

EXECUTIVE SUMMARY

CALL TO ACTION:
**Achieving Civil
Justice for All**

*Recommendations to the Conference of Chief Justices
by the Civil Justice Improvements Committee*

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The Call and a Strategic Response

Americans deserve a civil legal process that can fairly and promptly resolve disputes for everyone—rich or poor, individuals or businesses, in matters large or small. Yet our civil justice system often fails to meet this standard. Runaway costs, delays, and complexity are undermining public confidence in our system and denying people the justice they seek. This has to change. The Conference of Chief Justices (CCJ) is leading the charge to evolve this pillar of our democracy for the 21st century. Informed by data and proven experience, our Recommendations are a roadmap for restoring function and faith in a system that is too important to lose. We can again be the best choice for every citizen: affordable, efficient, and fair for all.

Restoring public confidence means rethinking how we work in fundamental ways. We need to put citizens back at the center of our system. We must ensure they are heard, respected, and capable of getting a just result, not just in theory, but in everyday practice. We have to harmonize the fairness of our process with the modern, flexible experience people expect. These Recommendations empower courts to embrace new procedures and technologies, to give each matter the resources it needs—no more, no less—and to prudently shepherd the cases we face now.

Given the profound challenges facing the civil justice system and the recent spate of reform efforts, the time was right to take a step back and examine the civil justice system holistically, consider the impact and outside assessments of the recent pilot projects, and develop a comprehensive set of recommendations for civil justice reform to meet the needs of the 21st century. The CCJ created the Civil Justice Improvements (CJI) Committee to develop the Recommendations that follow. They are grounded in research and supported by the experience of state court innovators who are challenging the status quo on behalf of citizens and succeeding. The Recommendations are crafted to work across local legal cultures and overcome the significant financial and operational roadblocks to change. With concerted action, we can realize the promise of justice for all. Our citizens deserve it. Our democracy depends on it.

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Underlying Realities

Recent empirical research tells us the contemporary civil justice system is very different from the picture generally imagined by most judges and lawyers. High-value tort and commercial contract disputes are only a small proportion of civil caseloads. Instead, the vast majority of civil cases are debt collection, landlord/tenant, mortgage foreclosure, and small claims cases involving relatively modest monetary claims. Very little formal adjudication takes place in these cases. Most cases are disposed by default judgment or dismissal. At least one party, usually the defendant, is unrepresented in more than three-quarters of the cases.

Research also shows that some litigants with meritorious claims and defenses are effectively denied access to justice because it is beyond their financial means to litigate. Others, who have the resources and legal sophistication to do so, are opting for private alternatives to the civil justice system. Reductions in the proportion of civil cases resolved through formal adjudication threaten to erode a publicly accessible body of case law and undermine the ability of other branches of government to respond effectively to changing societal circumstances that become apparent through claims filed in state courts.

In response to these realities, courts must improve how they serve citizens in terms of efficiency, cost, and convenience and make the court system a more attractive option to achieve justice in civil cases.

The Recommendations are founded on several core premises:

- The court, not lawyers or the parties, must control the pace of litigation.
- The “court” is not solely the trial judge. The term encompasses the entire judicial branch including its staff and technological resources.
- Civil cases should be triaged immediately at filing to determine the amount of judicial attention needed to resolve all disputed issues in a just, timely, and cost-effective way.
- Based on the initial assessment, cases should be assigned to a pathway with procedural rules that provide a presumptively sufficient process to meet the needs of the case.
- Effective rules, procedures, and business practices are especially critical to ensure just, speedy, and inexpensive resolutions in uncontested cases and cases involving large asymmetries in legal expertise.

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Recommendations

RECOMMENDATION 1

Courts must 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 a firm date 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.
- 1.3** To effectively achieve case management responsibility, courts should undertake a thorough statewide civil docket inventory.

RECOMMENDATION 2

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

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 court 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** Courts should 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 arise or circumstances change.
- 3.5** Alternative dispute resolution mechanisms can be useful on any of the pathways provided that they facilitate the just, prompt, and inexpensive disposition of civil cases.

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

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 A well-established Streamlined Pathway conserves resources by automatically calendaring core case processes. 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 establish deadlines to complete key case stages, including a firm trial date. The recommended time to disposition for the Streamlined Pathway is 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.

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 establish deadlines for the completion of key case stages, including a firm trial date.
- 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, staged discovery, plans for the preservation and production of electronically stored information, identification of custodians, and search parameters.
- 5.5 Courts should establish informal communications with the parties regarding dispositive motions and possible settlement, so as to encourage early identification and narrowing of the issues for more effective briefing, timely court rulings, and party agreement.
- 5.6 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.

Judges must manage trials in an efficient and time-sensitive manner...

RECOMMENDATION 6

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

- 6.1 At an early point in each case, the court should establish deadlines for the completion of key case stages, including a firm trial date. The recommended time to disposition for the General Pathway is 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 and possible settlement, so as to encourage early identification and narrowing of the issues for more effective briefing, timely court rulings, and party agreement.
- 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.

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. These tasks should be performed by persons whose experience and skills correspond with the task requirements.
- 7.2 Courts should delegate administrative authority to specially trained staff to make routine case management decisions.

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

Courts should conduct a thorough examination of their civil case business practices...

RECOMMENDATION 9

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

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 use information technology to inventory and analyze their existing civil dockets.
- 10.5** Courts should publish measurement data as a way to increase transparency and accountability, thereby encouraging trust and confidence in the courts.

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 entry of final judgments complies with basic procedural requirements for notice, standing, timeliness, and 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.

Courts should publish measurement data as a way to increase transparency and accountability...

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.

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.

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

Next Steps

These Recommendations advocate “what” state courts must do to address the evident urgencies in the civil justice system. While many of the Recommendations can be implemented within existing budgets and under current rules of procedure, others will require significant change and steadfast, strong leadership to achieve that change. The next step is to develop strategies for “how” court leaders can overcome barriers to needed changes and actually deliver better civil justice.

COURT AND STAKEHOLDER STRATEGIES

We know that successful problem solving is preceded by careful problem definition. The CJI Committee began its work with a comprehensive empirical study of the current state of civil litigation across the country. The Committee urges state courts to undertake their own study to enable court leaders to diagnose the volume and characteristics of civil case dockets across the state and identify major barriers to reducing cost, delay, and inefficiency in civil litigation. Leaders can then sequence and execute strategies to surmount those barriers.

Initially the Committee urges court leaders to build internal support for change. This suggestion derives from the experience of the Committee during its two years of work. This diverse group of judges, court managers, trial practitioners, and organization leaders started their work with an accurate picture of the civil litigation system. Simultaneously, from across the country, they collected a sampling of best practices that demonstrate smart case management and superior citizen access to justice. They then closely analyzed and discussed the data over the course of several in-person, plenary meetings and innumerable conference calls and email exchanges. What resulted? Unanimous and enthusiastic support for major civil justice improvements. And, for each participant, there

arose intense convictions: The quality and vitality of the civil justice system is severely threatened. Now is the time for strong leadership by all chief justices and court administrators.

Behind these Recommendations is the fundamental tenet that frontline judges and administrators must have the opportunity to ponder facts about the civil justice system in their state and strategize about the Recommendations here. Once that opportunity and those deliberations occur, a wellspring of support for civil justice improvement will take shape within the judiciary. With a supportive judicial branch, courts can face down tough issues and undertake needed improvements.

Court improvement efforts must involve the bar. The Washington State Bar provides a prime example of lawyers, sobered by evidence of growing civil litigation costs, taking bold actions to improve the fair resolution of cases. After four years of labor, the Bar’s Task Force on the Escalating Costs of Civil Litigation last year issued a series of recommendations to make courts affordable and accessible, including a call to “educate the **judges and lawyers** who will be responsible for making the recommendations a reality.”

Likewise, national organizations such as the American Board of Trial Advocates, the American Civil Trial Roundtable, the American College of Trial Lawyers, and the National Creditors Bar Association have contributed to the framing of these Recommendations. Such groups can have a continuing role in promoting them. Some of them have state counterparts that can collaborate with court leaders to educate key constituencies about the state’s top civil justice needs and help develop strategies to implement recommendations that fit their state or locality.

Future Assistance

Recognizing that organizational change is a process, not an event, the NCSC and IAALS will collaborate to assist court leaders who desire to implement civil justice change. Steps are underway to put the Recommendations into action. For more information and access to implementation tools, go to: ncsc.org/civil

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