



CIVIL JUSTICE INITIATIVE

Civil Justice Reform: Essential Pathway Rules and Procedures

A webinar brought to you by:





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CIVIL JUSTICE INITIATIVE

Civil Justice Reform:
Essential Pathway Rules and Procedures

Welcome and Webinar Basics

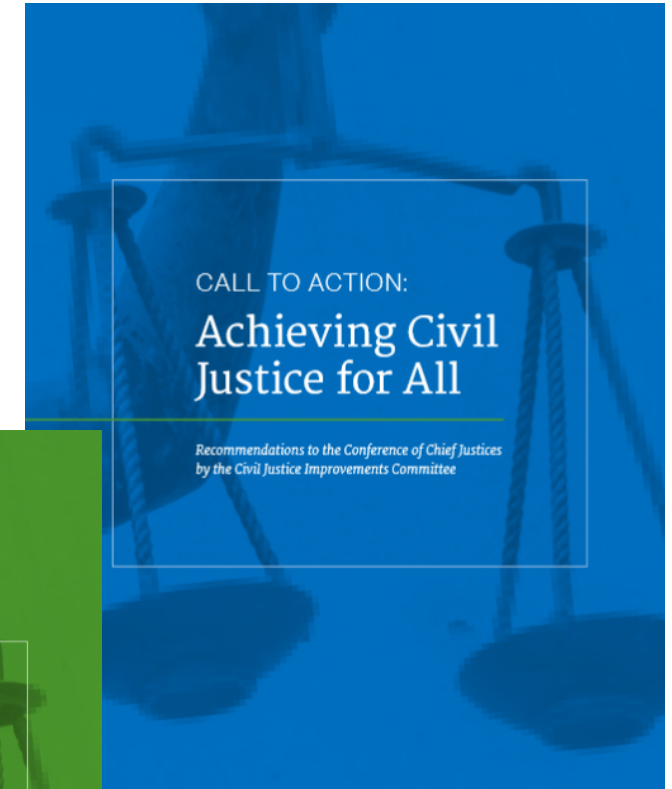




Hon. Jerome Abrams
First Judicial District Court of Minnesota

A Call to Action: Achieving Civil Justice For All

Recommendations to the
Conference of Chief Justices
by the Civil Justice
Improvements Committee



Exercise Ultimate Responsibility

Recommendation 1: Courts must take responsibility for managing civil cases from time of filing to disposition.

Recommendation 2: Beginning at the time each civil case is filed, courts must match resources with the needs of each case.

Every case, once filed with the Court must have a plan for its final resolution.

THIS RESOLVES THE PHILOSOPHICAL QUESTION OF WHO IS RESPONSIBLE FOR THE RESOLUTION OF THE CASE. ONCE FILED WITH THE COURT, IT IS THE COURT'S RESPONSIBILITY FOR TIMELY DISPOSITION.

Judges are expected to provide leadership, and be responsible for the 'plan' that drives a case(s) to completion.

MODERN LEADERSHIP SKILLS AS TAUGHT AND USED FOR THE PRIVATE SECTOR ARE USEFUL FOR JUDGES TO LEARN AND ADOPT.

Assessing Areas for Impact in Civil Justice Reform



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Assessing Areas for Impact in Civil Justice Reform:
A Questionnaire for State Courts

To ensure that state courts adopt policies and procedures appropriate for and responsive to the state's unique circumstances and issues, [Transforming Our Civil Justice System for the 21st Century: A Roadmap for Implementation](#) recommends that state courts begin their civil justice improvement efforts with an assessment. One key aspect of this assessment is for states to undertake their own *Landscape of Civil Litigation* study, similar to the NCSC *Landscape of Civil Litigation in State Courts*. That study examined the case characteristics and outcomes for civil cases through a docket study of non-domestic general civil and small claims cases. While an individual study will help to diagnose the volume and characteristics of the state's civil case docket, it also is important for the state court to analyze relevant issues that may not be highlighted through a docket study.

The following Impact Questionnaire is intended to help fill this gap. The Questionnaire provides concrete questions intended to highlight needed areas for reform, as well as potential barriers. The questions parallel the [Recommendations from the Conference of Chief Justices Civil Justice Improvements Committee](#) to ensure courts consider the full scope of the Recommendations. In addition, the following chart calls on courts to gauge how close or far the court is from compliance with the Recommendations, highlighting the investment of time and resources that would be needed to achieve compliance and the payoff from that investment. While the Questionnaire is intended to be comprehensive, the questions are meant as a starting point, not as an end point. In defining the issues to be addressed through reform, the court should consider the culture, case management, technology, process and procedure, and enforcement—both internal to the court and more broadly within the community.

In terms of timing, it is recommended that this analysis occur at the beginning of the civil justice reform efforts as part of the assessment step in the Roadmap for Implementation. Considering these questions from the beginning will naturally lead to the next step, which is to define the issues facing the court. The following questions also will help to identify the stakeholders that should be included in the working group, be it a "task force" or "committee." That said, this Questionnaire should be revisited with the working group, to get broader input and encourage discussion once that group is formed. The completed Questionnaire will also be an important tool at the point that the group develops its own tailored recommendations.

Exercise Ultimate Responsibility (Recommendations 1-2)

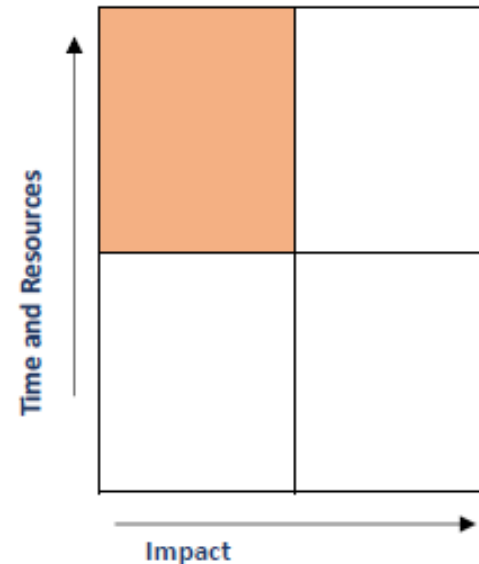
Does the court leadership (e.g. chief justice, judicial council, and/or civil rules committee) agree that the court¹ should exercise ultimate responsibility over the management of its cases?

Does the trial bench agree that the court should exercise ultimate responsibility over the management of its cases?

Does the practicing civil bar agree that the court should exercise ultimate responsibility over the management of its cases?

Is there disagreement within and among the above groups?

Identify areas for improvement	How would you achieve change?
a.	
b.	
c.	



*Mark the areas for improvement (a., b., c.) on the grid above, reflecting extent of time and resources and extent of impact.

Triage Case Filings With Mandatory Pathway Assignments

Recommendation 3: Courts should use a mandatory pathway-assignment system to achieve right-sized case management.

- Triage cases at the time of filing based on case characteristics and issues
- Pathway assignments should be mandatory upon filing
- Courts must include flexibility in the pathway approach
- Pathways include streamlined, general, and complex

Pathway Guidance

- (1) Multiple parties or claims;
- (2) Multiple or complex theories of liability, damages, or relief;
- (3) Complicated facts that require the discovery options provided by the Minnesota Rules of Civil Procedure;
- (4) Substantial likelihood of dispositive motions; or
- (5) Any factor that demonstrates that assignment to that Pathway would substantially affect a party's right to a fair and just resolution of the matter

Common Pathway Characteristics

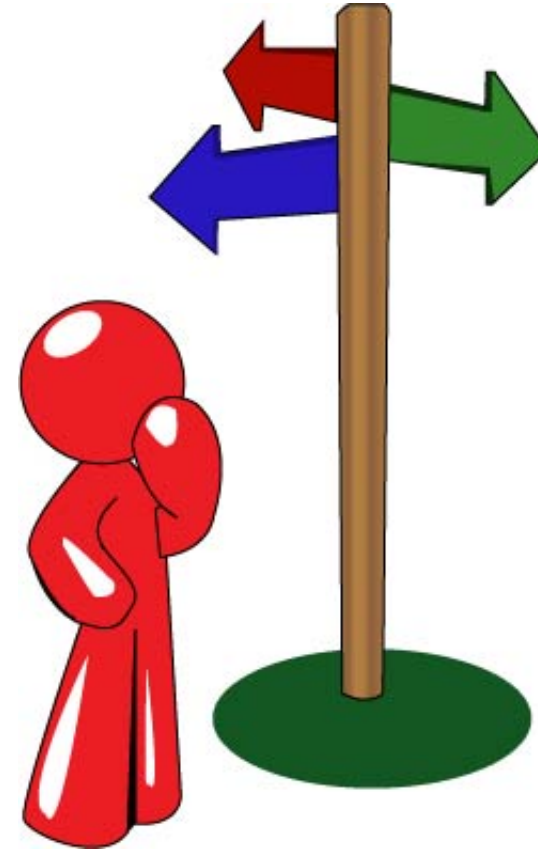
Defined timeframes for discrete stages of litigation process

Mandatory disclosures with teeth

Proportionality

Expedited resolution of discovery disputes

Informal communications with parties concerning dispositive motions, settlement negotiations




Streamlined Pathway

Recommendation 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.

Streamlined Pathway Case Characteristics

- Limited number of parties
- Routine issues related to liability and damages
- Few anticipated pretrial motions
- Limited need for discovery
- Few witnesses
- Minimal documentary evidence
- Anticipated trial length of one to two days



> 85% of
civil caseload

Streamlined Pathway Case Types

- Automobile tort
- Intentional tort
- Premises liability
- Tort-other
- Insurance coverage claims arising out of claims listed above
- Landlord/tenant
- Buyer Plaintiff
- Seller Plaintiff
- Consumer Debt
- Other contract
- Appeals from small claims decisions

Streamlined Pathway Rules and Procedures

- Recommended time to disposition – 6 to 8 months
- Automatically calendar core case processes
- Court should establish deadlines to complete key case stages, including a firm trial date
- Mandatory disclosures with enumerated and limited discovery thereafter
- Judges must manage trials in an efficient and time-sensitive manner to ensure trials are an affordable option for litigants

Examples of Rules, Procedures, etc

Sample Rules for a Streamlined Pathway:

<https://www.ncsc.org/~media/Microsites/Files/Civil-Justice/NCSC-CJI-Appendices-C.ashx>

Pilot Projects and Rule Changes in Courts Around the Country:

<https://www.ncsc.org/~media/Microsites/Files/Civil-Justice/NCSC-CJI-Appendices-D.ashx>

Minnesota Expedited Civil Litigation Track

The ELT program is principally designed to increase access to justice. This is achieved through mandatory disclosures, limited discovery, and prompt disposition.

The secondary goal of the ELT Program is to reduce time to disposition.

Cases That Benefit From the ELT

Those with a limited number of parties

Cases with simple issues related to liability and damages

Cases having limited motion practice

Cases where discovery information is readily available

Cases where few witnesses are needed for discovery and/or trial

Conclusions About the ELT

It is ok for parties and the courts to do less for many types of civil cases

It is also ok for the parties and the courts to do more in some types of civil cases

It is not only fair, it's also just for courts to place cases on pathways that effectively use the litigant's time and resources

Complex Pathway

Recommendation 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.

Complex Pathway Case Characteristics

- While they may comprise a very small percentage of most civil cases (generally no more than 3%), they tend to utilize the highest percentage of court resources
- Complex law
- Numerous parties
- Numerous witnesses
- Voluminous documentary evidence
- High interpersonal conflict

Complex Pathway Case Types

- Multi-party medical malpractice
- Class actions
- Antitrust
- Multi-party commercial cases
- Securities
- Environmental torts
- Construction defect
- Product Liability
- Mass torts

Complex Pathway Rules and Procedures

- A single judge for the life of the case
- Mandatory early case management conference, followed by periodic conferences
- Deadlines for completion of key case stages established early in the life of the case, including a firm trial date
- Detailed discovery plan, including mandatory disclosures, tailored discovery, and plans for preservation and production
- Informal communications with the parties regarding dispositive motions

Minnesota Rule 146

146.01 Purpose; Principles

146.02 Definition of a Complex Case

146.03 Judge Assigned to Complex Cases

146.04 Mandatory Case Management Conferences

146.05 Case Management Order and Scheduling Order

General Pathway

Recommendation 6: Courts should implement a General Pathway for cases whose characteristics do not justify assignment to either the Streamlined or Complex Pathways.

General Pathway Rules and Procedures

- Deadlines for completion of key case stages established early in the life of the case, including a firm trial date
- Early case management conference
- Mandatory disclosures and tailored additional discovery
- Expedited approaches to resolve discovery disputes
- Informal communications with the parties regarding dispositive motions

Questions



Ongoing support:

Technical Assistance from NCSC and IAALS

Publications regarding Implementation Steps, Case Management Team Building, Performance Measures for Civil Justice

Criteria for Automating Triage in Civil Cases

DIY Landscape Assessment Guide

Business Practices VizTool

Functional Standards for Civil Case Automation

Tools and Resources @ ncsc.org/civil

The screenshot displays the Civil Justice Initiative website. At the top, the header includes the logo "CIVIL JUSTICE INITIATIVE" and "a project of NCSC National Center for State Courts". A search bar with a "GO" button is on the right. Below the header is a navigation menu with links: "Home", "CCJ Report", "Implementation Tools", "Resources", "Events and News", and "Assistance". The date "May 01, 2018" is shown in the top right corner. The main content area features four cards:

- Conference of Chief Justices Report and Recommendations:** Includes an image of a gavel and scales, a description of the July 2016 resolution, and a circular logo for the "CONFERENCE OF CHIEF JUSTICES".
- Implementation Tools:** Includes an image of people working at a computer, a description of the Implementation Plan, and a star icon.
- Best of the Best Civil Justice Resources:** Includes an image of hands pointing at documents, a description of resources by topic, and a star icon.
- Events and News:** Includes an image of a person writing at a desk with a gavel, a description of upcoming events, and a star icon.

Each card has an orange "GO" button at the bottom.



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Thank you for attending today's webinar.

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