APPENDIX D

Pilot Projects, Rule Changes, and Other Innovations in State Courts Around the Country

ARIZONA COMMERCIAL COURT PILOT PROJECT

In December 2014, Arizona's Business Court Advisory Committee submitted a Report to the Arizona Judicial Council proposing a three-year pilot commercial court. In response, the Arizona Supreme Court established a three-year pilot Commercial Court, which began July 1, 2015, in Maricopa County. The Commercial Court provides a venue for the expeditious resolution of disputes arising in commercial settings. The Commercial Court's Experimental Rule 8.1 provides for the assignment and management of commercial cases within the pilot program.

CALIFORNIA EXPEDITED JURY TRIALS

In September 2010, the California legislature passed the Expedited Jury Trials Act, authorizing the California Judicial Council to establish a program under which parties could stipulate to a jury trial of eight or fewer jurors, a limit of three peremptory challenges per side, and a limit of three hours for each side to present its case. In 2015 the legislature made the voluntary program permanent, with limited changes, including expanding the time limit for trial per party from three to five hours. The legislature also made expedited jury trials mandatory in limited civil cases, where the amount in controversy does not exceed $25,000. The procedures for the mandatory expedited trial are similar to those for the voluntary program, with the exception that verdicts are appealable.

CALIFORNIA ORANGE COUNTY SELF-HELP PORTAL AND MY COURT CARD

In February 2016, the Orange County Superior Court launched the Self-Help Portal and My Court Card online program, through which self-represented litigants can access forms and instructions, sign up for workshops, and receive reminders of important case events. Self-represented litigants can reference their My Court Card during interactions at the self-help center, allowing staff to quickly pull up case-specific details and information. The Self-Help Portal and My Court Card were launched with a dissolution module and there are plans for additional modules to be added.

COLORADO CIVIL ACCESS PILOT PROJECT (CAPP)

In June 2011, the Colorado Supreme Court created a pilot project that would apply generally to "business actions" as specifically defined based on the claims set forth in the initial complaint. The pilot project went into effect on January 1, 2012, in four judicial districts, for a two-year period. The pilot project was extended several times to provide "more data and a detailed evaluation," and to "give the court time to determine whether the rules as piloted achieved the stated goals." The pilot ended June 30, 2015.

The CAPP rules provided for proportionality as the guiding principle, fact-based pleading, robust initial disclosures with staggered deadlines, a single judge assigned to the case for the duration, early active initial case management conferences with lead counsel to shape the pretrial process including the amount of discovery, and one expert per side per issue with expert discovery limited to the report. IAALS' evaluation of the pilot project, ***Momentum for Change: The Impact of the Colorado Civil Access Pilot Project***, revealed that the CAPP process as a whole succeeded in achieving many of its intended effects, including a reduced

time to resolution, increased court interaction, proportional discovery and costs, and reduced motions practice. Much of the positive feedback relates to CAPP's early, active, and ongoing judicial management of cases. Following the pilot project, the Colorado Supreme Court adopted changes to the Colorado Rules of Civil Procedure, effective July 1, 2015. The amendments are substantial and incorporate the best of CAPP, while also incorporating the proposed changes to the Federal Rules of Civil Procedure that went into effect in December, 2015.

DELAWARE COURT OF CHANCERY

The Delaware Court of Chancery amended its Rules on January 1, 2013 to "account for modern discovery demands" and to bring the Court's rules in line with "current practice." The amendments to Rules 26, 30, 34, and 45 incorporate "electronically stored information" into the rules, consistent with similar changes that have been made to the Federal Rules of Civil Procedure. The Court has also expanded its Guidelines to Help Practitioners in the Court of Chancery to include guidelines regarding discovery. The Guidelines now provide thorough guidance to practitioners on preservation, collection, review, production, privilege review, privilege logs, written discovery, discovery from third parties, and discovery disputes.

DISTRICT OF COLUMBIA

The District of Columbia, like many other jurisdictions, has experienced a burgeoning of mortgage foreclosures in the past several years. In the past three years, over 3000 mortgage foreclosure cases have been filed in the D. C. Superior Court. In more than half the cases, the borrowers did not respond to the complaint, and defaults therefore were entered against them. In order to address the influx of cases and the large number of defaults, the leadership of the Superior Court's Civil Division, in consultation with a working group of lawyers for borrowers, lenders, and other stakeholders, developed a new system for managing mortgage foreclosure cases. Although the Court's usual practice has been to cancel initial scheduling conferences when the defendant is in default, in the foreclosure cases, the conferences are not cancelled. Instead, a notice is sent to the defendants advising them that a default has been entered and encouraging them to attend the initial conference. In response, more than half the defendants in default have appeared in court for the initial conference. The defaults then are vacated by agreement and early mediation is made available to the parties. Volunteer lawyers from the Legal Aid Society and Legal Counsel for the Elderly (AARP) and housing counselors under contract with the District of Columbia government, are present in the courtroom every Friday for the initial scheduling conferences. The borrowers can consult with the lawyers and housing counselors and obtain assistance in putting together the information the lenders require for loan modifications or other types of loss mitigation. Although the results still are preliminary, hundreds of cases have been resolved through early mediation, and many litigants who had been in default have been able to keep their homes.

IDAHO

The mission of the Idaho Judiciary is to "provide access to justice through timely, fair, and impartial resolution of cases." Toward those ends, the Idaho Supreme Court established the Advancing Justice Committee to identify best practices in the area of caseflow management, develop a statewide caseflow management plan, and assist with the development of individual plans for the judicial districts. The Committee developed the statewide plan, which was adopted by the Idaho Supreme Court in 2015. The plan is being used as a framework for the more detailed, case type-specific caseflow management plans for Idaho's individual judicial districts. The statewide plan emphasizes proactive case management, early and continuous assessment, discovery plans, informal methods for the resolution of discovery disputes, and meaningful pretrial conferences.

IOWA CIVIL JUSTICE REFORM TASK FORCE

In December 2009, the Iowa Supreme Court established the Iowa Civil Justice Reform Task Force to develop a blueprint for the reform of the state's civil justice system. The Iowa Task Force was to develop proposals to make the system faster, less complex, more affordable, and better equipped to handle complex cases, such as complex business cases and medical malpractice matters. To inform its work, the Task Force administered a survey of the Iowa bench and bar and issued a final report, ***Reforming the Iowa Civil Justice System***, in March 2012. Among the recommendations was the establishment of a business court pilot project, one judge/one case and date certain for trial, adoption of the Federal Rules' initial disclosure regime, and a two-tiered differentiated case management pilot project.

Iowa has been in the process of implementing those recommendations. In December 2012, the Iowa Supreme Court established a three-year pilot project for an ***Iowa Business Specialty Court*** for complex cases. Cases are eligible to be heard there if compensatory damages totaling $200,000 or more are alleged, or the claims seek primarily injunctive or declaratory relief. In addition, eligible cases must satisfy one or more of the criteria listed in the Memorandum of Operation issued by the Supreme Court. After several ***evaluations***, the Supreme Court has now made the Business Court a permanent fixture in the state court system. Rule amendments incorporating many of the Task Force's recommendations also became effective January 1, 2015. As part of those amendments, the Iowa Supreme Court adopted an expedited civil action rule for actions involving $75,000 or less in money damages. The new expedited civil action rule includes limits on discovery and summary judgment motions, an expedited trial, and limitations on the length of trial. The court also adopted a package of discovery amendments that include initial disclosures, limitations on the frequency and extent of discovery, a discovery plan, and an expert report requirement.

MASSACHUSETTS BUSINESS LITIGATION SESSION PILOT PROJECT

The Massachusetts Business Litigation Session ("BLS") Pilot Project was implemented on a voluntary basis, effective January 4, 2010, for all new cases in Suffolk Superior Court's BLS. The goal of the project was to address the increasing burden and cost of civil pretrial discovery, particularly electronic discovery. The pilot project ran for two years and has continued to be implemented on a voluntary basis.

Following initial disclosures, the pilot project rules provided that the judge manage discovery, including electronic discovery, to settle on the right amount of discovery proportionate to the type of case at hand. Staging of discovery was encouraged, and the parties were expected to confer early and often regarding discovery. The Court has published a ***Final Report on the 2012 Attorney Survey***. Despite the program's voluntary nature, the survey found that few respondents opted out when they had eligible cases. In addition, the pilot program fared well across nearly all key indicators in comparison to both BLS and non-BLS cases. In comparison with other BLS cases, most respondents concluded the pilot was "much better" or "somewhat better" with respect to the timeliness and cost-effectiveness of discovery, the timeliness of case events, access to a judge to resolve discovery issues, and the cost-effectiveness of case resolution. In comparison with non-BLS session cases, 80 percent of respondents had a "much better" or "somewhat better" overall experience in the pilot project.

MINNESOTA CIVIL JUSTICE REFORM TASK FORCE

In November 2010, the Minnesota Supreme Court established the Civil Justice Reform Task Force for the purpose of reviewing civil justice reform initiatives undertaken in other jurisdictions and recommending changes to facilitate efficient and cost-effective processing of civil cases. The Minnesota Task Force ***Final Report*** in 2011, and ***Supplemental Report*** in 2012, included a number of rule and case management recommendations, including the incorporation of a proportionality consideration for discovery, the adoption of the federal regime of automatic disclosures, the adoption of an expedited procedure for non-dispositive motions, a trial date certain and assignment of civil cases to a single judge, and an expedited litigation track pilot program and a complex case program.

The Minnesota Supreme Court issued final amendments to the Rules of Civil Procedure and the General Rules of Practice for the District Courts in 2013, adopting many of the recommendations of the Minnesota Task Force, including incorporating proportionality into the scope of discovery, automatic disclosures, a discovery plan, an expedited process for non-dispositive motions, and a new Complex Case Program. The Supreme Court also created an ***Expedited Civil Litigation Track Pilot***, which provides for early involvement by the judge, limited discovery, curtailed continuances, and the setting of a trial date within four to six months. The goal of the project, which applies to cases involving contract disputes, consumer credit, personal injury, and some other types of civil cases, is to see whether this expedited process can reduce the duration and cost of civil suits. That pilot has been successful and has since been extended to additional courts in Minnesota.

NEW HAMPSHIRE PROPORTIONAL DISCOVERY/AUTOMATIC DISCLOSURE (PAD) PILOT PROJECT

In October, 2010, New Hampshire launched the Proportional Discovery/Automatic Disclosure (PAD) Pilot Rules Project in Strafford and Carroll County Superior Courts. In 2012, the pilot rules were extended to the Superior Courts for Hillsborough County-Northern District and Hillsborough County-Southern District.

The pilot project rules implemented temporary changes to the Superior Court pleading and discovery rules. The pleading standard was changed to fact-pleading from a notice-pleading system where the plaintiffs filed a writ with notice of suit, the defendants entered an appearance acknowledging suit, but neither party was required to include the factual basis for the suit until discovery. The pilot rules required the parties to meet and confer early in the case to establish deadlines, and where there was agreement, a case structuring conference was not required. The rules also provided for telephonic case structuring conferences rather than in-court conferences. In terms of discovery, the pilot project rules required early initial disclosures, after which only limited additional discovery was permitted.

The National Center for State Courts' evaluation of the pilot project, ***New Hampshire: Impact of the Proportional Discovery/Automatic Disclosure (PAD) Pilot Rules***, compared case processing outcomes for cases filed in the pilot courts under the PAD Pilot Rules with those outcomes for non-pilot project cases, and also included interviews with key stakeholders and attorneys. There was not a statistically significant decrease in the time from filing to disposition—a significant goal of the pilot project. Anecdotal reports from attorneys with pilot project cases, however, suggest the provisions worked well and that fact pleading gets the cases moving along

faster. One interesting outcome is that the change to fact pleading appears to have decreased the number of default judgments.

Because of the positive feedback regarding the PAD Project, by order dated January 9, 2013, New Hampshire made the pilot project rules applicable statewide. New Hampshire has since revised its Rules of Civil Procedure for all civil cases to fully incorporate the pilot project rules, and the new rules went into effect on October 1, 2013.

NEW JERSEY PROPOSED PILOT EXPEDITED CIVIL ACTIONS

In April 2014, the New Jersey Supreme Court Advisory Committee on Expedited Civil Actions issued a ***Report*** recommending a number of ideas to improve the timeliness of civil cases, including a mandatory pilot program focused on streamlining pretrial and trial procedures so as to achieve a more efficient and less costly resolution. The Committee recommended adoption of the pilot program for all Track 1 and Track 2 cases (which include property and contract disputes and insurance suits) in a few counties. A Pilot Program for Expedited Civil Actions was implemented as of November 2015, for certain civil actions in the Camden and Ocean Vicinages. The pilot program includes an early case management conference, limited discovery defined by Track, and an expectation that trial length is significantly reduced to one-half to two days.

NEW YORK TASK FORCE ON COMMERCIAL LITIGATION IN THE 21ST CENTURY

The Task Force on Commercial Litigation in the 21st Century was formed to explore and recommend reforms to enhance the already world-class status of the Commercial Division of the New York Supreme Court. The New York Task Force submitted its ***Report and Recommendations*** in June 2011. Key recommendations included: 1) endorsing the Chief Judge's legislative proposal to establish a new class of Court of Claims judges, appointed by the Governor and assigned to the Commercial Division; 2) implementing several measures to provide additional support to the Division, including additional law clerks and the creation of a panel of "Special Masters;" 3) implementing procedural reforms to facilitate prompt and cost-effective resolution of cases; 4) implementing initiatives to facilitate early case resolution and arbitration; and 5) appointing a statewide Advisory Council to review the recommendations and guide implementation.

In 2013, a permanent ***Commercial Division Advisory Council*** was established as recommended by the New York Task Force. The Council has been working on implementing the recommendations, and multiple rule amendments have been implemented, including 1) amendments that provide for more robust expert disclosure, 2) an accelerated adjudication procedure, 3) a limit to the scope and number of interrogatories, 4) a preference for the use of "categorical designations" in privilege logs, 5) guidelines for discovery of electronically stored information from nonparties, 6) replacing the calendar call system with specific time slots, and 7) a special masters pilot program for referral of complex discovery issues. The Advisory Council is continuing to work on implementation of the recommendations set forth in the New York Task Force report, and additional proposals are expected.

OHIO SUPREME COURT TASK FORCE ON COMMERCIAL DOCKETS

In April 2007, the Supreme Court Task Force on Commercial Dockets was formed to "develop, oversee, and evaluate a pilot project implementing commercial civil litigation dockets in select courts of common pleas." The Ohio Task Force began working in June 2007 and submitted an interim report in 2008 summarizing the Ohio Task Force's work, along with a proposed set of rules for the establishment of a commercial docket pilot project. Commercial dockets were established in four counties in 2009. The Ohio Task Force submitted a second interim report in March 2011, noting the great success of the pilot project at that time, but also highlighting its challenges. In December 2011, the Ohio Task Force submitted its final ***Report and Recommendations***, wherein it recommended creating a permanent program for courts operating specialized dockets to resolve business-to-business disputes. The report found that the benefits of the program include accelerating decisions, creating expertise among judges, and achieving consistency in court decisions around the state. In 2013, the Supreme Court of Ohio adopted permanent rules that govern the operation of commercial dockets in Ohio.

OREGON EXPEDITED CIVIL JURY TRIAL PROGRAM

In 2010, the Oregon Supreme Court implemented an expedited civil jury trial program in selected Oregon Circuit Courts. The goal of the program is to provide speedy and economical disposition of civil cases and to increase the use of jury trials to decide civil cases. Parties may opt in to this track. The process includes an initial case management conference with trial counsel no later than 10 days after the case is designated as appropriate for this track. At the initial conference the court sets a firm trial date which is no later than four months from the date of the designation order.

SOUTH CAROLINA FAST TRACK JURY TRIAL PROCESS

In 2013, South Carolina implemented a voluntary Fast Track jury trial process statewide. An attorney-controlled program has been in place for several years in several counties in South Carolina, including Charleston County where the program originated and has been highly successful. The rules provide for removal of the case from the docket and the setting of a mutually convenient trial date, as well as the timing for the exchange of documentary evidence to be used at trial and a pretrial conference. Fast Track juries consist of no more than six jurors, trial is expected to last no longer than one day, and the result is a binding jury verdict, subject to any written high/low stipulations by the parties.

TEXAS EXPEDITED CIVIL ACTION PROGRAM

In May 2011, the Texas legislature passed H.B. 274 directing the Texas Supreme Court to adopt rules to promote "the prompt, efficient, and cost-effective resolution of civil actions," including rules for civil actions in which the amount in controversy does not exceed $100,000. The Texas Supreme Court appointed a Task Force to advise the court in developing the program and the Task Force issued its Final Report in January 2012. In November 2012, the Texas Supreme Court issued the rules for expedited handling of cases. The final rules, which went into effect in March 2013, are mandatory and put limits on pre-trial discovery and trial in cases where the party seeks "monetary relief of $100,000 or less, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees." The rules also place restrictions on court-ordered mediation.

The National Center for State Courts' evaluation of this program compares civil cases filed after implementation of the Expedited Actions Rules in the Civil Courts of Law in five counties with a

comparable sample of cases filed before implementation of the Rules. Preliminary findings suggest that some attorneys may have attempted to evade the rules by failing to state the amount of damages sought in the Complaint. Nevertheless, cases in the post-implementation sample were significantly more likely to settle, and did so significantly earlier, than cases in the pre-implementation sample. The final report from the evaluation is expected in early fall, 2016.

UTAH STATEWIDE AMENDMENTS TO THE RULES OF CIVIL PROCEDURE

The Utah Supreme Court's Advisory Committee on the Rules of Civil Procedure developed, proposed, and ushered through significant statewide rule changes to address the expansion and increased cost of discovery and its impact on the state civil justice system. Prior to presenting their proposed rules changes for official notice and comment, the Committee spoke to bar groups, judges, and other interested organizations to inform them about, and receive comments on, the proposed changes. After working through comments and specific sections of the proposed changes, the Committee officially published the proposed rules for a notice and comment period. The rules went into effect statewide on November 1, 2011.

The new rules focus on proportional discovery, flipping the presumption from one where discovery is allowable unless the rules or a judge say otherwise to a scheme where discovery is *prohibited* unless the rules or a judge say otherwise. The changes include comprehensive initial disclosures and a requirement that discovery be proportional. Discovery is tiered based on amount in controversy: 1) actions claiming $50,000 or less, 2) actions claiming more than $50,000 and less than $300,000 or non-monetary relief; and 3) actions claiming more than $300,000. Expert discovery is limited to either a four-hour deposition or a report that limits the expert's testimony at trial. The Utah Rules have also adopted an expedited process for resolving discovery disputes.

The National Center for State Courts' evaluation, ***Utah: Impact of the Revisions to Rule 26 on Discovery Practice in the Utah District Courts***, shows some tier inflation, suggesting that some may be increasing the amount in controversy claimed in the complaint to secure a higher tier and corresponding higher discovery limits. Across all tiers and case types, cases tended to reach disposition more quickly. Stipulations for extraordinary discovery were filed in only a small minority of cases, contrary to expectations. Discovery disputes tended to occur about four months earlier than before the rule changes, although the surveys and focus groups suggested such disputes were rare following the changes. Setting aside debt collection and domestic relations cases, the rule changes were associated with an increased settlement rate. The report concludes that these "differences suggest that the Rule 26 rule changes, particularly the expanded automatic disclosure requirements, are providing litigants with sufficient information about the evidence to engage in more productive settlement negotiations."

UTAH'S CASE MANAGEMENT PILOT PROJECT

Piggybacking off the statewide rule changes in 2011, Utah has implemented a Civil Case Management Pilot Program that promotes increased judicial case management oversight. The pilot program, which went into effect January 1, 2016, recognizes that early and active judicial case management is key to efficient litigation, particularly for complex cases. The pilot program includes an early active case management conference, the early setting of a firm trial date and firm date for dispositive motions, periodic status conferences, and the option of using informal status conferences to resolve discovery disputes. The pilot project applies to select cases in the Second, Third, and Fourth Judicial Districts. All Tier 3 cases will be randomly assigned to participating judges, and a portion of Tier 2 cases in the Second and Fourth Districts.

WASHINGTON TASK FORCE ON THE ESCALATING COST OF CIVIL LITIGATION

In January 2011, the Washington State Bar Association created the Task Force on the Escalating Cost of Civil Litigation to assess the costs of civil litigation in Washington state courts and to recommend solutions. In 2013, the Task Force surveyed members of the bar to gain their perspectives on the high costs of civil litigation and approaches to reduce costs. The Task Force issued its ***Final Report*** in June 2015. The report identifies multiple factors impacting the cost of litigation, including legal fees, case management, case type, access to justice, pro se litigants, and the use of alternative dispute resolution. Recommendations include two-tier litigation, mandatory discovery conferences, mandatory disclosures, proportionality and cooperation, and discovery limits.

Notes

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