

LAW WEEK

COLORADO

Civil Justice Reform Has New 'Roadmap'

IAALS, NCSC provide guidance one year after identifying needs for civil litigants in state courts



IAALS, in partnership with NCSC and the Conference of Chief Justices, is focusing on national civil justice reform through the courts themselves. / **LAW WEEK FILE.**

BY HANNAH SKEWES
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Efforts to boost civil justice reform just got another push forward and a "roadmap" for state courts for the next steps.

The Institute for the Advancement of the American Legal System and the National Center for State Courts announced the release of their joint "Roadmap for Implementation," a practical guide for incorporating calls for change from the Conference of Chief Justices, a national group with the top judge from every state that adopted 13 recommendations in 2016 for civil justice reform.

"The civil justice system has really transformed in the last 10 to 15 years," said Brittany Kauffman, who leads IAALS's Rule One initiative. "There are more self-represented litigants, which can become really costly. There were also budget cuts from recession in 2008. These recommendations were really responsive to the needs of litigants across the states."

IAALS AND NCSC also announced five jurisdictions that will serve as "demonstration pilots" as they follow the roadmap and implement those recommendations. Idaho and Maine are already participating in the \$1-million grant program. The 11th Judicial Circuit of Florida, the Fulton County Georgia Magistrates Court in Georgia and the Illinois

22nd Judicial Court are also due to begin an implementation program, according to IAALS.

"We recognized that recommendations are just that, but we really needed to drive that home and support states in that effort," Kauffman said.

The effort is part of a three-year project to implement the 13 recommendations from the Conference of Chief Justices report. And along with the roadmap, Kauffman said the organizations involved with the effort are holding regional meetings in the West, Midwest, South, Mid-Atlantic and Northeast over the next two years where state teams will help craft action plans to bring back to their respective judiciaries.

"The hope is over the course of a few years, we will have worked with teams in each region and also territories like Guam," Kauffman said. "It's hard to really spread reform and the goal of this project is not just to do a report but spend several years to help make this happen."

An NCSC study of civil dockets in state courts between July 1, 2012, and June 30, 2013 in 10 urban commissioned by NCSC, which surveyed nearly 1 million cases, may contradict anecdotal experiences of lawyers and judges in civil litigation. Large tort and commercial contract disputes are dwarfed in numbers by smaller contract cases, which comprise about 64 percent of the dockets studied. The vast majority of those

were debt collection at 39 percent, landlord and tenant disputes at 27 percent and mortgage foreclosure cases at 17 percent.

NCSC and IAALS also found a disproportionate amount of self-represented litigants being involved in about 75 percent of cases in their dataset. Tort claims were the only type of case where both parties were represented in a majority of cases, in this instance 64 percent. By contrast, small claims courts had a "unexpectedly high" proportion of attorney-represented plaintiffs.

Overall, the issue creates problems for access to justice with litigants who may have legitimate claims facing financial barriers to litigation.

"This suggests that small claims courts, which were originally developed as a forum for self-represented litigants to access courts through simplified procedures, have become the forum of choice for attorney-represented plaintiffs in debt collection cases," according to findings in "Call to Action." "The picture of civil litigation that emerges from the ... dataset confirms the longstanding criticism that the civil justice system takes too long and costs too much."

Kauffman said she expects to see some rule changes within state courts that get at the effort. For example, one of the key recommendations from the Conference of Chief Justices report dealt with "rightsizing" the process and resources of courts in response to smaller cases, which are "a large majority" of state court dockets but "take a huge bulk" of their time, Kauffman said.

Utah has already adopted that tiered approach and Arizona is now looking at tailoring processes to smaller claims, she said.

"The idea is to have all courts to really recognize the needs of a case from very beginning and meet those needs across the board, whether be small cases or complex cases to make sure state courts are a real venue for people to bring these issues," Kauffman said •

—Hannah Skewes, HSKewes@circuitmedia.com

AT A GLANCE//

13 RECOMMENDATIONS FROM "CALL TO ACTION: ACHIEVING CIVIL JUSTICE FOR ALL" FROM THE CONFERENCE OF CHIEF JUSTICES

1. COURTS MUST TAKE RESPONSIBILITY FOR MANAGING CIVIL CASES FROM TIME OF FILING TO DISPOSITION.
2. BEGINNING AT THE TIME EACH CIVIL CASE IS FILED, COURTS MUST MATCH RESOURCES WITH THE NEEDS OF THE CASE.
3. COURTS SHOULD USE A MANDATORY PATHWAY ASSIGNMENT SYSTEM TO ACHIEVE RIGHT-SIZED CASE MANAGEMENT.
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.
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.
6. COURTS SHOULD IMPLEMENT A GENERAL PATHWAY FOR CASES WHOSE CHARACTERISTICS DO NOT JUSTIFY ASSIGNMENT TO EITHER THE STREAMLINED OR COMPLEX PATHWAY.
7. COURTS SHOULD DEVELOP CIVIL CASE MANAGEMENT TEAMS CONSISTING OF A RESPONSIBLE JUDGE SUPPORTED BY APPROPRIATELY TRAINED STAFF.
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.
9. COURTS SHOULD ESTABLISH JUDICIAL ASSIGNMENT CRITERIA THAT ARE OBJECTIVE, TRANSPARENT, AND MINDFUL OF A JUDGE'S EXPERIENCE IN EFFECTIVE CASE MANAGEMENT.
10. COURTS MUST TAKE FULL ADVANTAGE OF TECHNOLOGY TO IMPLEMENT RIGHT-SIZED CASE MANAGEMENT AND ACHIEVE USEFUL LITIGANT-COURT INTERACTION.
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.
12. COURTS MUST MANAGE UNCONTESTED CASES TO ASSURE STEADY, TIMELY PROGRESS TOWARD RESOLUTION.
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.