

COMPLEX CIVIL LITIGATION COURT EVALUATION COMMITTEE

MINUTES

February 21, 2008

Members Present:

Andrew Federhar, Chair
Hon. Mark Aceto
Mark Larson
William Maledon

Committee Staff:

Jennifer Greene
Theresa Barrett

Guests:

Hon. Janet Barton
Hon. John Buttrick
Kristi Dallmann
Elizabeth Goodman
Mark Jenson
Douglas Luson
Mitch Michkowski
Gordon Mulleneaux
Hon. Peter Swann
Lauri Thomas
Stephanie Valenzuela
Mike White

1. Call to Order Approval of the Minutes

The meeting was called to order at 12:15 PM by Andy Federhar, Chair. Judge Aceto introduced Judge Swann and Judge Doug Rayes (not present) who will be replacing Judge Gaines and Judge Barton on the panel.

The October 23, 2007 meeting minutes were approved without modification.

2. Program status report and update on the impact of the modified civil cover sheet

A pending cases document was shared with the group. Although not perfect, Judge Aceto indicated it was “close to accurate” and he noted that tracking would improve when the process was fully automated. The report indicated there are approximately twenty-five pending cases which suggests cases are resolving. Judge Aceto informed the committee that he was receiving great cooperation from the Clerk’s Office, however changing the civil cover sheet has not been as easy as expected. After one month of using the new cover sheets, only about 15% of the cases were accompanied with the new cover sheet, the rest were submitted with older versions. Additionally, it was noted the majority of cases identified as complex were filed by self-represented litigants indicating their case was complex, when in reality maybe one case (a class action) was complex.

Efforts taken to improve the use of the cover sheet include:

- The Clerk’s Office is giving the new cover sheet to runners from law firms in order to help spread the word.

- A flyer was created by the Clerk's Office.
- The Court prepared a press release on the new coversheet.

ACTION: Court Administration will follow up to confirm they issued press release.

Members offered additional suggestions for improving the use of the new coversheet which included:

- Mandating the use of the form. Specifically turning away filings not submitted with the proper coversheet. Concern was voiced that this approach could be a problem if a case was running up against the statute of limitations. It was suggested those using an old sheet be directed to Mitch Michkowski.
- E-mail the flyer created by the Clerk's Office again to the head of the Civil Litigation Department at local firms. It was suggested that the court could utilize their e-mail distribution list for disseminating minute entries.
- To capture recipients' attention, it was suggested to change the heading in email subject line to "Mandatory change to civil cover sheet."
- Explore submitting an article to the Arizona Attorney to provide additional exposure for the pilot program.

ACTION: Staff will follow up with contacts at AZ Attorney to assess interest.

Concerns were voiced regarding review of the civil coversheet. Judge Aceto shared his position that his early judicial involvement in cases that may be eligible for the program could be inappropriate. Specifically, in those cases where parties are not yet joined, early judicial involvement to determine if a case is appropriate for the program could be deemed ex-parte contact with a party. It was noted that all but three judges on the civil bench conduct early management conferences. It was suggested this is the point in time when a judge really gets a sense of a case's complexity. Other issues still requiring resolution include:

- Not all judges will refer cases to the program.
- Early settlement or failure to prosecute.
- Cases that appear complex early on and then turn into a much simpler case.
- How to eliminate judge-shopping for a panel judge.
- How to minimize taking desirable cases away from non-panel judges.

Next, discussion ensued regarding ways to get around the concerns shared and ultimately, how to get more cases into the program. Comments and questions included:

- Can current technology tell you when parties are joined? If so, the panel judge could review when the case management system (CMS) indicates an answer or motion has been filed and the case is "joined."
- Is there a way to get cover sheet information to the assigned judge at the first hearing?
- The cover sheet could skip past the presiding judge and go directly to the assigned judge to make the determination whether the case is complex.
- Make certain categories on the cover sheet presumptive and others conditional assignment.

- If cases were assigned on a provisional basis, the assigned judge could then ask for the designation.

Judge Aceto indicated that at the last meeting of the civil bench approximately 50% of the judges indicated they were willing to self-refer cases to the program. This is an increase over last polling. However, this would add only 10-30 cases per year to the program.

Judge Barton questioned how California deals with assignment for those cases marked as provisionally complex and that are later determined not complex.

ACTION: Judge Barton will gather information on how California administers their program.

The group then discussed possible challenges to the assignment process with the proposed strategies. Judge Aceto expressed his desire to keep assignments equitable and indicated he would like to talk to the civil bench first before making any changes to the current algorithm. Furthermore, any proposal will need to be administratively feasible and not impact morale.

ACTION: Clerk of Court, Court Administration and IT staff will explore CMS program changes and ways to identify when a case is joined; the impact of an automatic presumption assignment with self-represented litigant cases going back into the algorithm, and if a case is not deemed complex, how it would be sent back to court administration for assignment. The group will report back to the committee the recommended options that are the least intrusive and have the smallest administrative burden.

To allow sufficient time for follow-up on action items, it was decided to schedule the next meeting in May.

3. Call to the Public

No response.

Meeting adjourned at 1:05 PM.