

COMPLEX CIVIL LITIGATION COURT EVALUATION COMMITTEE

MINUTES

August 7, 2007

Members Present:

Andrew Federhar, Chair
Hon. Mark Aceto

Marcus Reinkensmeyer
Mark Larson

Guests:

Hon. Pendleton Gaines
Hon. Janet Barton
David Jacobs (Civil Ct Admin)
Mark Jensen (Clerk of Court)
Gloria Braskett (Civil Ct. Admin)
Bill Shore (Burdman & Shore)
Deb Jackson (Sup. Ct. Technology Svcs.)

Hon. John Buttrick
Mitch Michkowski (Civil Ct Admin)
Cynthia Puklin (Jud. Asst.)
George Knecht (Clerk of Court)
Kristi Dallmann (Civ.J.A.Trainer)
Douglas Lussion (Kasdan Simonds)

Jennifer Greene – Committee Staff

1. Call to Order Approval of the Minutes

The meeting was called to order at 12:05 PM.

The Chair welcomed Mark Aceto and John Buttrick to the meeting. Judge Aceto was appointed last month to replace Judge Baca as the new Civil Presiding Judge. Judge Buttrick has replaced Kenneth Fields on the panel. Judge Fields retired in June.

The October 2006 meeting minutes were moved and approved without modification.

2. Program Status Report

Mitch Michkowski, Civil Court Administrator, and David Jacobs, Deputy Civil Court Administrator, reported on the status of the program. To date, 74 motions for admission to the program have been granted and 44 denied. Of the 74 cases in the program, 12 were consolidated; 36 have been dismissed or settled. Of the 34 dismissals, 64% were resolved within 24 months. One case ended in a jury trial; 36% have more than 20 parties; 6% have more than 100 parties. Contract disputes and construction defect cases represent 46% of the program cases. There are 26 active cases in the program currently.

For fiscal year 06-07, the Complex Litigation Fund has collected \$42,257 through May, 2007, and spent \$53,635. The current balance is \$195,000. One year ago, the balance was \$212,889.

The law clerk/staff attorney position became vacant again in April. A law clerk with the federal trial court has accepted the job but will not be available until October 1st. The

position was granted a 5% pay increase to \$70,000 recently, and court administration will pursue more of an increase with the county. The salary level was an issue for two of the three final candidates for the position. A federal law clerk is paid \$84,000. Phoenix-area law firms are paying \$140,000 or more for new associates. The county recently agreed to establish a \$93,000 salary for a similar position for a capital case staff attorney/manager.

The court's technology division is working on moving the program's data collection into the case management system – iCIS, so it can be maintained and tracked more efficiently.

The panel judges reported that no cases have been referred to the program by judges. Judge Aceto estimated he had reviewed and denied four requests for admission in the past four months.

Members reviewed the factors the original committee identified for granting admission into the program, the decision to go with a complex rather than straight business court format, and the guiding principal of the program – to earn the support of the business community for judicial branch initiatives. Another important feature of the program is the new legal information and case management skills the panel judges have shared with the civil bench by virtue of the specialized training they have received and their membership in national organizations such as the American College of Business Court Judges. The fact that they have been teaching and attending seminars and conferences of this nature is also good advertising for both the county and the state.

Discussion ensued regarding exactly what the program has to offer at this point and how to attract more cases. The 5-year rotation of panel judges and the \$500 filing fee are the remaining unique factors of the pilot program. Program cases are moved through quickly, perhaps more quickly than non-program cases. Regular civil courtrooms are now mostly equipped with updated electronics, e-filing is more widely available, and non-program judges are using Rule 16.3 in non-program cases. The civil department includes many highly-skilled judges apart from the panel judges, which may explain why more cases are not in the pilot program. Attorneys may simply be content with their initial judicial assignments and not feel there is enough of an advantage to seeking program designation.

Pre-screening new cases for eligibility could bring more cases into the program. Other similar programs in other states have a presumptive dollar threshold or case category trigger for program admission. By amending the civil cover sheet, presumptively eligible cases can be assigned to a panel judge for an early status conference where the decision can be made on eligibility. Existing complex cases could also be moved into the program at the point when the assigned judge rotates to another department.

Andy Federhar, Judge Barton and Jennifer will inquire about the mechanism used by other complex/business courts to identify eligible cases and the amount of fees charged to litigants.

George Knecht, Senior Business Analyst with the Clerk of Court's Office, reported that the court is beginning the last year of its e-filing contract with LexisNexis. The LexisNexis system is a stand-alone program that differs from the one in use by the rest of the divisions that now have e-filing. The LexisNexis system offers e-service, which the other system does not have. A decision needs to be made on whether/how to integrate the pilot program's e-filing system into the e-filing system before September 2008.

4. Call to the Public

Meeting adjourned at 1:00 PM.

COMPLEX CIVIL LITIGATION COURT EVALUATION COMMITTEE

MINUTES

October 23, 2007

Members Present:

Andrew Federhar, Chair
Hon. Mark Aceto

Marcus Reinkensmeyer
William Maledon

Guests:

Hon. Pendleton Gaines
Hon. John Buttrick
Cynthia Puklin
Mark Jensen
David Jacobs
Theresa Barrett

Hon. Janet Barton
Mitch Michkowski
Laurie Thomas
Kenneth Januszewski
Lisa Goodman

Jennifer Greene – Committee Staff

1. Call to Order Approval of the Minutes

The meeting was called to order at 12:05 PM. Judge Gaines introduced Ms. Lisa Goodman, the program's new staff attorney.

The August 2007 meeting minutes were approved without modification.

2. Consideration of refinements to complex case designation and assignment

The members discussed whether to follow California's methods of identifying and assigning cases to its complex litigation programs. Members reviewed the California civil cover sheet and the questionnaire in use in Los Angeles County that the managing judge reviews to determine whether to re-assign a case to the Los Angeles County complex litigation program. California law deems certain types of cases to be "provisionally" eligible and the civil cover sheet (which is a mandatory statewide form) captures information to identify those new filings. Arizona's complex litigation committee decided not to assign provisional eligibility to any particular case type, but the program has remained small in scale, in part as a result of that decision. Judge Aceto reported he has seen less than one motion a month for complex designation.

It was noted that some Arizona lawyers are unaware of the program. There is a national trend favoring establishment of business or complex litigation courts and the trial court in Maricopa County is viewed nationally as a high-quality innovative court and that reputation can be attributed, in part, to the existence of the complex litigation program. Assigning more cases to the program will serve an educational function, as more lawyers will be exposed to the program and will talk with other lawyers about it. Putting something on the civil cover sheet that asks lawyers whether the case is eligible under Rule 8(i) will raise awareness as well.

The types of cases that are deemed provisionally eligible under the California statute -- antitrust/trade regulation, securities litigation, construction defect, mass tort, environmental/toxic tort, and insurance coverage claims arising from these case types -- are not a large percentage of civil cases and would not overwhelm program resources. Another case category warranting extra judicial oversight might be those that are related to other similar cases pending at the court or in other courts. Often an attorney will know of these other similar cases at the point in time when he or she fills out the cover sheet and could be asked to provide pertinent information on the cover sheet.

The consensus was to add some elements to the Maricopa civil cover sheet that will ask attorneys to identify whether their case is complex under Rule 8(i), whether their claim is cognizable under one of the California provisional case type categories, or is related to other pending civil cases. Once the cover sheet is revised, the court will track the number of cases that are identified in this manner for two months to determine the volume of cases that are identified as potentially eligible for complex case designation.

The group also discussed options for processing the cases that are identified on the cover sheet as potentially eligible for the program. The court could call the attorneys and suggest they consider filing a motion for complex designation. The court could ask the attorneys to complete a questionnaire like the one in use in Los Angeles that asks for information about the complex features of the case. The Presiding Civil Judge (or a designee) could review the pleadings and assign the case to the program unilaterally. The volume of potentially eligible cases that are filed may determine what process would work best.

Mitch Michkowski was asked to work on revising the civil cover sheet with the Clerk's Office in sufficient time to allow the committee to review the results of the changes at its next meeting in January.

3. Call to the Public

No response.

Meeting adjourned at 1:05 PM.

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.

COMPLEX CIVIL LITIGATION COURT EVALUATION COMMITTEE

MINUTES

May 19, 2008

Members Present:

William Maledon, Acting Chair
Hon. Mark Aceto
Mark Larson

Members not present:

Marcus Reinkensmeyer
Andrew Federhar

Committee Staff:

Theresa Barrett
Mark Meltzer

Guests:

Hon. Janet Barton
Hon. John Buttrick
Hon. Douglas Rayes
Hon. Peter Swann
Mark Jenson
Mitch Michkowski
David Jacobs
Gloria Braskete

1. Call to Order; Approval of the Minutes

The meeting was called to order at 12:15 PM by William Maledon, acting as chair on behalf of Andrew Federhar, who was out-of-state.

The February 21, 2008, meeting minutes were approved without modification.

2. Program status report and recommended refinements to the program.

The chair introduced the topic of the intake and designation of cases as complex.

Judge Aceto had taken the initiative on screening a sample of 75 cases that had not sought complex designation at the time of filing. Judge Aceto found that 70 of those cases were in fact not complex. Three of those cases which were potentially complex were “taken out of the running” shortly after filing (one had gone into an arbitration track; another had been removed to federal court; and the third was interrupted by a notice of bankruptcy filing.) Two of the 75 cases Judge Aceto reviewed, however, he would have considered for complex designation.

The issue was then presented: if the Court believes that a standard track case warrants complex designation, should the Court on its own motion, i.e., sua sponte, designate the case as complex, and admit it into the complex case management program without providing counsel an opportunity to object?

One view was that sua sponte designation should not occur at all. The belief was that plaintiffs’ counsel had already done an analysis of complexity prior to filing; that if plaintiffs’ counsel had not done such an analysis, that defense counsel certainly would have done one; and that the

attorneys' knowledge and insights on their case would be the most accurate gauge of the complexity of the case, and should not be supplanted by the Court's analysis.

Concern was also expressed that sua sponte designation might increase court costs or work a hardship on parties. One of the two cases discussed by Judge Aceto as warranting complex designation involved 50 separate plaintiffs in a homeowners association, and designating that case as complex could impose on them an additional fee of \$25,000 (\$500 times 50). Judge Barton suggested that the Court had discretion in such a case to appropriately modify or reduce the complex case management fee of \$500 per party.

Judge Barton pointed out that the Arizona complex case model, unlike that which exists in several other states, is purely voluntary. The chair also noted that early on in the complex committee work, California Chief Justice George addressed the committee and explained how California opens the gate wider in order to admit a larger volume of cases. The intent in Arizona was not to funnel a high number of cases into the complex litigation courts, but to identify those exceptional cases that merited intensive judicial case management.

The committee discussed how cases that are not designated complex at the time of filing in Maricopa County, but which are potentially complex cases, undergo three phases of screening. First, court administration, utilizing the civil cover sheet as well as manual screening, reviews the cases and identifies those that may be complex cases. Next, the complex litigation law clerk further reviews the cases identified by court administration, and makes recommendations to Judge Aceto. Finally, Judge Aceto reviews the cases and makes a determination of complexity.

Judge Buttrick proposed, and the committee agreed, that in those cases which had not been designated as complex by the parties, but which the three-phase court-screening process nonetheless identified as appropriate for complex case management, that Judge Aceto would issue a minute entry. His minute entry will issue only after all parties had appeared. The minute entry would advise the parties that the case would be identified as complex unless a party objected to the designation within twenty days.

ACTION: Judge Aceto will draft a form minute entry advising the parties that their case meets the complex criteria of Rule 8i; that the case would benefit from complex case management; and that unless a party objects within 20 days, the case will be so designated. The minute entry will advise the parties of the \$500 complex case fee.

The committee then considered the current volume of complex case filings in Maricopa County.

The civil court administrator provided the committee with data. In summary, the data showed that each of the past three years has seen a decrease in both the number of new cases entering the program, and a related reduction in revenue. Specifically, from the inception of the program through 2003, 37 cases entered the program. In 2004, 2005, 2006, and 2007, the respective number of cases admitted to the program were 20, 12, 9, and 7. For 2008, to date, no new cases have gone into the complex program. Commensurate with the reduction in admissions, the revenue collected by the program has gone from a high of \$92,046 in 2005, to a low of \$17,566

in 2007. Since this revenue supports the complex litigation law clerk position, the sustainability of that position may be jeopardized.

The discussion turned to possible explanations for the reduction in complex case filings. One suggestion was that due to the stringent application of the criteria, plaintiffs counsel may be dissuaded from seeking complex designation out of concern for being denied admission, and may instead chose to simply file in federal court. A point was made regarding a bias in favor of federal court, in part because of the permanency of a judge assignment and greater assurance that the case would receive complex case management. (Typical time for complex case processing in Maricopa County is 1200 to 1400 days, which could increase the undesired prospect of a judicial reassignment.) Judge shopping was also an expressed concern (i.e., staying out of the Maricopa County program to avoid assignment to one of the panel judges.)

Another explanation offered for the low number of case filings arose from the current civil cover sheet. Court administration noted that the current cover sheet, on which specific complex categories can be identified, is being used in as little as 15% of case filings. Since a new, statewide cover sheet is being mandated for use in early 2009, failure to file the interim cover sheet, with identification of the complex categories, is not resulting in rejection of new case filings by the clerk. And the lack of familiarity of the bar with the existence of the program has been a long-standing concern.

ACTION: Court administration will provide updated information to the committee at the next meeting concerning the complex litigation log and other case data. Staff will follow up with the AZ Attorney magazine to publicize the program.

It was decided to schedule the next meeting in September.

3. Call to the Public

No response.

Meeting adjourned at 1:15 PM.