

LAW WEEK COLORADO

Guide Book Provides Litigation Strategies For Judges

By **Tony Flesor**
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A NEW PUBLICATION could serve as a guidebook for judges — and attorneys — for more efficient litigation.

The Institute for the Advancement of the American Legal System and the American College of Trial Lawyers designed the publication, “Work Smarter Not Harder: How Excellent Judges Manage Cases,” to provide tips for a more effective justice system. The publication highlights courtroom management techniques for judges that help streamline their work. As a result, the publication also has a message for attorneys looking for more efficient litigation techniques.

The purpose of the publication is made clear in the opening passage: “Since Chief Justice Warren Burger convened the Williamsburg Conference in 1971 to address serious problems of backlog and inefficiency in U.S. courts, study after study has confirmed that judicial case management is the answer,” District of Arizona Judge David Campbell wrote. “Cases resolve in less time, at lower cost, and often with better results when judges manage them actively.”

Former Colorado Supreme Court Justice Rebecca Love Kourlis, executive director of IAALS, said the organization has had a high-level goal of making the civil justice system work better. Because of that, the organization has done studies to see what management strategies work better than others.

The best way to teach judges, she said, was by finding other judges who are effective at courtroom management and having them explain their techniques.

Kourlis said the idea of judges as case managers is a relatively new concept. “Up until the ’90s, attorneys viewed themselves as people who should collaborate with the other side,” she said. “Then there was a move toward adversarial, Rambo-type litigation. We can’t expect attorneys to be the ones controlling the process.”

Now, the role of a judge is to make sure the judicial process works. To fill that role, Kourlis said, a judge has to be aware of the facts and issues of a case and the personalities involved. The judge must also be able to move the case



REBECCA LOVE KOURLIS | LAW WEEK FILE PHOTO

through to a final resolution. It’s important for a judge to be proactive, she said.

4th District Judge David Prince said good case management starts with the judge’s philosophy of how to handle a case: dispute suppression or dispute engagement. He said he believes judges need to have a philosophy of dispute engagement.

“I embrace the idea that that my job is to help people resolve disputes,” he said. “Through trial, ruling, settlement, (my) job is to efficiently and fairly help them resolve disputes.”

To do that, judges should become engaged with the case early. At the first opportunity, judges should be involved with the parties involved to discuss what they want to get out of litigation. This is something that needs to happen in a conversation, not in pleadings, he said. When the parties discuss with each other what the problem is and what they want, cases often boil down to one or two real

issues.

And this is a key part of his own philosophy of providing procedural justice. He brings people into the discussion and he allows the attorneys involved to set their own schedule for the case.

“The adage among judges is that you have to push them into an aggressive schedule,” he said. “If you just ask, they’ll often set a more aggressive schedule than the judge will.”

Kourlis said these are all key takeaways from the IAALS research. The judges interviewed for the publication said the most important techniques were to get involved early in a case, get the judge and parties together as often as possible, to make themselves available to resolve issues and not to let the case proceed with large chunks of time passing since this is when costs rack up for litigants.

Attorneys can learn from the judges’ responses as well. Kourlis said the deeper

message is to serve clients. What serves clients best is avoiding gamesmanship, identifying issues in a case as early as possible and moving the case toward an outcome.

“Attorneys are officers of the court as well as advocates for their clients. Trying to use the system with that goal in mind ultimately serves everybody,” she said.

Prince said there are two steps for attorneys to help facilitate good case management.

“The most important thing a civil litigator can do to be effective is to understand their client’s actual goal and how litigation can help,” he said. “The second step is to ask to get in front of the judge. ... You’ll get it in that engagement philosophy. If you see the 40-page brief disappear because of the conversation, you’ll have credibility with the bench that will get you far.” •

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