

RECOMMENDATIONS TO REDUCE COST AND DELAY IN THE DELIVERY OF CIVIL JUSTICE

Our legal system promises the just, speedy, and inexpensive resolution of civil cases. Too often, however, we do not fulfill that promise. Beginning in 2011, the Conference of Chief Justices (CCJ) adopted resolutions to support state action plans to reduce cost and delay in civil cases. The recommendations set forth here are the culmination of efforts by the Civil Justice Improvements Committee (the "Committee") created by the CCJ to "develop guidelines and best practices for civil litigation based upon evidence derived from state pilot projects and other applicable research."¹

These recommendations could not be more timely. A few weeks ago Chief Justice Roberts wrote in his year-end report on the federal judiciary that it is "the obligation of judges and lawyers to work cooperatively in controlling the expense and time demands of litigation." He praised recent changes to the Federal Rules of Civil Procedure that "highlight[] the point that lawyers -- though representing adverse parties -- have an affirmative duty to work together, and with the court, to achieve prompt and efficient resolutions of disputes."

The following recommendations are a fulfillment of those resolutions. They derive from pilot project evaluations, discovered innovations, relevant research, and extensive deliberations of the Committee and its members working as a whole and in subgroups.

The recommendations are also largely informed by the *Landscape of Civil Litigation of State Courts*, a comprehensive study of civil caseloads in state courts in 10 urban counties undertaken by the National Center for State Courts ("NCSC"). The *Landscape* presented a dramatically changed picture of civil caseloads compared both to caseloads of two decades ago and to perceptions held by many civil trial lawyers and judges. Among the key findings:

- 80% of civil caseloads consisted of contract cases, small claims, and "other civil" cases involving agency appeals and domestic or criminal-related civil matters. Tort and real property cases comprised only 7 and 1 % of civil caseloads, respectively.
- The vast majority of cases involved relatively modest monetary values. Three-

¹ CCJ Resolution 5 "To Establish a Committee Charged with Developing Guidelines and Best Practices for Civil Litigation (January 30, 2013).

- quarters of the judgments entered were \$5,200 or less, and only 357 cases (0.2% of more than 900,000 cases examined) had judgments that exceeded \$500,000.
- Courts formally adjudicated (by way bench or jury trial, summary judgment, or arbitration) only 4 % of cases. Almost all of these were bench trials in low-value debt collection, landlord/tenant, and small claims cases. The most common dispositions for the *Landscape* cases were administrative dismissal (35%), default judgment (20%), and unspecified judgment (26%, many of which were likely default judgments).
 - At least one party was self-represented in more than three-quarters of the cases.

These and other findings in the *Landscape* make it imperative that court leaders move promptly to improve caseload management. They must use tools and methods that align with the realities of modern civil dockets to control costs, reduce delays, and ensure fairness for litigants. Toward those ends, these recommendations present a broad range of practices that each state can embrace in ways that fit local legal culture and resources. The recommendations are organized under these topical headings:

- Exercise Ultimate Responsibility
- Provide Effective Case Management
 - A. Triage Case Filings With Mandatory Pathway Assignments
 - B. Strategically Deploy Court Personnel & Resources
 - C. Use Technology Wisely
 - D. Focus Attention on High Volume and Uncontested Cases
- Provide Superior Access for Litigants
- Overcome Fiscal and Cultural Barriers to Change

The recommendations aim to create a future where:

- Each case receives the court attention necessary for efficient and just resolution;
- Teams of judges, court attorneys and professionally trained staff manage the case from filing to disposition;
- Litigants understand the process and make informed decisions about their cases,
- Justice is not only fair but convenient, timely, and less costly;
- Modern technology replaces paper and redundancy; and
- Civil justice is not considered an insider's game fraught with outdated rules and procedures.

In sum, the recommendations provide courts with a roadmap to make justice for all a reality.

Exercise Ultimate Responsibility

Recommendation 1.

Courts must² take responsibility for managing civil cases from time of filing to disposition.

1.1 Throughout the life of each case, courts must effectively communicate to litigants all requirements for reaching just and prompt case resolution. These requirements, whether mandated by rule or administrative order, should at a minimum include firm dates for commencing trial and mandatory disclosures of essential information.

1.2 Courts must enforce rules and administrative orders that are designed to promote the just, prompt and inexpensive resolution of civil cases.

Commentary

Our civil justice system has historically expected litigants to drive the pace of civil litigation by moving for court involvement as issues arise. This often results in delay as litigants wait in line for attention from a passive court—be it for rulings on motions, a requested hearing, or even setting a trial date. The wait-for-a-problem paradigm effectively shields courts from responsibility for the pace of litigation. It also presents a special challenge for self-represented litigants who are trying to understand and navigate the system. The party-take-the-lead culture can encourage delay strategies by attorneys, whose own interests and the interests of their clients may favor delay rather than efficiency. In short, adversarial strategizing can undermine the achievement of fair, economical and timely outcomes.

*It is time to shift this paradigm. The Landscape of Civil Litigation makes clear that relying on parties to self-manage litigation is often inadequate. At the core of the Committee's recommendations is the premise that the courts must be ultimately responsible for assuring access to civil justice. Once a case is filed in court, it becomes the **court's** responsibility to manage the case toward a just and timely resolution. When we say "courts" must take responsibility, we mean judges, court managers, and indeed the whole judicial branch, because the factors producing unnecessary costs and delays have slowly become deeply imbedded in our legal system.*

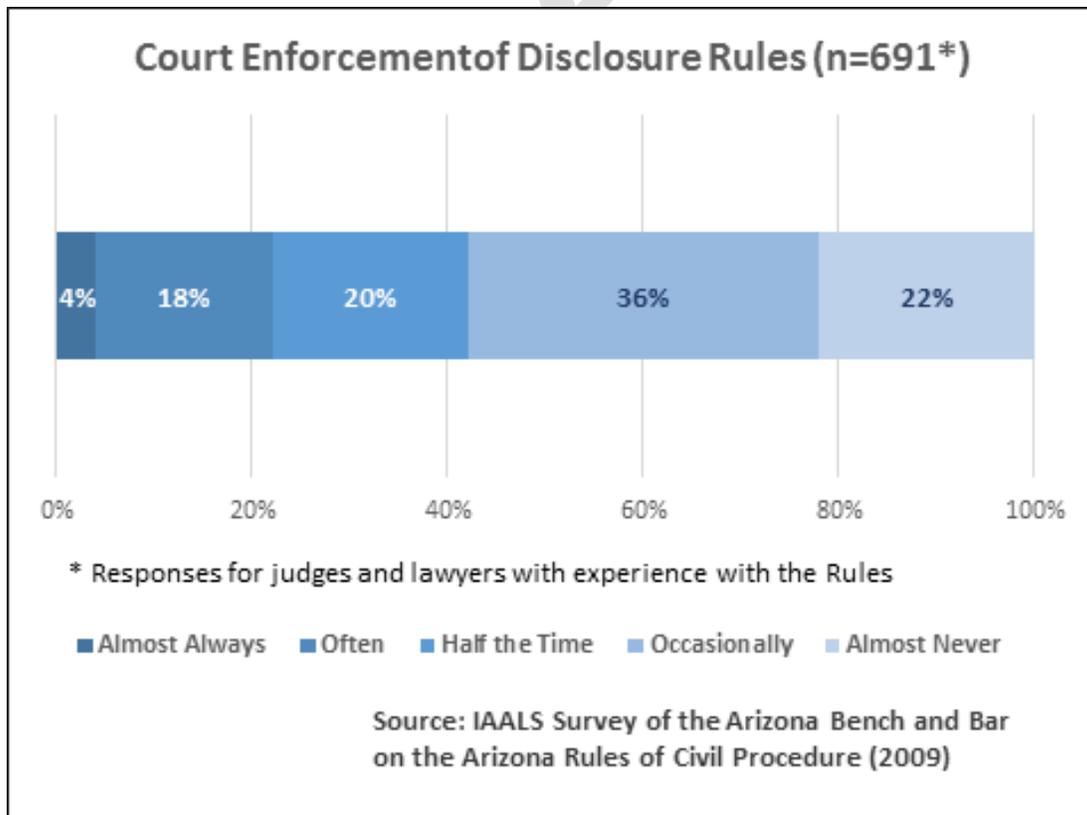
² These recommendations intentionally use the verbs "must" and "should." "Must" is used to convey an action that is essential and compelling in response to contemporary issues confronting civil case managers. "Should" is used to convey an action that is important and advisable to undertake. Hence, "must-do" recommendations are immediately necessary because they go to the heart of improving caseflow and reducing unnecessary cost and delay. "Should-do" recommendations are also necessary but may have to await the availability of such things as enabling authority or additional resources.

Re: 1.1

Primary case responsibility means active and continuing court oversight that is proportionate to case needs. At every point in the life of a case, someone in the court has responsibility for the case. The court, including its personnel and IT systems, must work in conjunction with individual judges to manage each case toward resolution. Progress in resolving each case is generally tied both to court events and to judicial decisions. Judicial management must involve: early setting of a firm trial date and timely exchange of necessary discovery information. In overseeing civil cases, relevant court personnel should be accessible, responsive to case needs, and engaged with the parties – emphasizing efficiency and timely resolution.

Re: 1.2

During numerous meetings, Committee members voiced strong concern (and frustration by every participating trial lawyer) that, despite the existence of well-conceived rules of civil procedure in every jurisdiction, judges too often do not enforce the rules. These perceptions are supported by empirical studies, especially with respect to discovery rules. For example, the following chart summarizes results of a 2009 survey of Arizona trial practitioners about court enforcement of mandatory disclosure rules.



Surely, whenever it is customary to ignore compliance with rules “designed to secure the just, speedy, and inexpensive determination of every action and proceeding,”³ reductions in cost and delay in civil litigation will not be sustained.

KEY RESOURCES FOR RECOMMENDATION 1

TASK FORCE ON THE ESCALATING COSTS OF CIVIL LITIGATION, WASHINGTON STATE BAR ASS’N, FINAL REPORT TO THE BOARD OF GOVERNORS (2015), available at http://www.wsba.org/~media/Files/Legal%20Community/Committees_Boards_Panels/ECCL%20Task%20Force/Reports/ECCL%20Final%20Report%2006152015.ashx.

INST. FOR ADVANCEMENT OF THE AM. LEGAL SYS., SURVEY OF THE ARIZONA BENCH & BAR ON THE ARIZONA RULES OF CIVIL PROCEDURE (2010), available at http://iaals.du.edu/sites/default/files/documents/publications/survey_arizona_bench_bar2010.pdf.

Provide Effective Case Management

Recommendation 2.

Beginning at the time each civil case is filed, courts must match resources with the needs of the case.

Commentary

Virtually all states have followed the federal model and adopted a single set of rules, usually similar and often identical to the federal rules, to govern procedure in civil cases. Unfortunately, this pervasive one-size-fits-all approach too often fails to recognize and respond effectively to individual case needs.

The one-size-fits-all mentality exhibits itself at multiple levels. Even where innovative rules are implemented with the best of intentions, judges often continue to apply the same set of rules and mindset to the cases before them. When the same approach is used in every case, judicial and staff resources are wasted on cases that do not need that much attention. Conversely, cases requiring more assistance may not get the attention they require because they are lumped in with the rest of the cases and receive the same level of treatment. Hence the civil justice system repeatedly imposes unnecessary, time consuming steps, and becomes inaccessible for many litigants.

Courts need to move beyond monolithic methods and recognize the importance of adapting court process to case needs. The Committee calls for a “right-sizing” of court

³ Rule 1, Federal Rules of Civil Procedure.

resources. Right sizing aligns rules, procedures, and court personnel with the needs and characteristics of similarly situated cases. As a result, cases get the amount of process needed—no more, no less. With right-sizing, judges tailor their oversight to the specific needs of cases. Administrators align court resources to case requirements — coordinating the roles of judges, staff, and infrastructure.

With the advent of e-filing and civil cover sheets, courts can use technology to begin to right-size case management at the time of filing. Technology can also help identify later changes in a case’s characteristics that may justify management adjustments.

This recommendation, together with Recommendation 1, adds up to the imperative: Every case must have an appropriate plan and the entire court system must execute that plan.

KEY RESOURCES FOR RECOMMENDATION 2

VICTOR E. FLANGO & THOMAS M. CLARKE, REIMAGINING COURTS: A DESIGN FOR THE TWENTY-FIRST CENTURY (2015), available at http://www.temple.edu/tempres/titles/2334_reg.html.

INST. FOR ADVANCEMENT OF THE AM. LEGAL SYS. & AM. COLL. OF TRIAL LAWYERS, REFORMING OUR CIVIL JUSTICE SYSTEM: A REPORT ON PROGRESS AND PROMISE 5 (2015), available at http://iaals.du.edu/sites/default/files/documents/publications/report_on_progress_and_promise.pdf.

BRIAN OSTROM & ROGER HANSON, NATIONAL CENTER FOR STATE COURTS, ACHIEVING HIGH PERFORMANCE: A FRAMEWORK FOR COURTS (2010), available at http://www.ncsc.org/~media/Files/PDF/Services%20and%20Experts/CTF/Achieving_HPC_April_2010.ashx.

CORINA D. GERETY & LOGAN CORNETT, INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS., MOMENTUM FOR CHANGE: THE IMPACT OF THE COLORADO CIVIL ACCESS PILOT PROJECT (2014), available at http://iaals.du.edu/sites/default/files/documents/publications/momentum_for_change_capp_final_report.pdf.

PAULA HANNAFORD-AGOR & CYNTHIA G. LEE, UTAH: IMPACT OF THE REVISIONS TO RULE 26 ON DISCOVERY PRACTICE IN THE UTAH DISTRICT COURTS, FINAL REPORT (2015), available at [http://www.ncsc.org/~media/Files/PDF/Topics/Civil%20Procedure/Utah%20Rule%2026%20Evaluation%20Final%20Report\(2015\).ashx](http://www.ncsc.org/~media/Files/PDF/Topics/Civil%20Procedure/Utah%20Rule%2026%20Evaluation%20Final%20Report(2015).ashx).

A. Triage Case Filings With Mandatory Pathway Assignments

Recommendation 3.

Courts should use a mandatory pathway-assignment system to achieve right-sized case management.

3.1 To best align court management practices and resources, courts should utilize a three-pathway approach: Streamlined, Complex, and General.

3.2 To ensure that such practices and resources are aligned for all cases throughout the life of the case, courts must triage cases at the time of filing based on case characteristics and issues.

3.3 Based on reliable research, the Committee strongly recommends that courts make the pathway assignments mandatory upon filing.

3.4 Courts must include flexibility in the pathway approach so that a case can be transferred to a more appropriate pathway if significant needs and circumstances change.

Commentary

The premise behind the pathway approach is that different types of cases need different levels of case management and different rules-driven processes. Data and experience tell us that cases can be grouped by their characteristics and needs. Tailoring the involvement of judges and professional staff to those characteristics and needs will lead to efficiencies in time, scale, and structure. To achieve these efficiencies, it is critical that the pathway approach be implemented at the individual case level and consistently managed on a system wide basis from the time of filing.

Implementing this right-size approach is similar to, but distinct from, differentiated case management (“DCM”). DCM is a longstanding case management technique that applies different rules and procedures to different cases based on established criteria. In some jurisdictions the track determination is made by the judge at the initial case management conference. Where assignment to a track is more automatic or administratively determined at the time of filing, it is usually based merely on case type or amount in controversy. There has been a general assumption that a majority of cases will fall in a middle track, and it is the exceptional case that needs more or less process. While the tracks and their definitions may be in the rules, it commonly falls upon the judges to assign cases to an appropriate track. Case automation or staff systems are rarely in place to ensure assignment and right-sized management, or to evaluate use of the tracking system. Thus, while DCM is an important concept upon which these recommendations build, in practice it has fallen short of its potential. The right-sized case management approach recommended here embodies a more modern approach than

DCM by (1) requiring utilization of court resources at all levels, including non-judicial staff and technology, to manage cases from the time of filing until disposition, (2) using case characteristics beyond case type and amount in controversy, and (3) recognizing the great majority of civil filings present uncomplicated facts and legal issues.

Re: 3.2

*Right-sized case management emphasizes transparent application of case triaging early and throughout the process with a focus on case characteristics all along the way. Pathway assignment **at filing** provides the opportunity for improved efficiencies because assignment does not turn on designation by the judge at a case management conference, which may not occur or be needed in every case. Entry point triage can be accomplished by non-judicial personnel, based upon the identified case characteristics and through the use of more advanced technology and training. Triage is done more effectively early in the process, with a focus on case issues and not only on case type or monetary value.*

Re: 3.3

There has been much experimentation around the country with different processes for case designation upon filing, particularly for cases with simpler issues. Courts and parties invariably underutilize (and sometimes ignore) pilot programs that are voluntary. Hence the Committee recommends mandatory application of a triage-to-pathway system. When all civil cases are subject to this right-sized treatment, courts can achieve maximum cost-saving and time-saving benefits.

Re: 3.4

While mandatory assignment is critical, the Committee recognizes that right-sizing is dynamic. It contemplates that a case may take an off ramp to another pathway as a case unfolds and issues change. This flexibility comes from active participation of the court and litigants in assessing case needs and ensuring those needs are met.

KEY RESOURCES FOR RECOMMENDATION 3

VICTOR E. FLANGO & THOMAS M. CLARKE, REIMAGINING COURTS: A DESIGN FOR THE TWENTY-FIRST CENTURY (2015), available at http://www.temple.edu/tempres/titles/2334_reg.html.

INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS. & AM. COLL. OF TRIAL LAWYERS, REFORMING OUR CIVIL JUSTICE SYSTEM: A REPORT ON PROGRESS AND PROMISE (2015), available at http://iaals.du.edu/sites/default/files/documents/publications/report_on_progress_and_promise.pdf.

CORINA D. GERETY & LOGAN CORNETT, INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS., MOMENTUM FOR CHANGE: THE IMPACT OF THE COLORADO CIVIL ACCESS PILOT PROJECT (2014), *available at* http://iaals.du.edu/sites/default/files/documents/publications/momentum_for_change_capp_final_report.pdf.

Streamlined Pathway

Recommendation 4.

Courts should implement a Streamlined Pathway for cases that present uncomplicated facts and legal issues and require minimal judicial intervention but close court supervision.

4.1 Courts should implement a Streamlined Pathway that includes structured rules and processes with automatically calendared events. This approach should include the flexibility to allow court involvement and/or management as necessary.

4.2 At an early point in each case, the court should set a firm trial date with a recommended time to disposition for the Streamlined Pathway of 6 to 8 months.

4.3 To keep the discovery process proportional to the needs of the case, courts should require mandatory disclosures as an early opportunity to clarify issues, with enumerated and limited discovery thereafter.

4.4 Judges must manage trials in an efficient and time-sensitive manner so that trials are an affordable option for litigants who desire a decision on the merits.

Commentary

Streamlined civil cases are those with a limited number of parties, routine issues related to liability and damages, few anticipated pretrial motions, limited need for discovery, few witnesses, minimal documentary evidence and anticipated trial length of 1 – 2 days. Significantly, the Landscape of Civil Litigation informs us that 85% of all civil case filings fit within this category.

Re: 4.1

Most courts do not have the resources to schedule an initial case management conference in every case. The Streamlined Pathway approach recognizes resource limits. Case management conferences are rarely necessary in simple cases. Instead, events should be calendared automatically and monitored through a management system powered by technology. At the same time, the process should be flexible and allow court involvement, including judges, as necessary. For example, a case manager or judge can

schedule a management conference to address critical issues that might crop up in an initially simple case.

Re: 4.2

Too many simple cases languish on state court dockets, without forward momentum or resolution. At or soon after filing, these cases should receive a firm trial date. The parties may always come to the court to fashion a different schedule if there is good cause. This pathway contemplates conventional fact finding by either the court or a jury, with a judgment on the record and the ability to appeal. Because this process is intended for the vast majority of our cases in the state courts, it is important that the process ensure a final judgment and right to appeal, both to safeguard the rights of litigants and to gain buy-in from attorneys.

Re: 4.3

Mandatory disclosures provide an important opportunity in streamlined cases to focus the parties and discovery early in the case. With robust, meaningful initial disclosures, the parties can then decide what additional discovery, if any, is necessary. The attributes of streamlined cases put them in this pathway for the very reason that each side commonly knows the information supporting the claims and defenses. Thus, streamlined rules schemes should include presumptive discovery limits, because such limits build in proportionality. Presumptive discovery limits also clarify expectations. Where additional information is needed to make decisions about trial or settlement, the parties can obtain additional discovery with a showing of good cause. Presumptive discovery maximums have worked well in various states including Utah, where there are enumerated limits on deposition hours, interrogatories, requests for production, and requests for admission.

Re: 4.4

While the vast majority of cases do not go to trial, trial should be more accessible for those who want to go to trial, even in the Streamlined Pathway. Because trial is a costly event in litigation, it is critical that trials be managed in a time-sensitive manner. Once a trial begins in a case, the trial judge should give top priority to trial matters, making presentation of evidence and juror time fit into full and consecutive days of business. A thorough pretrial conference can address outstanding motions and evidentiary issues so that time is not wasted and a verdict can be reached in one or two days.

KEY RESOURCES FOR RECOMMENDATION 4

PAULA HANNAFORD-AGOR & CYNTHIA G. LEE, UTAH: IMPACT OF THE REVISIONS TO RULE 26 ON DISCOVERY PRACTICE IN THE UTAH DISTRICT COURTS, FINAL REPORT (2015), available at

[http://www.ncsc.org/~media/Files/PDF/Topics/Civil%20Procedure/Utah%20Rule%2026%20Evaluation%20Final%20Report\(2015\).ashx](http://www.ncsc.org/~media/Files/PDF/Topics/Civil%20Procedure/Utah%20Rule%2026%20Evaluation%20Final%20Report(2015).ashx).

CORINA D. GERETY & LOGAN CORNETT, INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS., **MOMENTUM FOR CHANGE: THE IMPACT OF THE COLORADO CIVIL ACCESS PILOT PROJECT (2014)**, *available at*

http://iaals.du.edu/sites/default/files/documents/publications/momentum_for_change_capp_final_report.pdf.

PAULA HANNAFORD-AGOR, ET AL., NAT'L CTR. FOR STATE COURTS, CIVIL JUSTICE INITIATIVE, NEW HAMPSHIRE: **IMPACT OF THE PROPORTIONAL DISCOVERY/AUTOMATIC DISCLOSURE (PAD) PILOT RULES (2013)**, *available at*

<https://www.ncsc.org/~media/Files/PDF/Topics/Civil%20Procedure/12022013-Civil-Justice-Initiative-New-Hampshire.ashx>.

Complex Pathway

Recommendation 5.

Courts should implement a Complex Pathway for cases that present multiple legal and factual issues, involve many parties, or otherwise are likely to require close court supervision.

- 5.1** Courts should assign a single judge to complex cases for the life of the case, so they can be actively managed from filing through resolution.
- 5.2** The judge should hold an early case management conference, followed by continuing periodic conferences or other informal monitoring.
- 5.3** At an early point in each case, the judge should set a firm trial date so the parties can work backward from that date to schedule and accomplish all necessary pretrial tasks.
- 5.4** At the case management conference, the judge should also require the parties to develop a detailed discovery plan that responds to the needs of the case, including mandatory disclosures, plans for the preservation and production of electronically stored information, identification of custodians, and search parameters.
- 5.5** Judges must manage trials in an efficient and time-sensitive manner so that trials are an affordable option for litigants who desire a decision on the merits.

Commentary

The Complex Pathway provides right-sized process for those cases that are complicated by a variety of factors. Such cases may be legally complex or logistically complex, or they may involve complex evidence, numerous witnesses, and/or high interpersonal conflict. While these cases comprise a very small percentage (generally no more than 3%) of most civil dockets, they tend to utilize the highest percentage of court resources.

Complex cases require a mandatory case management conference early in the process including early issue identification and prompt discussions regarding the necessity of motions. These early actions must be followed by judicial monitoring, periodic reports to the court, and timely rulings by the trial judge.

Re: 5.1

To ensure proportionality for the complex cases, a single judge should be assigned for the life of these cases. Judges can do much to prevent undue cost and delay. A one-judge-from-filing-through-resolution policy preserves judicial resources by avoiding the need for a fresh learning curve whenever a complex case returns to court for a judicial ruling. The parties are also better served if a single judge is engaged on a regular basis. During the course of the case, attorneys can build upon prior communications rather than repeat them.

Re: 5.2

Case management for the Complex Pathway must be customized to fit case needs. Research and experience confirms the importance of having a mandatory case management conference early in the life of complex cases. Case conferences provide an ideal opportunity to narrow and focus the issues, discuss and focus dispositive motions prior to filing, and identify and address discovery issues before they grow into disputes. For the Colorado Civil Access Pilot Project, the focus on early, active, and ongoing judicial management of cases was essential and received more positive feedback than any other part of the project.

Re: 5.3

Cases with firmly set trial dates tend to resolve more quickly. The longer a case goes on, the more it costs. Firm trial dates, set at an early point in the case and enforced by a vigilant trial judge, can significantly reduce cost and delay.

Re: 5.4

Once a discovery plan is determined, the judge must continue to monitor progress over the course of discovery. Everyone in the litigation, particularly the court, has a

continuing responsibility to move the case forward according to established plans and proportionality principles.

Re: 5.5

Judges must lead the effort to avoid unnecessary time consumption during trials. A robust pretrial conference prior to trial should address outstanding motions and evidentiary issues so that the trial itself is conducted as efficiently as possible. The court and the parties should consider agreeing to time limits for trial segments. Once a trial begins, the trial judge should give top priority to trial matters, making presentation of evidence and juror time fit into full and consecutive days of business.

KEY RESOURCES FOR RECOMMENDATION 5

Nat'l Ctr. for State Courts, Dimensions of Complexity, Civil Action, Vol. 3, No. 1 (Winter 2004)

JORDAN SINGER, SUFFOLK SUPERIOR COURT BUSINESS LITIGATION SESSION PILOT PROJECT: FINAL REPORT ON THE 2012 ATTORNEY SURVEY (2012), available at http://iaals.du.edu/sites/default/files/documents/publications/final_bls_survey_report.pdf.

NATALIE ANNE KNOWLTON & RICHARD P. HOLME, INST. FOR ADVANCEMENT OF THE AM. LEGAL SYS. & AM. COLL. OF TRIAL LAWYERS, WORKING SMARTER NOT HARDER: HOW EXCELLENT JUDGES MANAGE CASES 18-19 (2014), available at http://iaals.du.edu/sites/default/files/documents/publications/working_smarter_not_harder.pdf.

CORINA D. GERETY & LOGAN CORNETT, INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS., MOMENTUM FOR CHANGE: THE IMPACT OF THE COLORADO CIVIL ACCESS PILOT PROJECT 25 (2014), available at http://iaals.du.edu/sites/default/files/documents/publications/momentum_for_change_capp_final_report.pdf.

General Pathway

Recommendation 6.

Courts should implement a General Pathway for cases whose characteristics do not justify assignment in either the Streamlined or Complex Pathway.

6.1 At an early point in each case, the judge should set a firm trial date with a recommended time to disposition for the General Pathway of 12 to 18 months.

6.2 The judge should hold an early case management conference upon request of the parties. The court and the parties must work together to move these cases

forward, with the court having the ultimate responsibility to guard against cost and delay.

6.3 Courts should require mandatory disclosures and tailored additional discovery.

6.4 Courts should utilize expedited approaches to resolving discovery disputes to ensure cases in this pathway do not become more complex than they need to be.

6.5 Courts should establish informal communications with the parties regarding dispositive motions, so as to encourage early identification and narrowing of the issues for more effective briefing and timely rulings by the court.

6.6 Judges must manage trials in an efficient and time-sensitive manner so that trials are an affordable option for litigants who desire a decision on the merits.

Commentary

Like the other pathways, the goal of the General Pathway is to determine and provide “right-sized” resources for timely disposition. The general pathway provides the right amount of process for the cases that aren’t simple, but also aren’t complex. Thus, general pathway cases are those cases that are principally identified by what they are not, as they do not fit into either the streamlined pathway or the highly managed pathway. Nevertheless, the general pathway is not another route to “litigation as we know it.” Like the streamlined cases, discovery and motions for these cases can become disproportionate, with efforts to discover more than what is needed to support claims and defenses. The goal for this pathway is to provide right-sized process with increased judicial involvement as needed to ensure that cases progress toward efficient resolution.

As with the other case pathways, at an early point in each case courts should set a firm trial date. Proportional discovery, initial disclosure and tailored additional discovery are also essential for keeping General Pathway cases on track.

Re: 6.1 to 6.3

The cases in the general pathway may need more active management than streamlined cases. A judge may need to be involved from the beginning to understand unusual issues in the case, discuss the anticipated pretrial path, set initial parameters for discovery, and be available to resolve disputes as they arise. The court and the parties can then work together to move these cases forward, with the court having the ultimate responsibility to guard against cost and delay.

Re: 6.4 and 6.5

Courts should utilize informal processes, such as conference calls with counsel, to encourage narrowing of the issues and concise briefing that in turn can promote more efficient and effective rulings by the court. In addition, an in-person case management conference can play a critical role in reducing cost and delay by affording the judge and

parties the opportunity to have an in-depth discussion regarding the issues and case needs.

Re: 6.6

As with the other pathways, trial judges play a crucial role in preserving litigation costs and precious juror time by making time management a high priority once a trial begins.

KEY RESOURCES FOR RECOMMENDATION 6

PAULA HANNAFORD-AGOR & CYNTHIA G. LEE, UTAH: IMPACT OF THE REVISIONS TO RULE 26 ON DISCOVERY PRACTICE IN THE UTAH DISTRICT COURTS, FINAL REPORT (2015), available at

[http://www.ncsc.org/~media/Files/PDF/Topics/Civil%20Procedure/Utah%20Rule%2026%20Evaluation%20Final%20Report\(2015\).ashx](http://www.ncsc.org/~media/Files/PDF/Topics/Civil%20Procedure/Utah%20Rule%2026%20Evaluation%20Final%20Report(2015).ashx).

Steven S. Gensler & Lee H. Rosenthal, *The Reappearing Judge*, 61 U. KAN. L. REV. 849 (2013), available at https://law.ku.edu/sites/law.drupal.ku.edu/files/docs/law_review/v61/02-Gensler%20Rosenthal_Final.pdf.

B. Strategically Deploy Court Personnel & Resources

Recommendation 7.

Courts should develop civil case management teams consisting of a responsible judge supported by appropriately trained staff.

7.1 Courts should conduct a thorough examination of their civil case business practices to determine the degree of discretion required for each management task.

7.2 Courts should delegate administrative authority to specially trained staff to make routine case management decisions.

Commentary

Recommendation 1 sets forth the fundamental premise that courts are primarily responsible for the fair and prompt resolution of each case. This is not the responsibility of the judge alone. Active case management at its best is a team effort aided by technology and appropriately trained and supervised staff. The Committee rejects the proposition that a judge must manage every aspect of a case after its filing. Instead the Committee endorses the proposition that court personnel, from court staff to judge, be utilized to act at the “top of their skill set.”

Team case management works. Utah’s implementation of team case management resulted in a 54% reduction in the average age of pending civil cases from 335 days to 192 days (and an 54% reduction for all case types over that same period) despite considerably higher caseloads. In Miami, team case management resulted in a 25% increase in resolved foreclosure cases compared consistently at six months, twelve months and eighteen months during the foreclosure crisis, and the successful resolution of a 50,000 case backlog. Specialized business courts across the country use team case management with similar success. In Atlanta, business court efforts resulted in a 65% faster disposition time for complex contract cases and a 56% faster time for complex business tort cases.

Re: 7.1

The effective utilization of court management teams requires that the court conduct a thorough examination of civil case business practices to determine the degree of discretion required for each. Based upon that examination, courts can develop court-wide policies and practices to identify case management responsibilities appropriately assignable to professional court staff or automated processes. Such delegation and automation of routine case management responsibilities will generate time for judges to make decisions that require their unique authority, expertise and discretion.

Re: 7.2

Matching management tasks to the skill level of the personnel allows administrators to execute protocols and deadlines and judges to focus on matters that require judicial discretion. Evaluating what is needed and who should do it brings organization to the system and minimizes complexities and redundancies in court structure and personnel.

KEY RESOURCES FOR RECOMMENDATION 7

LEE SUSKIN & DANIEL HALL, A CASE STUDY: REENGINEERING UTAH’S COURTS THROUGH THE LENS OF THE PRINCIPLES OF JUDICIAL ADMINISTRATION 1 (2012), available at <http://www.ncsc.org/~media/Files/PDF/Services%20and%20Experts/Court%20reengineering/Utah%20Case%20Study%202%2027.ashx>.

FULTON COUNTY SUPERIOR COURT, BUSINESS COURT: 2014 ANNUAL REPORT 4 (2014), available at https://www.fultoncourt.org/business/Business_Court_2014_Annual_Report.pdf.

Recommendation 8.

For right-size case management to become the norm, not the exception, courts must provide judges and court staff with training that specifically supports and

empowers right-sized case management.

8.1. Courts should partner with bar leaders to create programs that educate lawyers about the requirements of newly instituted case management practices.

Commentary

Judicial training is not a regular practice in every jurisdiction. To improve, and in some places reengineer, civil case management, jurisdictions should establish a comprehensive judicial training program. The Committee advocates a civil case management-training program that includes web-based training modules, regular training of new judges and sitting judges, and a system for identifying judges who could benefit from additional training.

Accumulated learning from the private sector suggests that the skill sets required for staff will rapidly and radically change over the next several years. Staff training must keep up with the impact of technology improvements and consumer expectations. For example, court staff should be trained to provide appropriate help to self-represented litigants. Related to that, litigants should be given an opportunity to perform many court transactions online. Even with well-designed websites and interfaces, users can become confused or lost while trying to complete these transactions. Staff training should include learning skills to answer user questions and solve user process problems.

Re: 8.1

The cooperation and understanding of lawyers can significantly influence the effectiveness of any pilot projects, rules changes, or case management processes that court leaders launch. Judges and court administrators must partner with the bar to create CLE programs and bench/bar conferences that help practitioners understand why changes are being undertaken and what will be expected of lawyers. Bar organizations, like the judicial branch, must design and offer education programs to inform their members about important aspects of the new practices being implemented in the courts.

KEY RESOURCES FOR RECOMMENDATION 8

LEE SUSKIN & DANIEL HALL, A CASE STUDY: REENGINEERING UTAH'S COURTS THROUGH THE LENS OF THE PRINCIPLES OF JUDICIAL ADMINISTRATION 1 (2012), available at <http://www.ncsc.org/~media/Files/PDF/Services%20and%20Experts/Court%20reengineering/Utah%20Case%20Study%202027.ashx>.

REPORT OF THE IOWA CIVIL JUSTICE REFORM TASK FORCE: REFORMING THE IOWA CIVIL JUSTICE SYSTEM (2012), available at http://publications.iowa.gov/12732/1/FINAL_03_22_12.pdf.

Recommendation 9.

Courts should establish judicial assignment criteria that are objective, transparent, and mindful of a judge’s experience in effective civil case management.

Commentary

The Committee recognized the variety of legal cultures and customs that exist across the breadth of our country. Given the case management imperatives described in these recommendations, the Committee trusts that all court leaders will make judicial competence a high priority. Court leaders should consider a judge’s particular skill sets when assigning judges to preside over civil cases. For many years, in most jurisdictions, the sole criterion for judicial assignment was seniority and a judge’s request for an assignment. The judge’s experience or training were not top priorities.

To build public trust in the courts and improve case management effectiveness, it is incumbent upon court leaders to avoid politicization of the assignment process. In assigning judges to various civil case dockets, court leaders should consider a composite of factors including: (1) demonstrated case management skills; (2) civil case litigation experience (3) previous training, (4) specialized knowledge, (5) interest, (6) reputation with respect to neutrality, and (6) professional standing within the trial bar.

KEY RESOURCE FOR RECOMMENDATION 9

LEE SUSKIN & DANIEL HALL, A CASE STUDY: REENGINEERING UTAH’S COURTS THROUGH THE LENS OF THE PRINCIPLES OF JUDICIAL ADMINISTRATION 1 (2012), available at <http://www.ncsc.org/~media/Files/PDF/Services%20and%20Experts/Court%20reengineering/Utah%20Case%20Study%202027.ashx>.

C. Use Technology Wisely

Recommendation 10. Courts must take full advantage of technology to implement right-size case management and achieve useful litigant-court interaction.

10.1 Courts must use technology to support a court-wide, teamwork approach to case management.

10.2 Courts must use technology to establish business processes that ensure forward momentum of civil cases.

10.3 To measure progress in reducing unnecessary cost and delay, courts must regularly collect and use standardized, real-time information about civil case management.

10.4 Courts should undertake a civil case data inventory.

10.5 Courts should publish measurement data as a way to increase transparency and accountability, thereby encouraging trust and confidence in the courts.

Commentary

This recommendation is fundamental to achieving effective case management. To implement right-sized case management, courts must have refined capacities to organize case data, notify interested persons of requirements and events, monitor rules compliance, expand litigant understanding, and prompt judges to take necessary actions. To accomplish these urgent needs, courts must fully employ information technologies to manage data and business processes. It is time for courts to catch up with the private sector. The expanding use of online case filing and electronic case management is an important beginning – but just a beginning. Enterprises as diverse as commercial air carriers, online retailers, and motor vehicle registrars have already given us proven ways to manage hundreds of thousands of transactions and communications. What stands in the way of courts following suit? If it involves lack of leadership, the Committee trusts that its Report and these Recommendations will embolden CCJ and COSCA members to fill that void.

Re: 10.1

Modern data management systems and court oriented innovations such as e-filing, e-scheduling, e-service, and e-courtesy provide opportunities for personnel coordination not only within courthouses but also across entire jurisdictions.

Re: 10.2

To move cases efficiently towards resolution, case management automation should, at a minimum, (1) generate deadlines for case action based on court rules, (2) alert judges and court staff to missed deadlines, (3) provide digital data and searchable options for scheduled events; and (4) trigger appropriate compliance orders. Courts should strive to attain these functions in their current software and in their requirements for future software.

Re: 10.3

Experience and research tell us that one cannot manage what is unknown. Smart data collection is central to the effective administration of justice and can significantly improve decision-making.

Although court administrators appreciate the importance of record keeping and performance measurement, few judges routinely collect or use data measurements or analytical reports. As made clear in previous recommendations, the entire court system acting as a team must collect and use data in order to improve civil caseflow management and reduce unnecessary costs and delay. This can be accomplished by enlisting court system actors at different levels and positions in developing the measurement program, by communicating the purpose and importance of the information to all court staff, and by appointing a responsible oversight officer to ensure accuracy and consistency.

Courts must systematically collect data on two types of measures. The first is descriptive information about the court's cases, processes, and people. The second is court performance information, dictated by defined goals and desired outcomes.

To promote comparability and analytical capacity, courts must use standardized performance measures such as CourTools as the presumptive measures, departing from them only where there is good cause to do so. Consistency—in terms of what data is collected, how it is collected, and when it is collected—is essential for obtaining valid measures upon which the court and its stakeholders can rely.

Re: 10.4

As the Landscape of Civil Litigation did for a representative sample of state courts nationally, each court system should gain a firm understanding of its current civil case landscape.

Re: 10.5

The NCSC and the Justice at Stake consortium commissioned a national opinion survey to identify what citizens around the country think about courts and court funding. The ultimate purpose of the project, entitled "Funding Justice: Strategies and Messages for Restoring Court Funding," was to create a messaging guide to help court leaders craft more effective communications to state policy makers and the general public about the functions and resource needs of courts. Interviews with citizen focus groups suggested that certain narratives tend to generate more positive public attitudes to courts. These include: (1) courts are effective stewards of resources, (2) the courts' core mission is delivery of fair and timely justice, and (3) courts are transparent about how their funding

is spent. In light of these findings, the Committee believes that smart civil case management, demonstrated by published caseflow data, can lead to increased public trust in the courts.

KEY RESOURCES FOR RECOMMENDATION 10

JOHN MATHIAS & LARRY WEBSTER, BUSINESS PROCESS CASE AUTOMATION STUDIES, (2013), available at

<http://courts.mi.gov/Courts/COA/aboutthecourt/Documents/NCSC%20Business%20Processes%20Automation%20Case%20Studies.pdf>.

James Cabral et al., *Using Technology to Enhance Access to Justice*, 26 HARV. J.L. & TECH. 241 (2012), available at <http://jolt.law.harvard.edu/articles/pdf/v26/26HarvJLTech241.pdf>.

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http://www.courttools.org/~media/Microsites/Files/CourTools/CourTools_Trial_Why_Measure.ashx.

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<http://www.tandfonline.com/doi/abs/10.1080/0098261X.2013.859970?journalCode=ujjs20>.

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<https://www.judiciary.state.nj.us/pressrel/BacklogPerformMeasure.pdf>.

NAT'L CENTER FOR ST. CTS. & JUST. AT STAKE, FUNDING JUSTICE: STRATEGIES AND MESSAGES FOR RESTORING COURT FUNDING (2013), available at

http://www.justiceatstake.org/media/cms/Funding_Justice_Online2012_D28F63CA32368.pdf.

D. Focus Attention on High-Volume and Uncontested Cases

Recommendation 11.

Courts must devote special attention to high-volume civil dockets that are typically composed of cases involving consumer debt, landlord-tenant, and other contract claims.

11.1. Courts must implement systems to ensure that the issuance of final judgments complies with basic procedural requirements for notice, standing, timeliness, and the sufficiency of documentation supporting the relief sought.

11.2. Courts must ensure that litigants have access to accurate and understandable information about court processes and appropriate tools such as standardized court forms and checklists for pleadings and discovery requests.

11.3. Courts should ensure that the courtroom environment for proceedings on high-volume dockets minimizes the risk that litigants will be confused or distracted by over-crowding, excessive noise, or inadequate case calls.

11.4. Courts should, to the extent feasible, prevent opportunities for self-represented persons to become confused about the roles of the court and opposing counsel.

Commentary

State court caseloads are dominated by lower-value contract and small claims cases rather than high-value commercial or tort cases. Few cases are adjudicated on the merits, and almost all of those are bench trials in small claims, landlord/tenant, and lower-value contract cases. Although plaintiffs are generally represented by attorneys, defendants in these cases are overwhelmingly self-represented, creating an asymmetry in legal expertise that, without effective court oversight, can easily result in unjust case outcomes.

Re: 11.1

Recent federal investigations and agency studies have found widespread instances of judgments entered for cases in which the defendant did not receive notice of the complaint or the plaintiff failed to demonstrate standing to bring suit or adequate documentation of compliance with statutory requirements for timeliness or the basis for the relief sought. Courts have an obligation to implement practices that prevent such abuse.

Re: 11.2

This recommendation complements Recommendation 13 with respect to making court services more accessible to litigants. Self-represented litigants need access to accurate information about court processes including trained court staff that can help them navigate the civil justice system. This information should be available electronically or in person at the courthouse, and at other sites where litigants can receive free assistance. Standardized forms should use plain English and include check-off lists for basic claim elements, potential common defenses, and the ability to assert counter-claims.

Re: 11.3

Courts often employ block calendaring on high-volume dockets, in which large numbers of cases are scheduled for the same period of time. The result is often overcrowded, noisy, and potentially chaotic environments in which litigants may not hear their case when it is called or may become distracted by competing activities in the courtroom. Frequently, courts sequence cases after the initial call to benefit attorneys, resulting in long wait times for self-represented litigants. The use of electronic sign-in systems can help ensure that litigants are not mistakenly overlooked and that their cases are heard in a timely manner.

Re: 11.4

Self-represented litigants often lack understanding about the respective roles of the court and opposing counsel, and may acquiesce to opposing counsel demands because they mistakenly assume that the opposing counsel is connected to the court. As a result, judges may not obtain complete information from both sides to ensure a legally correct judgment on the facts and the law. Self-represented litigants also may not appreciate the far-reaching implications of agreeing to settle a case (e.g., dismissal, entry of judgment). To curb misunderstandings, courts should provide clear physical separation of counsel from court personnel and services, and provide standardized guidelines to all litigants and counsel concerning how settlement negotiations are conducted and the consequences of settlement. Before accepting settlements, judges should ascertain that both parties understand the agreement and its implications.

KEY RESOURCES FOR RECOMMENDATION 11

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Mary Spector, *Defaults and Details Exploring the Impact of Debt Collection Litigation on Consumers and Courts*, 6 VA. L. & BUS. REV. 257 (2011).

Paris R. Baldacci, *Assuring Access to Justice: The Role of the Judge in Assisting Pro Se Litigation in Litigating Their Cases in New York City's Housing Court*, 3 CARDOZO PUB. POL'Y & ETHICS J. 659 (2006), available at <https://litigation-essentials.lexisnexis.com/webcd/app?action=DocumentDisplay&crawlid=1&srctype=smi&srcid=3B15&doctype=cite&docid=3+Cardozo+Pub.+L.+Pol%27y+%26+Ethics+J.+659&key=703076743da2f010e67462e95121ffd8>.

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Russell Engler, *Out of Sight and Out of Line: The Need for Regulation of Lawyers' Negotiation with Self-represented Poor Persons*, 85 CAL. L. REV. 79 (1997), available at <http://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=1630&context=californialawreview>.

Recommendation 12.

Courts must manage uncontested cases to assure steady, timely progress toward resolution.

12.1 To prevent uncontested cases from languishing on the docket, courts should monitor case activity and identify uncontested cases in a timely manner. Once uncontested status is confirmed, courts should prompt plaintiffs to move for dismissal or final judgment.

12.2 Final judgments must meet the same standards for due process and proof as contested cases.

Commentary

Uncontested cases comprise a substantial proportion of civil caseloads. In the Landscape of Civil Litigation in State Courts, the NCSC was able to confirm that default judgments comprised 20 % of dispositions, and an additional 35 % of cases were

dismissed without prejudice. Many of these cases were abandoned by the plaintiff or the parties reached a settlement, but failed to notify the court. Other studies of civil caseloads also suggest that uncontested cases comprise a substantial portion of civil cases (e.g., 45% of civil cases subject to the New Hampshire Proportional Discovery/Automatic Disclosure (PAD) Rules, 84% of civil cases subject to Utah Rule 26). Without effective oversight, these cases can languish on court dockets indefinitely. For example, more than one-quarter of the Landscape cases that were dismissed without prejudice were pending at least 18 months before they were dismissed.

Re 12.1

To resolve uncontested matters promptly yet fairly requires focused court action. Case management systems should be configured to identify uncontested cases shortly after the deadline for filing an answer or appearance has elapsed. If the plaintiff fails to file a timely motion for default or summary judgment, the court should order the plaintiff to file such a motion within a specified period of time. If such a motion is not filed, the court should dismiss the case for lack of prosecution. The court should monitor compliance with the order and carry out enforcement as needed.

Re 12.2

Recent studies of consumer debt collection, mortgage foreclosure, and other cases that are frequently managed on high volume dockets found that judgments entered in uncontested cases were often invalid. In many instances, the plaintiff failed to provide sufficient notice of the suit to the defendant. Other investigations found that plaintiffs could not prove ownership of the debt or provide accurate information about the amount owed. To prevent abuses, courts should implement rules to require or incentivize process servers to use smart technology to document service location and time. Courts should also require plaintiffs to provide an affidavit and supporting documentation of the legitimacy of the claim with the motion for default or summary judgment. Before issuing a final judgment, the court should review those materials to ensure that the plaintiff is entitled to the relief sought.

KEY RESOURCES FOR RECOMMENDATION 12

FEDERAL TRADE COMMISSION, **REPAIRING A BROKEN SYSTEM: PROTECTING CONSUMERS IN DEBT COLLECTION LITIGATION (2010)**, *available at* <https://www.ftc.gov/sites/default/files/documents/reports/federal-trade-commission-bureau-consumer-protection-staff-report-repairing-broken-system-protecting/debtcollectionreport.pdf>.

Mary Spector, *Defaults and Details Exploring the Impact of Debt Collection Litigation on Consumers and Courts*, 6 VA. L. & BUS. REV. 257 (2011).

Press Release, The Office [Minnesota] Attorney General Lori Swanson, Attorney General Swanson Sues Legal Process Server for Engaging in “Sewer Service” (Nov. 6, 2014), *available at* <http://www.ag.state.mn.us/Office/PressRelease/20141106SewerService.asp>.

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FAIRFAX COUNTY [VIRGINIA] GENERAL DISTRICT COURT BEST PRACTICES: DEFAULT JUDGMENTS/DEBT BUYERS (2009), *available at* <https://www.ftc.gov/sites/default/files/filings/initiatives/312/091119bestpractices.pdf>.

Provide Superior Access for Litigants

Recommendation 13.

Courts must take all necessary steps to increase convenience to litigants by simplifying the court-litigant interface and creating on-demand court assistance services.

13.1 Courts must simplify court-litigant interfaces and screen out unnecessary technical complexities to the greatest extent possible.

13.2 Courts should establish Internet portals and stand-alone kiosks to facilitate litigant access to court services.

13.3 Courts should provide real-time assistance for navigating the litigation process.

13.4 Judges should promote the use of remote audio and video services for case hearings and case management meetings.

Commentary

The importance of “access to substantive justice” is inherent in the mission of the Civil Justice Improvements Committee and underpins all of its recommendations.

Recommendation 13 particularly addresses “access” in terms of making the civil justice system less expensive and more convenient to the public.

To mitigate problems, we must know what they are. We also need to know how the public wants us to fix them. A national poll by NCSC in 2014 found that a high percentage of responders thought courts were not doing enough to help self-represented litigants, were out of touch, and were not using technology effectively. Barriers that were frequently cited included the time required to interact with the courts, lack of available ADR, and apprehensiveness in dealing with court processes. Finally, the poll found strong support for a wide array of online services, including a strong desire to ask questions online about court processes.

Re: 13.1

Courts should simplify court forms and develop online “intelligent forms” that enable litigants to create pleadings and other documents in a manner that resembles a Turbo Tax interactive dialogue. Forms should be available in languages frequently used by litigants of the jurisdiction. Processes associated with the forms (e.g., attaching documents, making payments, etc.) should be simplified as much as possible.

Re: 13.2

To improve citizen understanding of court services, courts should install information stations inside and outside of courthouses as well as on-line. These portals should be accessible in languages commonly spoken by residents of the jurisdiction. They should enable court users to conveniently complete core transactions such as filing standardized pleadings, forms and papers, paying fines, and accessing public court records. To expand the availability of important court information, courts might partner with private enterprises and public service providers such as libraries and senior centers to install interactive, web-based, court business portals in outside host locations.

Re: 13.3

Courts should create online, real time court assistance services such as online chat services, and 800-number help lines. Litigant assistance should also include clear signage at court facilities to guide litigants to any on-site navigator personnel. Online resolution programs also offer opportunities for remote, and possibly real-time case resolution.

Re: 13.4

Vast numbers of self-represented litigants navigate the civil justice system every year. However, travel costs and work absences associated with attending a court hearing can deter self-represented litigants from effectively pursuing or defending their legal rights. The use of remote hearings has the potential to increase access to justice for low-income individuals who have to miss work for every court date. Audio or videoconferencing can mitigate these obstacles, offering significant cost savings for litigants and generally resulting in increased access to justice through courts that “extend beyond courthouse walls.”

The growing prevalence of smart phones enables participants to join audio or videoconferences from any location. To the extent possible and appropriate, courts should expand the use of telephone communication for civil case conferences, appearances, and other straightforward case events.

If a hearing or case event presents a variety of complexities, remote communication capacities should expand to accommodate those circumstances. In such instances video conferencing may be more fitting than telephone conferencing. The visual component may facilitate reference to documents and items under discussion, foster more natural conversation among the participants, and enable the court to “read” unspoken messages. For example the video may reveal that a litigant is confused or that a party would like an opportunity to talk but is having trouble getting into the conversation.

KEY RESOURCES FOR RECOMMENDATION 13

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Overcome Fiscal and Cultural Barriers to Change

Recommendation 14.

Courts must develop action plans to implement these recommendations.

14.1 Court systems should undertake their own “Landscape of Civil Litigation” to determine which recommendations in this Report are advisable for implementation in their jurisdiction.

14.2 Courts must adapt to the transparency and accountability that new technologies introduce to the public service enterprise while maintaining privacy interests and judicial integrity.

Commentary

Courts must identify major barriers to reducing cost, delays and inefficiencies in civil litigation, and execute external and internal strategies to surmount those barriers.

As explained more fully in the accompanying Report, three major barriers confront court leaders in accomplishing sustainable change in the justice system -- self-interest, court structure, and insufficient resources. To neutralize resistance to change, judges and administrators should consider proven methods for successfully managing change: demonstrate the relative advantage of the changes (personal and institutional), avoid complexity, promote pilot testing, and be inclusive.

The previous recommendations advocate a series of case level and docket level actions to address existing problems in the civil justice system. These are the “what” parts of change. This recommendation addresses the “how” to implement change.

Initially, court leadership must solidify internal support for change. A supportive judiciary can influence external stakeholders, including legislators, executive branch leaders and the bar. Facts and evidence-based practices contribute to building trust. Court leaders should leverage the priorities of the other stakeholders to demonstrate the

positive cost-benefits of best practices recommended here. Courts must educate the public and the media about the rationale and benefits of these changes.

Recognizing that organizational change is a process, not an event, the Committee, NSCS, and IAALS will collaborate to assist court leaders who desire to implement civil justice change. We hope to:

- *Develop a directory of experts (judges, administrators, lawyers and national experts) with proven experience in successfully implementing change in the civil justice system.*
- *Provide technical assistance to jurisdictions wishing to adopt any CJI recommendations.*
- *Create a Best Practices Guide for court leaders to use in developing a strategy for implementing civil justice improvements.*
- *Launch an on-line “community” for users to communicate with experienced court leaders who have successfully implemented change.*
- *Maintain a directory of successful projects for court leaders to use in initiating change.*
- *Identify technologies that support civil justice improvement and work with the court technology industry to develop new applications to support civil justice improvement.*
- *Continue to evaluate and document efforts to improve the civil justice system.*
- *Identify and coordinate with other national groups committed to improving efficient and accessible civil justice.*

Re: 14.1

The national snapshot of civil litigation undertaken in the NCSC’s Landscape of Civil Litigation provides a model for big-picture visioning, problem identification, and strategic planning opportunities at the state and local level.

Re: 14.2

Courts must fully exploit technological tools, and be open to new opportunities to improve service through new technologies. Full use of these resources will require judges and technology experts to work together to optimize civil justice. The public requires nothing less.

When courts become comfortable with the transparency and accountability that new technologies introduce, the public will likely have greater confidence in courts.

KEY RESOURCES FOR RECOMMENDATION 14

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