

ABOTA JURY SUMMIT

Call to Action

As agreed to by the participants of the 2011 National Jury Summit.

The civil justice system often takes too long and costs too much. As former-New Hampshire Supreme Court Chief Justice John T. Broderick, Jr., has warned: “Change will come even if we do nothing but it will not be the change we want.” We encourage jurisdictions to design their own answers to the problem.

Some principles that can underlie solutions are as follows:

- The “one size fits all” approach of the current federal and most state rules is useful in many cases but rule makers should have the flexibility to create different sets of rules for certain types of cases so that they can be resolved more expeditiously and efficiently. Differentiated case management is one example of case-specific procedures that is encouraged. (cite to National Center for State Courts materials).
- Proportionality should be the most important principle applied to all discovery. All facts are not necessarily subject to discovery.
- Shortly after the commencement of litigation, each party should produce all reasonably available non-privileged, non-work product documents and things that may be used to support that party’s claims, counterclaims or defenses.
- All issues to be tried should be identified early.
- Costs of expert discovery and utilization of experts should be contained.
- Judges should be empowered and encouraged to enforce Rule 1 to achieve a “just, speedy and inexpensive determination of every action.”

Further, a framework for civil justice reform is as follows:

1. Form a Committee or Task Force: A civil justice reform committee or task force with a mandate dedicated entirely to exploring and designing solutions that are intended to make the civil justice system more accessible, less costly and more efficient can be a very effective tool in this effort. To the extent possible, the committee/task force should solicit involvement from judicial leaders, state and local bar leaders, litigant representatives, and representatives from court administrative offices.

2. Compile the Research and Information: No jurisdiction need now start at the beginning. Each should stand on the shoulders of the others, access the research and share data. At an early stage in the process, the committee/task force should become acquainted with existing literature and research on the issues of cost and delay in the civil justice system. The IAALS website is a resource for this purpose.¹ If the committee/task force determines that it does not have enough state-specific information, it may also consider in-state surveys of the bench and/or bar, which can be an effective means through which to explore areas of specific concern and to gauge receptiveness to potential solutions. IAALS has an electronic survey that can be tailored and administered by a court or state bar for this purpose.
3. Design the Project: Using the survey results as a jumping off point, the committee/task force should decide whether they wish to design a pilot project or implement some statewide changes. Attorney and judge education and training programs should also be developed as a part of the package.
4. Publish the Project: Although in many states, pilot project rules are not required to be published under the official notice and comment period for rules amendments, if the committee chooses the pilot project approach, it is clearly better to offer the project rules for input and buy-in from individuals and organizations that have a stake in the civil justice system.
5. Presentations on the Project: Presentations to state and local bar groups, judicial groups and other organizations involved in the system are important both as part of the education and training component, but can also be an effective means through which to gain support for the project. These presentations allow questions and concerns to be voiced and considered—increasing the potential for project buy-in.
6. Design a Measurement Plan and Instruments: The committee/task force or a subset of that group, in conjunction with court administrators and clerks should develop a measurement process to evaluate whether the project rules and procedures are serving the intended goals. This process should include baseline data collection instruments and end-of-project data collection instruments.
7. Launch the Project: After adequate time for notice and sufficient training, the committee/task force, participating judges and court staff should launch the pilot project—with sufficient notice and fanfare to garner attention. Some jurisdictions have found it helpful to develop and disseminate model timelines and pilot orders, and post this information on a sub-site of the court's website.²
8. Collect and Share Data: Data collection should be ongoing throughout the life of the project, to ensure timely evaluation. A detailed and synthesized evaluation should be shared with the

¹ Institute for the Advancement of the American Legal System, <http://www.du.edu/legalinstitute> (last visited May 5, 2011).

² For example, the New Hampshire Superior Court PAD Pilot Rules Project available at <http://www.courts.state.nh.us/superior/civilrulespp/index.htm> or the content dedicated to the Oregon Expedited Jury Trial Program available at http://courts.oregon.gov/Multnomah/General_Info/Civil/Civil.page.

courts and state rulemakers, to inform efforts moving forward. Sharing the data and evaluation with national organizations will further the study of civil rules and procedures, and the collection of data from various states will allow for a comparative review.