

LAW WEEK COLORADO

CAPP Progress Report: Positive

By **Tony Flesor**
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IAALS LAST WEEK received a report card for its Colorado Civil Access Pilot Project, and the grades are mostly good.

The project is designed to streamline the legal process, resulting in less expensive and more efficient litigation. IAALS, on April 7, published its preliminary report for CAPP, revealing the project is serving its intended purpose, though some participants have given negative feedback on the changes to the process.

CAPP began in January 2012 as one piece of the larger national civil justice reform movement. IAALS' executive director Rebecca Love Kourlis said a number of court systems around the country began thinking about ways to improve their own court processes, and Colorado was at the forefront of that movement. The CAPP committee started meeting in 2010 and worked on the pilot project until recommending it to the Supreme Court in 2011 and starting the project in 2012.

Kourlis said Colorado is one of six states and three federal court systems running pilot projects testing simplified pre-trial procedures. In Colorado, five district courts tested simplified procedures relating to pleadings, disclosures, discovery and case management for civil business cases. Kourlis said the success and failures of the projects are shared among participants.

Corina Gerety, IAALS director of research, said the CAPP rules were made with four guiding principles: bringing issues to light at the earliest possible point, tailoring the process proportionately to the needs of the case, providing active case management by a single judge and moving the case forward to trial or resolution. Every individual rule goes back to those basic principles, she said.

"The idea is that access is not just about the ability to make it to the courthouse door," she said. "It's about the resources required to make it all the way to disposition."

After more than two years, IAALS



REBECCA LOVE KOURLIS

considers the project successful, though it won't be completed until December. The project's results were studied through objective research in the form of a docket study and subjective research through responses from judges and parties involved in CAPP cases.

Gerety said IAALS approached the evaluation by trying to get as much information from as many sources as possible. She said the objective data suggests the project overall succeeded in achieving its goals, and the attorney responses provide more information on what can be done going forward to improve upon that success.

"Change is not easy for people, but it's easier if you have data showing the changes are beneficial," she said.

Results of the docket study show that CAPP cases move quicker overall than cases outside the project did. The time it takes to get a case in front of a judge is reduced, the number of granted motions for extension were lower and the time to resolution was lower in comparison to Colorado Rule of Civil Procedure 16.1,

when there's a continuance," Kourlis said. "It creates a culture where attorneys and judges have it in the back of their minds they can just request an extension. It undermines the notion that this is on track to trial or disposition and only extraordinary circumstances would derail it."

Although the preliminary report suggests positive results from CAPP, responses to an attorney participant survey revealed that suggestions to eliminate the project were more prevalent than the suggestion to maintain or expand it. Attorneys responded saying the ways the CAPP rules fit into the Colorado Rules of Civil Procedure can be confusing and having parallel sets of rules can be time consuming.

Despite that, attorneys and judges both responded to surveys saying CAPP cases involved a strong level of cooperation between parties and the process was fair to both plaintiffs and defendants.

Kourlis said that the surveys show areas where attorneys were unhappy with the rules in regard to their specific cases. "In general, even survey responses didn't point to things that undermine the docket data," she said.

Following the publication of the preliminary report last week, the Colorado Supreme Court Civil Rules Committee formed a subcommittee to consider what should be done within the rules in regard to CAPP or the lessons learned from it. Subcommittee chair and Davis Graham & Stubbs of counsel Richard Holme said the subcommittee will not likely make any determination until the fall.

Because a change in the rules could be a guide for other states, the committee is going to take its time in making suggestions.

"There's an enormous amount of interest around the country in this report. It's going to impact more than Colorado going forward. It might have echoes around the country about rules and processes changes that reflect the successes," Kourlis said. •

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Colorado's rule for simplified procedure.

According to the report, CAPP reduces the time to resolution over standard procedure by 103 percent. Gerety said the biggest surprise to her in reviewing the data was that the CAPP cases beat the rule 16.1 cases in time to disposition. She also said that the difference in the time it takes to get a case in front of a judge was huge.

According to the preliminary report, CAPP cases are more likely to have a single judge and are 540 percent more likely to see that judge earlier in the process. More than half of CAPP cases had been in court within 100 days of filing.

Kourlis said the general objective for getting a case in front of a judge sooner rather than later is so the judge can tailor the process to the needs of the case.

The CAPP research also showed that requests for time extension were reduced, and the likelihood of extensions being granted decreased as well. Under the CAPP rules, extensions are granted for extraordinary cases, but one of the goals of the project is to limit them overall.

"It costs parties money most of the time