not had an impact on the number of judges. No fewer judges. Savings in the clerk's office staff.

Parties most upset with changes in Utah were District Attorneys in individual districts. Clerks are the happiest. Went from jobs that are routine to ones that are satisfying.

Impediments in North Carolina for Utah template:

Model requires changes in clerk's offices. In North Carolina all 100 clerks of court are independently elected, getting 100 clerks to agree much more complicated. In Utah, clerks were elected before 1984.

Regarding judicial clerks in Utah: there is a pool. Ratio of 1 clerk every 2.5 judge state wide. Clerks are wired into the process. Mixture of new grads (2 year position) or career clerk. JD for clerks. But BA for other part of case management team.

One possible recommendation is to pick out 3 or 4 clerks offices to try to implement a team management approach, restructure responsibilities and let the pilot run for two or three years.

Discovery reform big part of case management.

Intensive case management program. Takes notion that complex cases (tier 3 cases) warrant specific responsibility for management. Set out specific case management tasks for nine judges, and see how it works compared to other kinds of management.

High volume and self-represented litigants: online court assistance, system in place for 20 years, started out as kiosk, now on internet, like a Turbo Tax, generates form for them to file. Maintains an account for an individual. Self-help center in law library, five attorneys work in it, respond to request for assistance (not legal advice), across phone, chat, text, etc. 18000 people served through self-help center.

Licensed legal practitioner in infancy. Washington State using a licensed legal practitioner system. Utah decided to expand the Washington program, using a licensed paralegal practitioner. Limited representation to domestic, eviction, debt collection.

Broke for lunch at 12:15

Reconvened at 12:27

Tom Murry discussed legislative relationships. Business model, marketplace mindset is where the legislature is. Want a business approach -- that's what we've been asked to do with respect court and technology. Legislative leader wants to be able to access legal documents from his office. Technology plays a huge role. Speaker of House and President pro-tem are lawyers. Framework, pro-business. Interest in attracting business, and want court system to work efficiently. Incumbent to give the General Assembly relevant information. Recommendations need to give relevant information. Legislature really likes the business court. Family court always a topic of conversation in legislature.

Chamber of commerce is the best ally with respect to change.

Commerce needs to be on board, that efficient system a boon for everyone. Cost to business for pro se, for example.

Dan Becker remarked on Utah online dispute resolution and self-help center. Utah legislature interested because these resources reduces time to spend at the courthouse. Interest in empowering people.

Discussion of Small Claims and Civil District Court, Brad Fowler, Cynthia Easterling, Judge Hill and Shelia Eley

Presentation by Fowler:

Civil Small Claims: 51% non child support domestic relations (primarily divorce and custody), general civil too large for small claims.

Relatively stable figure except for Non IV D child support. (IV D are involve agency handling child support)

Interstate child support, that don't get resolved take a long time.

Juvenile Delinquency change in philosophy may have impact on intake. Some decline in crime late may explain decline in juvenile delinquency.

Magistrate cases: Summary ejectments, Money owed are the largest percentages.

63 counties have small claims up to \$10,000, 24 only up to \$5,000

Quick disposition of appeals from magistrates.

Pressure point on electronic in lower courts. Inefficient to have someone key in the filing in small claims, etc.

Hausen: Business community wants help for its employees to deal with issues like custody, landlord tenant, etc.

Easterling: Court Services offers field support for all matters not financial. Clerks and magistrates, try to support doing things in the similar way in all 100 counties. Support the record-keepers. Work with local plan for case management. Try to help local courts implement a local plan with respect to case management. Vast majority use AOC forms.

No pressure to clear out small claims faster. Local plan, either agreement, magistrates, or local rule or local order. 700 magistrates available 24/7 and no problem there.

Hill noted that no one is guiding process in small claims. No lawyers, two parties unsophisticated, got a disagreement, magistrate makes a ruling.

Dates range from 7 – 60 days based on expectations and type.

All this is AOC claims forms driven. Inefficiencies are in clerk keying in other kinds of stuff.

Clerks have an index system, not a case management system.

Calendaring success recommendations:

Set clear expectations for all stakeholders including attorneys and pro se

Define expected communication via ACO Forms or local forms

Define the Clerk's role in setting court dates based on specific guidelines versus Judicial Support Staff's role in managing calendars

Establish clear lines of data entry and communication between CSC and JSS staffs

Clearly define calendar formats and task posting to nccourts.org

Frequent review of local rules by all stakeholders annually, when change in stakeholders, change in redistricting, or when new courtrooms become available.

Seek assistance from Court Services when revise plans.

1:28 Minutes approved and adjournment.

DRAFT