

# TRANSFORMING OUR CIVIL JUSTICE SYSTEM FOR THE 21ST CENTURY

## A ROADMAP FOR IMPLEMENTATION

### ORGANIZATIONAL CHANGE IS A PROCESS, NOT AN EVENT

Much effort has been devoted to the study of organizational change over the last twenty years, recognizing that how change is implemented determines its success—or failure. The objective of this roadmap is to ensure that courts across the country can embrace the Conference of Chief Justices' (CCJ) recently adopted Recommendations for improving our civil justice system and implement them in a way that is thoughtful, responsive to the needs of court users, well-designed, and well-executed so that the reforms have the greatest possible likelihood of success.

To provide guidance and support for this effort, IAALS, the Institute for the Advancement of the American Legal System, and the National Center for State Courts (NCSC) present the following roadmap, recognizing that courts will enter this process at different points, with different needs, and with different prior knowledge and experience.

#### IT STARTS WITH LEADERSHIP



As a first step, leaders—be it the Chief Justice, State Court Administrator, or frontline judges and court staff—must take up the CCJ's call to action and commit to reform. In some states, this effort will begin with the Chief Justice and State Court Administrator, and in others, it will take place at the local level. And in some states, we know innovation can begin with the bar. Regardless of initial leaders, the court must be involved and engaged from the start.

#### THE ROADMAP STEPS

- LEAD
- ASSESS
- DEFINE ISSUES
- CREATE A WORKING GROUP AND ENGAGE STAKEHOLDERS
- DEVELOP VISION AND GOALS
- DEVELOP TAILORED RECOMMENDATIONS
- TAKE ACTION

It is important to collaborate and build internal and external support for change from the very beginning of this process. The reform projects that have included strong leadership and support from the local legal community have been the most successful.

The initial internal leadership, likely comprised of the Chief Justice and key staff, should consider and clarify the scope and parameters of the reform efforts from the beginning of the process. For example, will reform efforts apply to all civil actions in all state court tiers, or will the efforts be limited in some way?

## THE CALL TO ACTION AND A RESPONSE

### THE REALITY FOR OUR COURTS

State courts need to become an accessible, affordable venue for the resolution of civil disputes. To achieve that goal, the courts must address issues of complexity, delay, and cost. At the same time, society's expectations are growing—in terms of service, access to information, and technology.



OUR COURT SYSTEM HAS TO EVOLVE—  
THE PUBLIC DEMANDS IT, AND OUR DEMOCRACY DEPENDS ON IT.

### A RESPONSE FROM THE CONFERENCE OF CHIEF JUSTICES

Recognizing these challenges facing our courts, CCJ created the Civil Justice Improvements (CJI) Committee in 2013 to develop recommendations to transform our system for the 21st Century. The Committee drew on innovations and research from states around the country and developed a comprehensive set of recommendations for civil justice reform. CCJ and the Conference of State Court Administrators (COSCA) jointly endorsed the Committee's report, *Call to Action: Achieving Civil Justice for All*, in July 2016.

### THE ROLE OF STATE COURTS

State courts cannot simply rely on past methods to administer justice in the face of these new and pressing realities. The goal is a civil justice system that is accessible, inexpensive, timely, and just. Courts must confront these realities and address them head on to meet these goals in the 21st Century. The recommendations tell state courts “what” they can do to achieve these goals. However, the recommendations adopted by CCJ and COSCA will have no impact if the report merely sits on a shelf. In order to make the recommendations actionable, this roadmap provides a strategy for “how” to get there.

# THE IMPLEMENTATION ROADMAP



## LEAD

- Embrace call to action
- Build initial leadership team
- Define initial scope for assessment
- Collaborate and build internal and external support



## ASSESS

- Understand your context
- Do your own Landscape of Civil Litigation
- Answer questions designed to help your court broadly define your court's challenges
- Explore local and system-wide issues



## DEFINE ISSUES

- Identify and define issues
- Rank them in order of impact and possibility for improvement



## CREATE A WORKING GROUP AND ENGAGE STAKEHOLDERS

- Form a Task Force or Committee
- Engage stakeholders
- Think of balance and diversity
- Consider the size of the committee to ensure efficiency but also broad involvement



## DEVELOP VISION AND GOALS

- Reassess defined issues
- Develop a vision
- Set goals



## DEVELOP TAILORED RECOMMENDATIONS

Recommendations should consider how the court can:

- Exercise ultimate responsibility
- Triage case filings with mandatory pathway assignments
- Strategically deploy court personnel and resources
- Use technology wisely
- Focus attention on high-volume and uncontested cases
- Provide superior access for litigants



## TAKE ACTION

- Prioritize recommendations for implementation
- Consider what resources are needed for effective implementation
- Ensure coordination
- Invest in communication and education, within and outside the court



## ASSESS

Successful problem solving must be preceded by careful problem definition. To inform the CJI Committee's efforts, the NCSC undertook a multijurisdictional study of civil caseloads in state courts, *The Landscape of Litigation in State Courts*, that provides a national snapshot of civil litigation in our state courts. It is a very different picture than most lawyers and judges envision.

Each of our states faces unique challenges. To efficiently and effectively address your unique challenges, you must know and understand them. Courts should undertake landscape studies to document the volume and characteristics of civil case dockets across their state and identify areas of concern.

The DIY Landscape will provide insight on the following:

- Caseload Composition
- Manner of Disposition
- Judgment Amounts
- Number of Self-Represented Litigants
- Time to Disposition

However, not all of the issues within your court will be identified through a docket analysis. Courts should also complete the Impact Questionnaire, which provides concrete questions intended to highlight needed areas for reform.

The Impact Questionnaire will identify areas for reform that will result in the greatest impact.

### Resources:

- NCSC, *The Landscape of Litigation in State Courts*
- NCSC, *Assessing the Landscape of Civil Litigation: A Do-It-Yourself Guide for State Courts*
- IAALS and NCSC, *Assessing Areas for Impact in Civil Justice Reform: A Questionnaire for State Courts*
- NCSC, *The State of State Courts Public Opinion Survey*



## DEFINE ISSUES

The assessment above leads directly into the next step in the roadmap—defining the issues. A list of common state court issues is included below. It is important to define the issues facing your court, and to begin to rank them in order of impact and possibility of improvement.

## POSSIBLE ISSUES:

- Cost and delay
- Inefficient court processes
- Barriers to access
- Increasing self-represented litigants
- Challenges of high volume cases
- Declining case loads
- Budgetary constraints
- Demand for more technologically advanced solutions for litigants and counsel
- Demand for accessibility
- Lax enforcement of court rules
- Ineffective oversight of civil dockets

## ON THE GROUND EXAMPLE:

The Minnesota Supreme Court Civil Justice Reform Task Force began its reform efforts by identifying the problems and reviewing case statistics, both of which informed the Task Force's ultimate recommendations and successful implementation.



## CREATE A WORKING GROUP AND ENGAGE STAKEHOLDERS

At this point, it is important to create an official working group, be it a "task force" or a "committee." This group will serve in a policymaking role to define the vision and goals and to consider and make recommendations for reform.

- Too large will lead to inefficiency
- Too small can lead to under-representation of viewpoints
- Enlist and engage a variety of stakeholders, as members lend perspective and ultimate credibility to efforts
- Consider the results of your assessment and issue definition (e.g., if significant number of self-represented litigants, include someone who represents those interests —be it an organization or members of the public)

## POSSIBLE STAKEHOLDERS:

- Court administrators
- Clerks of court
- Judges (trial and appellate)
- Lawyers (plaintiff and defense, Legal Aid)
- Consumer protection organizations
- State or county legislators
- Users of the system, from self-represented litigants to corporations
- Members of the public



## DEVELOP VISION AND GOALS

Once you have created a Task Force or Committee comprised of your initial leadership team and additional stakeholders, the group needs to reassess defined issues, develop a vision, and set goals. The group should review the results of the assessment and examine the issues identified and expand on them—based on the collective experiences and insight of the group. It is important to confirm that the identified issues are the right ones, and to prioritize and ensure buy-in from the collective group.



## DEVELOP TAILORED RECOMMENDATIONS

How can your court, through implementation of the recommendations, address the issues in your jurisdiction that are undermining the accessible, inexpensive, timely, just, and fair resolution of civil disputes?

The above steps should provide a strong basis for the working group's analysis of the CJI Committee's recommendations. The next step is to pick up the Committee's recommendations, as well as the research and analysis that supported those recommendations, and work through them. Develop a set of tailored recommendations to be implemented in your court.

- Does the same process apply to every civil case? Are judges expected to individually manage their full docket? If so, your court would benefit from a right-sized pathway approach that systematizes triage, with staff teams and technological support for judges.
- Do you have a high number of SRLs? If so, your court would benefit from judicial and staff training and expanded use of remote services and court-litigant interfaces.

### ON THE GROUND EXAMPLE:

Arizona created a Committee on Civil Justice Reform focused on issues related to time and expense of litigation. The Committee has issued a report with recommendations that embrace proportionality, differentiated case management, active management by courts, and judicial training.

### A WORD ON BUY-IN:

As recommendations are developed, consider how to engage the broader community in review and comment on proposed recommendations. Transparency and input from the greater community—including the bench, bar, and public—is critical to successful reform.

Consider the incentives that are current barriers to change. Also consider how to tap into bench and bar motivations in order to gain support for the recommendations and their implementation.



## TAKE ACTION

Once recommendations are developed, the next step is to take action. The initial working group that developed the recommendations may or may not be the right group to implement change. Consider creating project groups to take action.

### WHAT DOES ACTION LOOK LIKE?

- Implementation locally or statewide
- Pilot projects to test, evaluate, and gain buy-in prior to statewide implementation
- Investment in technology and infrastructure
- Development of performance measures and an evaluation process



### KEY RESOURCE

*CALL TO ACTION: ACHIEVING CIVIL JUSTICE FOR ALL*  
*Recommendations to the Conference of Chief Justices by the Civil Justice Improvements Committee*

*Adopted by CCJ/COSCA July 2016*

Thirteen recommendations for restoring function and faith in a system that is too important to lose. The recommendations challenge courts to:

- Take ownership of cases before the court and manage from date of filing to disposition
- Triage case filings with mandatory pathway assignments
- Strategically deploy court personnel and resources
- Use technology wisely
- Focus attention on high-volume and uncontested cases
- Provide superior access for litigants



## THE IMPORTANCE OF EVALUATION

Historically, the success or failure of civil justice reforms has been evaluated on a largely anecdotal basis. Over the last ten years, that has begun to change. More recently, we have seen significant evaluation of rule reform efforts, and those evaluations informed the CCJ Committee's recommendations. Knowing what works—and what does not—is critical to continuous improvement. Additionally, legislatures and the public are now demanding evaluation and evidence of successes and failures. Going forward, understanding and responding to the changing needs and challenges of our courts will be essential. Thus, as part of implementation, you need to develop performance measures and plan for evaluation.

- What outcomes need to be evaluated?
- What data needs to be captured: baseline and ongoing?
- What processes needed to be established to ensure data collection happens?
- How will you utilize this data going forward for continuous improvement?
- Will it be shared publicly?

### Resources:

- IAALS, *A Roadmap for Reform: Measuring Innovation*
- NCSC, *Assessing the Landscape of Civil Litigation: A Do-It-Yourself Guide for State Courts*
- IAALS and NCSC, *Assessing Areas for Impact in Civil Justice Reform: A Questionnaire for State Courts*
- NCSC, *Performance Measures for Civil Justice*

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## SUPPORT PROVIDED BY:



You can access the resources identified in this roadmap and more at:

[WWW.NCSC.ORG/CIVIL](http://WWW.NCSC.ORG/CIVIL)

NCSC and IAALS, with support from the State Justice Institute, are committed to a three-year implementation project in support of states' efforts. This project includes a series of strategic planning workshops for the CCJ and COSCA regional meetings, educational and technical assistance, development and pilot testing of automated triage criteria, definition of the role of civil case management teams, development and evaluation of demonstration projects, and a national clearinghouse of information regarding state efforts.