

APPENDIX H

Judicial Attributes and Assignment Criteria for Civil Cases

A hallmark of right-sized case management is triaging cases into one of three pathways.¹ This aligns litigation processes and resources with the needs and characteristics of each case. On one end of the pathway spectrum, the Streamlined Pathway contains cases with simple legal issues, low dollar amounts, and few parties. Conversely, cases with multiple complex legal issues, high dollar amounts in controversy, and many parties fit into the Complex Pathway. The judicial role is especially important in the right-sizing approach as judges have the ultimate responsibility for ensuring cases progress in a timely manner. Regardless of whether a judge presides over cases in one of the recommended pathways or over matters in a traditional blended docket, a judge must exercise an appropriate amount of civil case management.

ATTRIBUTES

With judges as the lynchpin for case progression, judicial attributes and skill sets are critical. The CJI Committee recognized this and explored the dynamics of judicial attributes and skill sets within the context of the pathway approach. There are certain baselines that judges should meet as a general matter. Knowledge of the law, organizational skills, preparedness, and strong communication abilities should be in the forefront. However, just as cases have different characteristics that make them more appropriate for one pathway over another, a judge's particular skills and attributes might lead to a conclusion that she or he is a "natural fit" to preside over cases in a particular pathway.

The Court Operations Subcommittee identified several skills and attributes that especially befit the recommended pathways. To manage cases in the Streamlined Pathway well, it is advisable for a judge to have the dexterity to handle both macro and micro issues. Specifically the judge must assure that the mass of cases on his or her docket are progressing toward resolution while also giving laser focus to the peculiarities and needs of each case while it is being heard. This calls for a mixture of logistical agility,

time management disciplines, openness to using technology tools, and commitment to teamwork among bench and bar actors. Given the data from the *Landscape of Civil Litigation*, the judge must have a facility to work with self-represented litigants.

To effectively preside over cases in the Complex Pathway, a judge like a marathoner has to "live with" cases for long time periods. He or she must be comfortable handling complex legal issues, multiple parties, and perhaps multiple jurisdictions. Hence it is advisable for the judge to have a proactive approach to case management, a commitment to enforcing rules and time deadlines, a facility to consistently orient the parties to the big picture, and significant prior experience in conducting civil litigation.

The CJI Committee recognized that a large number of judges are "generalists." Despite hearing cases across pathways, the attributes are instructive of a mindset and approach appropriate to certain cases.

ASSIGNMENT CRITERIA

After discussing the important attributes of a civil trial judge, we now suggest criteria for assigning those judges to civil case calendars. In general judicial assignment criteria should be objective and transparent to promote effective case management and to curb politicization of the assignment process as much as possible. The following criteria are distilled from a national survey² that inquired about existing judicial assignment practices for complex cases, supplemented by the observations of CJI Court Operations subcommittee members.

- *Demonstrated Case Management Skills:* Existing rules provide ample opportunities for case management. Civil court leaders should look for trial judges who by philosophy use the rules to keep cases moving and current. A judge who has to be persuaded to engage in case management may not be suited to some pathway assignments.
- *Complexity Experience:* The Complex and Streamlined Pathways can present complexities on a

variety of levels. As noted above, the Complex Pathway by its nature contains cases that can have legal and logistical complexities by virtue of the issues being raised and the number of parties involved. Case management in the Streamlined Pathway can also present logistical complexities because there are typically high volumes of cases on these dockets. Hence a judge's experience in managing legal or logistical complexities should be taken into consideration.

- *Civil Experience:* Judicial experience with civil caseloads promotes solid understandings of the rules, civil jurisprudence, and time and attorney management.
- *Training:* A record of pursuing ongoing education in developing areas of the law and relevant litigation practices may foretell excellence in case and courtroom management.
- *Interest:* It can be significant that a judge requests a civil case assignment or shows interest in certain case types or length of appointment.
- *Reputation/Record:* Respect from bench and bar and an appropriate reversal rate.

Notes

1. Acknowledgement: The CJI Committee's Court Operations Subcommittee (chaired by Judge Jennifer Bailey) generated these attributes and criteria.
2. Inquiries were made to members of the CCJ/COS-CA listserv. Many states reported an absence of established assignment criteria or acknowledged that assignment criteria may vary by locality.