

MINNESOTA CIVIL JUSTICE FORUM RECOMMENDATIONS FOR IMPROVED CIVIL CASE PROCESSING

Introduction

The Civil Justice Forum¹ was established in the fall of 2009. This effort was at the request of the 2009 Legislature which reacted favorably to the Criminal Justice Forum and asked that a like group be established in the civil justice arena. Specifically the Legislature asked that the Civil Justice Forum examine civil case processing statutes, court rules and practices in an effort to identify proposed changes aimed at facilitating more cost effective and efficient civil case processing.

Deliberations

The Forum reviewed current statutes, rules and court practices, current constraints on the system, measures the various constituencies have taken to change policies, procedures, or operations to address these constraints, and other state models for civil case processing.

The Civil Justice Forum reviewed efficiencies being used in Minnesota courts, including the use of subordinate judicial officers, mediation, and the development of e-filing.

The Colorado “simplified” procedure for civil litigation was also reviewed. This process generally applies to all civil actions, whether for monetary damages or any other form of relief, with a maximum allowable monetary judgment to \$100,000 against any one party. The procedure requires early, full disclosure of persons, documents, damages, insurance, and experts, and early, detailed disclosure of witnesses’ testimony, whose trial testimony is then generally limited to that which has been disclosed. Normally, no depositions, interrogatories, document requests, or requests for admission are allowed.

The Forum also identified changes to policies, procedures, and practices in the civil justice system that would increase efficiencies and reduce costs. Proposals identified included the following:

1. Provide more clear definitions in information statements:
 - a. Complex case
 - b. Standard case
2. Do more with the information statement – use it to focus; e.g. to refine scheduling orders
3. Shorten time requirement for filing information statements
4. Provide more certainty in trial dates – for fee?
5. Increase use of ITV
 - a. Consolidation of cases
 - b. Interviews

¹ The Civil Justice Forum roster can be found at Appendix A.

- c. Remote trials and hearings
- 6. Expedite consumer credit cases
- 7. Create specialized referees and magistrates to hear cases such as:
 - a. Housing
 - b. Conciliation court
 - c. CHIPs – truancy, run away, less serious CHIPs and/or traditional CHIPs cases and TPRs.
- 8. Reduce duplication of resources, e.g. predatory offender civil commitments
- 9. Let IFP designated litigants continue with IFP status without annual review, especially persons represented by Legal Aid.
- 10. Standardize length of oral arguments
- 11. Implement e-filing throughout the state.
- 12. Implement expedited procedures for “smaller \$ amount” civil cases, e.g. in Colorado there is an expedited process for civil actions under \$100,000.
- 13. Implement “loser pay system” to discourage excessive motion practice OR adopt Federal Rule 6.
- 14. Implement e-filing.
- 15. Move to centralized administration of court documents. Documents should be accessible throughout the state and not just in the county where the action is filed.
- 16. Expand the use of subordinate judicial officers
 - a. Conciliation court
 - b. Housing matters
 - c. Harassment
 - d. Implied consent
 - e. Name changes
 - f. Consumer credit actions
- 17. Create specialization in subject matters for subordinate judicial officers, judges, and volunteer conciliation court referees. Judges in greater MN could travel throughout the district to hear certain case types.
- 18. Implement methods to assist in the processing of cases with pro se litigants
 - a. Free attys?
 - b. Self Help Center
 - c. Law students
- 19. Streamline all case processing procedures.
- 20. E-mail notices
- 21. Simplify processes, especially in the area of family law.
- 22. Encourage use of mediation (the counterpoint raised was that this might add to cost of litigation if is not binding).
- 23. Look at appellate ease processing, e.g. electronic records in lieu of transcripts
- 24. Need limits on appeals. Need more final decisions.
- 25. Analyze whether we have pushed to create process that is way beyond the definition of due process.
- 26. Have attys send electronic documents that judge can use in drafting orders, jury instructions, etc.

27. Create uniform submission standards for documents – judges all have different personal styles to accommodate.
28. Create a docket for complex civil cases.
29. Remove Implied Consent cases from the court system to an administrative process which is done in nearly every other state.
30. Changing MRCP, Rule 43.07 and Minn. Stat. 546.44 to allow for taxation of interpreter costs in the discretion of the court
31. Providing an exclusive means based test for granting IFP status. The current screening tools and training allow for such programs as Minnesota Care to be used as qualifiers, when that program’s guidelines are well in excess of what should be considered.
32. Adopting rules which make the parties responsible for the per diem costs of civil trials, including jury, clerk, and reporter costs as is done in some other jurisdictions, subject to judicial discretion.
33. Permitting the parties to supplement the daily jury fee, by agreement, in an amount permitted by the court
34. Looking at a change in the method by which civil discovery is done to shift the initial obligation of production to be consistent with the federal rules and other proposals.
35. Utilize court commissioners or similar officers to handle routine matters requiring court approval, especially those which are administrative or default.

At a subsequent meeting the group reviewed the proposals and “ranked them” according to need to move forward, both in the short term and the long term. The initiatives with the most votes are listed below:

Proposal	Short Term Solution	Long Term Solution	How would this help?	How would we tackle it?
Simplify process	13	4		Examine Colorado simplified process.
Create a docket for complex civil cases	12	12	Better case management.	Create task force to explore alternatives and make recommendations.
Information Statement issues a. Provide more clear definitions in information statements: i. Complex case ii. Standard case b. Do more with the information statement –	11	0	Would result in more effective case management for parties. Would speed up case	Look at Colorado simplified process. Add complex litigation designation on scheduling order. Would require Rule

Proposal	Short Term Solution	Long Term Solution	How would this help?	How would we tackle it?
use it to focus; e.g. to refine scheduling orders c. Shorten time requirement for filing information statements			processing.	changes.
Create specialization in subject matters for subordinate judicial officers, judges, and volunteer conciliation court referees. Judges in greater MN could travel throughout the district to hear certain case types.	10	2	The use of subordinate judicial officers has been a huge help where used today.	The Judicial Council currently has this issue under consideration.
Encourage use of mediation (the counterpoint raised was that this might add to cost of litigation if is not binding).	8	2	Cases will settle and not go to trial, saving time four courts, and possibly money for litigants.	We already have a Court Rule requirement to consider mediation. Should require it.
Rule 68 – offers of judgment – return to use as tool in trying to achieve early settlements of cases so that it is like the federal rule.	8	0	In those cases that involve a potential attorney’s fee award to plaintiff’s counsel, a mechanism to put teeth into an offer of judgment – similar to the federal Rule 68 – would be helpful in encouraging early settlements of civil cases.	Amendment to Rule 68
E-mail notices Note: Court Administrators: Concern	8	1	Would save time and money Do not believe	

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expressed about emailing notices due to confidentiality issues. Suggested faxing is a better approach.			there would be privacy issues.	

Recommendations

At the final meeting the Civil Justice Forum was in agreement that the Supreme Court should be asked to establish a workgroup to study case processing of both complex and simple civil litigation to determine if and how these cases can be handled better, faster and at less expense through changes in court rules and court processes.

Suggestions for Workgroup membership include the following:

- Supreme Court Justices
- Court of Appeals Judges
- District court judges
- Minnesota State Bar Association
- Plaintiff Bar
- Defense Bar
- Court Administration
- Academicians
- Legal Aid
- Association of Corporate Counsel
- Business Interests
- Civil Rules Committee

The Forum suggests that the Workgroup charge be as follows:

- Examining whether case differentiation will promote better use of resources, both public and private; and if so:
- Making recommendations for changes to rules, policies and practices that allow for civil case differentiation, including:
 - Development of a definition for simplified and complex cases that clearly distinguishes them from a “standard” case.
 - Development of a process for simplified civil case processing (e.g. Colorado Simplified Process) and complex civil case processing (e.g. California) that would formalize rules that would make the processing of these cases more efficient and cost-effective. The processes should more closely match the needs of litigation in terms of cost and resources appropriate to the specific nature of the litigation. Cases should be easily identified at initiation for differentiation, track assignment and differential management.

Conclusion

The Civil Justice Forum acknowledges that the Minnesota civil justice system could be improved. At the same time the group believes that changes in current practices, procedures and policies should not be implemented without a more in-depth review of the current system, proposed changes and the impact of the changes on the litigants and the system. As a result the Civil Justice Forum recommends that a work group be created to conduct the in-depth analysis and to make recommendations to the Supreme Court for changes that will facilitate more cost effective and efficient civil case processing.

APPENDIX A

Civil Justice Forum Roster

Group	Participants
MSBA	
	Patrick Costello Costello, Carlson & Butzon
	D. Clay Taylor D Clay Taylor PA
	H. Le Phan Felhaber, Larson, Fenlon & Vogt PA
	Mary Schwind Leonard, Street and Deinard Professional Association
	Thomas Kelly, III Dorsey & Whitney
	David Allgeyer Lindquist & Venum
	Mary Vasaly Maslon, Edelman, Borman & Brand LLP
	Angela Brandt Larson King LLP
American Board of Trial Advocates	
	Jan Gunderson Bassford Remele
	John Patrick Brendel Brendel and Zinn
	John Vukelich Attorney at Law
Minnesota Association for Justice	
	Michael A. Bryant President, MAJ Bradshaw & Bryant, PLLC
Minnesota Defense Lawyers Association (1 member)	
	Thomas Marshall President, MDLA Jackson Lewis LLP
Legal Services Coalition (2 members)	
	Jerry Lane Legal Aid Society of Minneapolis
	David Lund North East Legal Services
County Attorneys	

Group	Participants
	David Hauser Ottertail County Doug Johnson Washington County
City Attorneys	
	Susan Segal Minneapolis City Attorney
Judges	
	Chief Justice Eric J. Magnuson Judge Jerome Abrams Judge Robert Awsumb Judge Fred Wellman Judge John McShane Judge Kurt Johnson Judge Eric Hylden Judge Susan Miles
Administrators	
	Sue K. Dosal State Court Administrator Mark Thompson 4th Judicial District Administrator Tim Ostby 8th Judicial District Administrator Dick Fasnacht 5th Judicial District Administrator LuAnn Blegen Court Administrator, Pine County Anna Lamb 4 th Judicial District Civil Manager Darrell Paske Court Administrator, Crow Wing County

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