

TRANSFORMING OUR CIVIL JUSTICE
SYSTEM FOR THE 21ST CENTURY

THE ROAD TO CIVIL
JUSTICE REFORM



Justice we can believe in



In July 2016, the Conference of Chief Justices and the Conference of State Court Administrators adopted recommendations designed to secure the fair, speedy, and inexpensive resolution of civil cases in state courts. The Civil Justice Initiative (CJI) Recommendations present a comprehensive framework that features: 1) a pathway approach based on the concept of proportionality in which civil rules and court resources are matched to the unique needs of each case; 2) a radically different staffing model for civil case processing that delegates substantial responsibility for routine caseload management to specially trained professional staff, supported by effective case automation, permitting judges to focus on tasks that require their unique training and expertise; and 3) a renewed focus on high-volume calendars that comprise the vast majority of contemporary civil caseloads, especially improved access for self-represented litigants, and greater attention to uncontested cases and greater security on claims to ensure procedural fairness for litigants.

With support of a generous grant from the State Justice Institute, IAALS, the Institute for the Advancement of the American Legal System, and the National Center for State Courts have partnered on a three-year project to implement the CJI Recommendations. The CJI report, recommendations, and information about the CJI Implementation Plan are available at ncsc.org/civil and iaals.du.edu/cji.



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INSTITUTE *for the* ADVANCEMENT
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IAALS, the Institute for the Advancement of the American Legal System, is a national, independent research center at the University of Denver dedicated to facilitating continuous improvement and advancing excellence in the American legal system. We are a “think tank” that goes one step further—we are practical and solution-oriented. Our mission is to forge innovative and practical solutions to problems within the American legal system. By leveraging a unique blend of empirical and legal research, innovative solutions, broad-based collaboration, communications, and ongoing measurement in strategically selected, high-impact areas, IAALS is empowering others with the knowledge, models, and will to advance a more accessible, efficient, and accountable American legal system.

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INTRODUCTION

In July 2016, the Conference of Chief Justices (CCJ) and the Conference of State Court Administrators (COSCA) endorsed 13 recommendations for improving the American civil justice system. The report and recommendations, titled *Call to Action: Achieving Civil Justice for All*¹, were the result of more than two years of research and work by the CCJ Civil Justice Improvements Committee, with support from the National Center for State Courts (NCSC) and IAALS, the Institute for the Advancement of the American Legal System.

The Committee's charge was to develop guidelines and best practices to ensure the just, prompt, and cost-effective resolution of civil cases in state courts.² The resulting report provides a comprehensive set of national recommendations for civil justice reform, from the easy-to-implement to the transformational, all with the ultimate goal of ensuring access to justice in the twenty-first century. As former Chief Justice Thomas A. Balmer, Chair of the Committee, noted upon release of the report:

We recognize that the changes we propose will not be easy. They need to be guided by leadership from the top. We need education as we implement change. We need outreach to lawyers. We need to embrace organizational change management. Finally, we need a change in mindset. But, if we make the changes ourselves, we can control the outcomes and transform our courts to achieve civil justice for all.³

Within the report itself, the Committee recognized that the changes would also need future assistance to ensure maximum success, and both the NCSC and IAALS committed to collaborate and take steps “to move the Recommendations into action.”⁴ With support from a generous grant from the State Justice Institute (SJI), and guidance from the Civil Justice Initiative (CJI) Steering Committee, the NCSC and IAALS partnered on a three-year project to support implementation of the recommendations. The plan included several components: regional civil justice reform summits in partnership with CCJ and COSCA, education and technical assistance, implementation tools, oversight and evaluation of demonstration pilot projects, and webinars.⁵

As a first step in the implementation plan, IAALS and NCSC leaders sat down together to develop a roadmap for implementation. We pulled together all that we had learned over the course of developing the CJI Committee's recommendations, as well as the lessons learned from previous state court pilot projects and our collective work with innovative states implementing reforms. The result was *Transforming Our Civil Justice System for the 21st Century: A Roadmap for Implementation*, a set of seven clear steps for courts to follow when

1 NAT'L CTR. FOR STATE CTS. & INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS., *CALL TO ACTION: ACHIEVING CIVIL JUSTICE FOR ALL, RECOMMENDATIONS TO THE CONFERENCE OF CHIEF JUSTICES BY THE CIVIL JUSTICE IMPROVEMENTS COMMITTEE* (2016), <https://www.ncsc.org/~media/Microsites/Files/Civil-Justice/NCSC-CJI-Report-Web.ashx> [hereinafter *CALL TO ACTION*].

2 CCJ/COSCA, Resolution 8, In Support of the Call to Action and Recommendations of the Civil Justice Improvements Committee to Improve Civil Justice in State Courts (July 27, 2016), <https://ccj.ncsc.org/~media/microsites/files/ccj/resolutions/07272016-support-call-action-recommendations-cji.ashx>.

3 Hon. Thomas A. Balmer, *A Call to Action in our State Courts: Achieving Justice for All*, IAALS BLOG (Aug. 3, 2016), <https://iaals.du.edu/blog/call-action-our-state-courts-achieving-justice-all>.

4 *CALL TO ACTION*, *supra* note 1, at 41 (“Recognizing that organizational change is a process, not an event, the NCSC and IAALS will collaborate to assist court leaders who desire to implement civil justice change.”).

5 See INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS. & NAT'L CTR FOR STATE CTS., *CIVIL JUSTICE INITIATIVE IMPLEMENTATION PLAN*, <https://www.ncsc.org/~media/Microsites/Files/Civil-Justice/Implementation%20Plan.ashx>. The final Call to Action report, executive summary, appendices, implementation tools, webinars, and a collection of resources listed by topic are available at www.ncsc.org/civil.

tailoring the national recommendations.⁶ The objective of the roadmap is to ensure that courts across the country can both embrace the recommendations 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.”⁷

As a follow up to this set of guidelines, four states were selected as roadmap implementation states—Idaho, Maine, Missouri, and Texas. The idea was simple: rather than draft another 50-page report detailing exactly how state courts should implement reform, we developed a six-page guide with clear steps for success and then identified four states willing to answer the *Call to Action*. IAALS and the NCSC provided technical assistance as needed along their path to implementing the recommendations, and later circled back to interview those involved and share their experiences through this series of case studies.⁸ This approach allows us to share the lessons learned from four states actually implementing reform on the ground.

We purposefully chose the four states for their diversity across multiple factors, including geographical region, physical size, and court structure. The result is a set of four very different experiences, confirming the *Roadmap’s* recognition that “courts will enter this process at different points, with different needs, and with different prior knowledge and experience.”⁹ The *Roadmap* does not set out a strict path—rather, it recognizes the differences among courts and encourages courts to consider key steps along the way. The four roadmap states illustrate that different courts, with different paths, can be very successful, providing other states with tangible experiences on which to draw when initiating their own efforts.

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.

Transforming Our Civil Justice System for the 21st Century: A Roadmap for Implementation



6 INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS. & NAT’L CENTER FOR STATE CTS., *TRANSFORMING OUR CIVIL JUSTICE SYSTEM FOR THE 21ST CENTURY: A ROADMAP FOR IMPLEMENTATION* (2017) [hereinafter *ROADMAP*].

7 *ROADMAP*, *supra* note 6, at 1.

8 The *Roadmap* steps also served as the overall framework for the CCJ/COSCA regional civil justice reform summits. Over the course of two days, attendees learned about leadership, assessment, and tailoring recommendations for civil rule reform and business practice innovations, ending with the development of state action plans for civil justice reform. In total, 43 states and territories participated in the four summits, which were held between May 2017 and October 2018.

9 *ROADMAP*, *supra* note 6, at 1.



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

THE STUDY

To understand these experiences, we conducted one-on-one interviews, as well as a few group interviews, to collect information and narratives directly from the individuals who were involved in these efforts. In each of the four states, we identified a group of interviewees that included the committee chairs and other leaders, judges, attorneys, court staff, attendees of the national summits, and others involved in the effort—both committee and non-committee members—to provide a diversity of insights into the process. Interviews were largely conducted in person in each of the states, although a handful of interviews were conducted by phone given scheduling conflicts and our desire to ensure broad geographic representation. The following case studies, presented in chronological order, draw from these interviews and first present a narrative of the state's reform efforts, followed by key insights and lessons learned from these experiences.

KEY THEMES

There are several key themes that emerge across the jurisdictions. **First, reform takes time.** This is a process that cannot be rushed if it is to be successful. While the goal of the national recommendations and *Roadmap* is to provide states a launching point for success, including a set of recommendations with underlying research upon which to base their efforts, states need to develop their own set of tailored recommendations based on the state's rules, procedures, and unique challenges. Likewise, each of the states' paths to reform will differ, depending on their size, structure of committees, and the scope of the effort. Within this variation, the experiences of these four states reflect that each of the *Roadmap* steps still play a key role.

One of those key steps is assessment. Each of the states embraced the assessment step, leading to efforts that are more informed and tailored to the particular needs of the states. **The ultimate purpose of this evidence-based approach is for the reforms to be more successful—leading to greater access and justice for all users of the system.** As the states illustrate through their efforts, assessment goes beyond a landscape study, and can include surveys, focus groups, and outreach in the community to gather data and input.

Engagement with stakeholders is essential, and the view of who is a stakeholder in the process must be broad. The state experiences reflect there are many different ways to engage stakeholders in the process, both through committee membership and otherwise, but foundationally this engagement is what leads to an informed, engaged, and successful effort. While early and intentional engagement across stakeholder groups is critical, it is also equally important to revisit engagement throughout the process as additional information is gathered, the goals and vision are more clearly defined, and recommendations are developed. It is important to include input beyond judges and lawyers to include court staff, those responsible for technology innovations, liaisons to other court and attorney committees, business owners, and court users.

In developing recommendations, states should build off the reforms, research, and experiences of other states. The Civil Justice Improvements Committee did just that, pulling together all of the learning from pilot projects and rule reform efforts around the country, as well as their evaluations. These efforts provide a body of knowledge for what has been most successful. In tailoring the national recommendations, states should draw on both this experience and research, as well as the people who were instrumental in these efforts.

One common factor across the four states: leadership. As a first step, leaders in each of the four states answered the CCJ's call to action and committed to reform. This leads to the project's second important goal of finding first followers and starting a movement. In the now-viral three-minute TED talk, Derek Sivers illustrates the start of a movement and the importance of first followers.¹⁰ A lone person stands dancing on a hill, until he is joined by others.

A leader needs the guts to stand alone and look ridiculous. But what he's doing is so simple, it's almost instructional. This is key. You must be easy to follow!

Now comes the first follower with a crucial role: he publicly shows everyone how to follow. Notice the leader embraces him as an equal, so it's not about the leader anymore—it's about them, plural. Notice he's calling to his friends to join in.

It takes guts to be a first follower! You stand out and brave ridicule, yourself. Being a first follower is an under-appreciated form of leadership. **The first follower transforms a lone nut into a leader.** If the leader is the flint, the first follower is the spark that makes the fire.

The second follower is a turning point: it's proof the first has done well. Now it's not a lone nut, and it's not two nuts. Three is a crowd and a crowd is news.

A movement must be public. Make sure outsiders see more than just the leader. Everyone needs to see the followers, because new followers emulate followers—not the leader.¹¹

In this report, we highlight the efforts of our first followers. These four states have taken up the call to action and turned the hard work of the CCJ Civil Justice Improvements Committee into a movement to transform how we deliver justice in the United States. We hope others are encouraged to follow.

¹⁰ Derek Sivers, *First Follower: Leadership Lessons From a Dancing Guy*, <https://sivers.org/ff> (last visited Feb. 5, 2020).

¹¹ *Id.*



THE ROAD TO CIVIL JUSTICE REFORM IN IDAHO

The mission of the Idaho Judiciary is to “provide access to justice by ensuring fair processes and the timely, impartial resolution of cases.”¹² Idaho has a history of efforts in support of this mission, including establishing the Idaho Advancing Justice Committee, which the Idaho Supreme Court tasked in 2012 to identify best practices in the area of caseload management, develop a statewide caseload management plan, and assist with the development of individual plans for the judicial districts.¹³ The Idaho Supreme Court revised the Idaho rules of family law procedures in 2013 after a vigorous process. In September 2014, the Advancing Justice Committee issued a *Statewide Caseload Management Plan for the Idaho District Courts*.¹⁴ Idaho’s Advancing Justice Committee also worked on caseload management and streamlining process times for all case types.¹⁵ In 2016, Idaho revised its small claims rules to streamline small claims cases.¹⁶ Idaho’s Court Assistance Office (CAO), an integral part of improving service for self-represented litigants, most recently developed forms for self-represented litigants and updated its website to be more user-friendly.¹⁷ In 2018, the Idaho Administrative Office of the Courts (AOC) finalized the statewide implementation of the Odyssey case management system, a project that began in 2013.

As part of this continuing dedication to justice reform, the Idaho Supreme Court invited IAALS’ then-executive director Rebecca Love Kourlis to speak at the Idaho Supreme Court’s Denton Darrington Annual Lecture on Law and Government in February 2016,¹⁸ and again at the annual Idaho Judicial Conference

12 Mission Statement of the Idaho Courts (adopted Apr. 25, 2016), <https://isc.idaho.gov/files/MissionStatement-CURRENT-04-25-16.pdf>.

13 See Order, In re: Formation and Membership of the Advancing Justice Committee (Idaho July 28, 2016), https://isc.idaho.gov/adm_orders/Advancing_Justice_Committee_07.16.pdf.

14 ADVANCING JUSTICE COMMITTEE, STATEWIDE CASEFLOW MANAGEMENT PLAN FOR THE IDAHO DISTRICT COURTS (Sept. 14, 2014). The Plan, which was adopted by the supreme court in 2015, recommended, among other things, standards for case processing times, calendar settings, proactive case management, early and continuous case assessment by the courts, recommendations for motions practice and discovery recommendations, and trial management standards.

15 IDAHO CT. ADMIN. RULE 57(a) states, “[t]he following time standards are adopted as guidelines for judges, trial court administrators, lawyers, and litigants to assist them in determining the length of time it should take to conclude a case in the trial court.”

16 IDAHO CODE § 1-2301 et seq. (2018).

17 CAO provides resources, court forms, and legal information for self-represented litigants. The CAO is funded by the Idaho legislature and overseen by the Court Assistance Advisory Committee at the Idaho Supreme Court.

18 The Denton Darrington Annual Lecture on Law and Government is an annual lecture sponsored by the University of Idaho College of Law, the Idaho Supreme Court, and the Idaho State Bar and Law Foundation, and is broadcast live and archived on Idaho Public Television; Kourlis’ lecture was published by the Idaho Law Review, Hon. Rebecca Love Kourlis, *Civil Justice Reform: A Movement*, 52 IDAHO L. REV. 497 (2016), <https://www.idahoptv.org/shows/idahoinsession/archive/?group=darringtonlec?group=darringtonlec?group=darringtonlec>.

in September 2016. As these seeds of reform were being sowed,¹⁹ then-Chief Justice Jim Jones and the Idaho Supreme Court were presented with several concerns regarding the increasing cost of civil litigation.²⁰ Recent Idaho civil case outcomes showed that the attorneys' fees and costs expended were disproportionate to amounts in controversy.²¹ Through these cases, the supreme court witnessed first-hand the costs of litigation exceeding the amounts in controversy and the decline in civil filings in Idaho.

Based on these concerns, and the contemporaneous release of the *CCJ Call to Action*, the Idaho Supreme Court issued an Order on November 21, 2016, establishing the Idaho Civil Justice Reform Task Force.²² The Order appointed judges and lawyers across practice areas and the state to serve as Task Force members, appointed Appellate Court Judge Molly Huskey as chair, and included a specific charge to the Task Force to review court procedures and rules and make recommendations for reform.²³

In February 2017, the Task Force began meeting once per month, starting by "initially determining what problems, if any, existed in Idaho."²⁴ As a first step in this assessment, the Task Force set out to obtain accurate civil case landscape data. Because of limitations in the available data, the Task Force worked with the AOC to develop a plan for data collection to provide more complete data that could then be compared to the national statistics.²⁵ Data specialists from the AOC developed a data collection plan that included a review of randomly sampled paper case files from each of Idaho's seven judicial districts. The analysis included the type of case, the amount at issue, time to resolution, and representation status of litigants.²⁶ Idaho looked to many sources to inform its assessment efforts,

"I didn't have any preconceived idea of what the outcomes should be, or if there even should be a change. You have to be able to step back and have a broad perspective so that you don't unintentionally funnel your results in a particular manner."

*Judge Molly Huskey,
Idaho Court of Appeals
Chair, Idaho Civil Justice
Reform Task Force*

19 RECOMMENDATIONS OF THE IDAHO SUPREME COURT CIVIL JUSTICE REFORM TASK FORCE, FINAL REPORT 2 (2019), <https://isc.idaho.gov/links/Civil%20Justice%20Task%20Force%20Final%20Report%20Combined%20A.pdf> [hereinafter IDAHO FINAL REPORT].

20 *Id.* at 1.

21 Jim Jones, *Civil Justice Reform - An Idaho Imperative*, CONCORDIA L. REV. Vol. 2: No. 1, Art. 4 (2017); *Stevens v. Eyer*, 387 P.3d 75 (Idaho 2016); *Campbell v. Parkway Surgery Ctr., LLC*, 354 P.3d 1172 (Idaho 2015); *City of Meridian v. Petra Inc.*, 299 P.3d 232 (Idaho 2013).

22 Order, *In re Formation of a Civil Justice Reform Task Force* (Idaho Nov. 21, 2016), https://isc.idaho.gov/adm_orders/Formation_of_Civil_Justice_Reform_Task_Force_11.16.pdf. The Order states that the Committee shall "1. Rethink longstanding orthodoxies about the process for resolving civil cases in light of evidence derived from applicable research and pilot projects in both state and federal courts; 2. Review current court procedures to identify areas of delay and the causes thereof; 3. Review current court rules, procedures, and business practices, as well as the use of technology; 4. Consider making recommendations for change which will protect, support, and preserve litigants' constitutional rights to a speedy remedy, to a jury trial, to due process, and to justice administered without sale, denial, delay or prejudice."

23 *Id.*

24 IDAHO FINAL REPORT, *supra* note 19, at 3.

25 PAULA HANNAFORD-AGOR ET AL., NAT'L CTR. FOR STATE COURTS, THE LANDSCAPE OF CIVIL LITIGATION IN STATE COURTS iv (2015), <https://www.ncsc.org/~media/Files/PDF/Research/CivilJusticeReport-2015.ashx> [hereinafter LANDSCAPE STUDY].

26 IDAHO FINAL REPORT, *supra* note 19, at Appendix 4.

including the Civil Justice Initiative *DIY Landscape Guide*²⁷ and the civil justice reform reports from Iowa and Minnesota, among others.²⁸

In this initial assessment stage, the Task Force also developed a survey to distribute to the bench and bar. Rather than reinvent the wheel in developing the survey instrument, Judge Huskey reached out to the Iowa Supreme Court and received permission to use the survey Iowa had developed as part of its reform efforts in 2010.²⁹ The Task Force members adapted the survey to Idaho's unique circumstances and worked with the AOC to convert the survey to an online format. The Task Force collaborated with the Idaho State Bar to distribute the online survey to its members and also identified a focus group for individual distribution. The Idaho Supreme Court provided CLE credit as an incentive for completion of the survey.

The administration of the survey and subsequent data collection took approximately six months. While this timeframe took longer than anticipated, bar association members needed enough time to take the survey and the supreme court research and data division needed time to distill the responses into a digestible format. The results further refined issues and educated the Task Force about the views of Idaho attorneys.³⁰

The Task Force then analyzed the survey results and examined them in conjunction with the case data collected from each of the seven districts, and reviewed the civil rules and procedures, business practices, and current technology needs. The Task Force also considered other states' experiences to understand what civil justice reforms have been most successful. Alongside these efforts, in May 2017, Task Force members attended the CCJ/COSCA Western Region Civil Justice Reform Summit in Utah, where Idaho members learned first-hand about the reforms and experiences of other states, including Utah.³¹ The Summit energized Idaho's efforts and propelled the Task Force to focus on the most important issues for civil justice reform in Idaho.

Based on these assessment efforts, the Task Force recognized that it needed to expand its membership. On September 14, 2017, Chief Justice Roger Burdick issued an Order expanding and diversifying the membership of the Civil Justice Reform Task Force by adding two magistrate judges including a magistrate in northwest Idaho, an experienced civil litigation practitioner located in southern Idaho, an attorney representing Legal Aid, and a member from the AOC's Data and Evaluation Division.³²

Recognizing the importance of outreach, education, transparency, and input from the bench and bar and the broader Idaho community, the Task Force created a subcommittee dedicated to communication with the bench and bar. All Task Force members were engaged in these outreach efforts in some way, from articles

27 PAULA HANNAFORD-AGOR ET AL., *ASSESSING THE LANDSCAPE OF CIVIL LITIGATION: A DO-IT-YOURSELF GUIDE FOR STATE COURTS*, NAT'L CTR FOR STATE CTS., CIVIL JUSTICE INITIATIVE, (2016) [hereinafter *DIY LANDSCAPE GUIDE*].

28 *REFORMING THE IOWA CIVIL JUSTICE SYSTEM, REPORT OF THE IOWA CIVIL JUSTICE REFORM TASK FORCE* (Jan. 30, 2012), https://www.iowacourts.gov/static/media/cms/FINAL03_22_12_0E9941AE5D491.pdf [hereinafter *IOWA TASK FORCE REPORT*]; *IN RE: MINNESOTA SUPREME COURT CIVIL JUSTICE REFORM TASK FORCE, RECOMMENDATIONS OF THE MINNESOTA SUPREME COURT CIVIL JUSTICE REFORM TASK FORCE, SUPPLEMENTAL REPORT ADM10-8051* (May 22, 2012), http://www.mncourts.gov/mncourtsgov/media/assets/documents/reports/Civil_Justice_Ref_Task_Force_Supp_Rpt_May_2012.pdf (The Minnesota Supreme Court approved its Task Force's recommendations and asked that the Task Force draft proposed rule changes, case management orders, and forms, which are set forth in a Supplemental Report).

29 *IOWA TASK FORCE REPORT*, *supra* note 28, at Appendix B.

30 *IDAHO FINAL REPORT*, *supra* note 19, at Appendix 3.

31 The Summit was held as part of the national implementation project, and each of the Roadmap states attended their respective Summits along with forty other states and territories around the country.

32 Order, *In re Membership of the Civil Justice Reform Task Force* (Idaho Sept. 14, 2017), https://isc.idaho.gov/adm_orders/Membership_of_Civil_Justice_Reform_Task_Force_09.17.pdf.

to speaking engagements. As an example, two members wrote an article in the Idaho Bar publication that coincided with the release of the survey to encourage survey participation.³³ Task Force members presented to a broad range of groups, including Inns of Court, the Idaho Trial Lawyers Association, as well as magistrates and district court judges at the annual judicial conference.

Following the early assessment and outreach efforts, the Task Force shifted its focus towards methodically examining each of the national recommendations. As a result, the Task Force proposed revisions to the rules of civil procedure, including a tiered system with proportional discovery in district court matters. The Task Force sought to complement Idaho's previous reforms. The concurrent statewide Odyssey case management system implementation shaped Idaho's recommendations for future data collection and the use of caseload reports to guide case management. Finally, the Task Force utilized current judiciary resources for self-represented litigants by recommending that Idaho's Court Assistance Office receive additional funds to develop online dispute resolution programs.

In early 2019, the Task Force delivered its Final Report to the Idaho Supreme Court.³⁴ The Task Force's Final Report and proposed revisions to the Idaho Rules of Civil Procedure were posted on the Idaho State Bar's website and the Idaho Supreme Court's website for public comment. The Final Report recommended changes to the Idaho Rules of Civil Procedure (IRCP) to provide more timely and cost-effective measures for the majority of the civil cases filed in Idaho courts. The Task Force revised IRCP Rule 26 to include "mandatory initial disclosures; three separate tiers for case assignment—simple, standard, and complex—each with different discovery limits; and stronger enforcement of disclosure requirements."³⁵ Recommendations also incorporated proportionality into the scope of discovery. The Idaho Supreme Court has adopted the Task Force's recommendations, and Idaho is now moving forward with implementation.

COORDINATION WITH OTHER REFORMS

Idaho was the first of our Roadmap states to launch its Task Force, and as a first follower, it has been an exemplar for other states considering reform. The Task Force was created with a clear vision and direction, as defined in its written charge from the supreme court. The size, balance of viewpoints, and diversity of such a group are critical, and the supreme court was thoughtful in forming the committee and naming a strong chair to lead the efforts. Chief Justice Roger Burdick recommended getting "the best and brightest people you can find who will be smart, motivated, and remarkable jurists." Recognizing the value of overlapping efforts, Idaho purposefully included the chair and vice-chair of the Advancing Justice Initiative on the Civil Justice Reform Task Force to ensure continuity and coordination in efforts.

Importantly, the Task Force also reevaluated its own composition. Five months into the reform efforts, the Task Force realized it needed to expand its membership to include a few additional perspectives. Idaho included representatives that provided broad experience across the bench and bar, while also including leaders with credibility across a variety of case types. Recognizing that the state can be "Boise-centric," the Task Force thought it was critical to involve members from other regions.

33 Brian Wonderlich and Jennifer Jensen, *Will Idaho Adopt Mandatory Initial Disclosures – Part 1: Historical Development of Federal Court and Consideration for State Court*, 60 *ADVOCATE* 29 (2017); see also Brian Wonderlich and Jennifer Jensen, *Idaho's Civil Justice Reform Task Force Begins Its Work by Seeking Input from the Bench and Bar* 60 *ADVOCATE* 52 (2017).

34 *IDAHO FINAL REPORT*, *supra* note 19.

35 *Id.* at 4; Appendices 5 – 13 (these Appendices contain draft recommended language for IDAHO R. CIV. P. 16, 26, 29, 30, 31, 33, 34, 36, and 37).

“The key thing is to have a cross section of attorney experience that resembles the profile of cases in the state so that they can speak to the issues we are trying to solve.”

*Justice Gregory Moeller,
Idaho Supreme Court*

*Member, Idaho Civil Justice
Reform Task Force*

The Task Force also conducted a statewide survey of attorneys and judges aimed at gathering perspectives about challenges and needs for reform. In addition to gathering vital data, the survey created two crucial opportunities. First, it allowed the Task Force to approach the project without preconceived goals or outcomes; that is, the survey allowed the Task Force to ask at the outset “what problems, if any, existed in Idaho” and to avoid “crafting a solution for a problem that did not exist.”³⁶ Second, by seeking input from attorneys and judges, the survey created the opportunity to get buy-in from the legal community—an essential component of change management.

Idaho benefits from a unified bench and bar with a high level of civility and collegiality. Recognizing that it was essential to have buy-in from the bench and the bar, Idaho believed a survey was an important step in the process to gain input, define the issues, and develop buy-in. The survey results affirmed and reflected some consensus, highlighting that attorneys were comfortable with discovery changes, and that they wanted increased case management consistent with the national recommendations. While the Idaho landscape was surprising to some and confirming to others, it usefully afforded a broad view of the system to inform the Task Force’s efforts. The Task Force also created a subcommittee explicitly focused on communications with the legal community, and the entire Task Force was engaged in the efforts to communicate openly to the legal community about its goals for civil justice reform and to get feedback and input from as many people as possible. Gathering landscape data, conducting surveys, and gathering input provided critical information for defining the issues for reform, but Idaho also found that these efforts were vital for change management.

Idaho also benefits from being surrounded by states in the West that have implemented reforms. Idaho worked through the national recommendations and *Roadmap* and looked to the experiences from other states, learning from those efforts and tailoring them to match Idaho’s specific landscape and needs. From adopting Iowa’s attorney survey as a template to looking to Utah’s rule reform experiences, Idaho used the efforts of others as a starting point and thoughtfully examined them to inform its own final recommendations. This outreach was always balanced with the recognition that the bench and bar did not just want to be told their issues were the same as other states. The Task Force recognized that it had to understand its own issues, gather data specific to Idaho to justify the changes, and get buy-in from the legal community on the need for reform.

Several lessons can be drawn from the Task Force’s work itself. The group focused on goals quickly, determined a path for its work, and then regularly reviewed the goals and plans to keep on task. The Task Force met monthly and found half-day meetings to be most productive so that significant progress could be made with each meeting. Judge Steven Hippler took on the task of working on proposed rule

36 IDAHO FINAL REPORT, *supra* note 19, at 3.

language between meetings, rather than drafting by committee, and this made the meetings run efficiently. The Task Force worked closely with the data experts in the court to get assistance on defining the data needed, developing a clear research plan, and then incorporating presentations on the data into their meetings. When it came to publication of the final report, the subcommittees each contributed their own sections, and then Judge Huskey revised the report to ensure a consistent voice.

One pragmatic challenge to Idaho's dedication to continual improvement is that these efforts can, at times, result in reform fatigue on the part of the bench and bar. For example, the Task Force's efforts were concurrent with the development and rollout of Odyssey's new case management system. The AOC, while occupied with Odyssey's rollout, also worked diligently to gather data vital to the Idaho landscape. The AOC has taken lessons learned from the landscape analysis and worked with Odyssey to standardize best practices for searching and tracking specific data such as civil case types, self-represented parties, and manner of disposition. Odyssey's statewide integrated case management system will ultimately help courts manage workflow and automate tasks. While concurrent implementation of technology can frustrate civil justice reform efforts—a challenge that many other courts are facing—the new technology provides a critical tool to gather and maintain invaluable data to inform better case management going forward.



THE ROAD TO CIVIL JUSTICE REFORM IN TEXAS

Texas was well represented on the CCJ Civil Justice Improvements Committee, with both Texas Chief Justice Nathan L. Hecht and former Chief Justice Wallace B. Jefferson serving as members. Texas has a history of innovation and reform, and Texas' experience in implementing expedited civil action rules was very informative to the development of the national recommendations on pathways and streamlined processes.³⁷ The Chief Justice has supported the implementation of reforms nationally and has also championed their efforts in his home state.³⁸

In June 2017, Chief Justice Hecht, along with the Office of Court Administration (OCA) and the Texas Judicial Council, launched Texas' civil justice reform efforts and elected eight Council members to form the Texas Civil Justice Committee, including Chief Justice Sherry Radack of the Texas First Court of Appeals as chair. The Judicial Council is a policy-making body for the state judiciary created to "continuously study and report on the organization and practices of the Texas Judicial Branch."³⁹ The Judicial Council, comprised of diverse appointees from the judicial, executive, and legislative branches of government, as well as private practitioners, is responsible for studying and making recommendations to improve the administration of the judicial system. The Judicial Council makes recommendations to the legislature, the governor, and the Texas Supreme Court.

The Committee was created within the Judicial Council to "study the Conference of Chief Justices' Civil Justice Initiative recommendations and the landscape of Texas civil justice and recommend necessary reforms to improve access to civil justice in the Texas courts."⁴⁰ The eight-member Committee, all members of the Judicial Council, included a state representative, a state senator, a county court judge, an appellate court judge, private practitioners, members of the Texas Bar Association, and a business owner. The Committee was given a one-year deadline of June 30, 2018, to issue a report and recommendations.

37 See generally PAULA HANNAFORD-AGOR AND SCOTT GRAVES, NAT'L CTR FOR STATE CTS, TEXAS: IMPACT OF THE EXPEDITED ACTIONS RULES ON TEXAS COUNTY COURTS AT LAW, FINAL REPORT (2016).

38 See, e.g., Order, Supreme Court of Texas, Adoption of Rules for Dismissals and Expedited Actions, Doc. No. 12-9191 (Texas Nov. 13, 2012), https://www.txcourts.gov/All_Archived_Documents/SupremeCourt/AdministrativeOrders/miscdocket/12/12919100.pdf.

39 Texas Judicial Branch, Texas Judicial Council, <https://www.txcourts.gov/tjc/>.

40 TEXAS JUDICIAL COUNCIL COMMITTEE REPORT AND RECOMMENDATIONS, June 2018, <https://www.txcourts.gov/media/1442196/civil-justice-committee-report.pdf> [hereinafter TEXAS CIVIL JUSTICE REPORT].

The OCA took an active leadership role in this effort by providing technical support, data on civil courts, historical information on the judiciary, and support staff. In support of the June 2017 formation of the Committee, Administrative Director David Slayton gave a presentation to the Judicial Council covering the CJI Initiative, including the *Call to Action* publication and its 13 recommendations, the national civil landscape data for civil court filings, Texas-specific landscape data, and the *Roadmap's* guidance on how to implement the *Call to Action* recommendations.⁴¹

The Committee first met in person in September 2017. Similar to Missouri, Texas launched its first meeting with an external presentation on the national recommendations and landscape. The first meeting included a presentation on the specific civil landscape in Texas. The OCA already publishes annual statistical reports for the Texas Judiciary on its website going as far back as 2004, along with yearly supplements containing detailed case activity statistics for each court level back to 1966.⁴² For this project, the OCA specifically gathered court data to determine the types of cases filed in civil courts, including information about civil caseload characteristics, times to disposition, manner of disposition, and the number of cases involving self-represented litigants. The data helped identify specific concerns for discussion.

In Texas, the civil litigation landscape paralleled national trends, with contract cases with self-represented litigants now dominating Texas courts, high default judgment rates in debt collection matters and landlord-tenant matters, and the cost of litigation disproportionate to the judgments obtained. The Committee was surprised by the current landscape of cases filed in Texas courts, and the data provided valuable context for the Committee's assessment of needed reforms and their ultimate recommendations.

Recognizing its limited size and the need for additional stakeholder input, the Committee created a 21-member Advisory Council to provide broader input. The Advisory Council included a cross-section of stakeholders, including a state representative, judges from different courts, business owners, attorneys, legal aid, rules committee representatives, and court administration, with a broad geographic representation across the state. In February 2018, the Advisory Council met for two days to brainstorm issues and possible solutions. The meeting included background on the national recommendations, national landscape, and the Texas-specific data to inform the discussion. The Advisory Council was given full license to freely discuss problems they saw and potential solutions. The two-day meeting resulted in a long list of thoughtfully defined issues for the Committee's consideration.

Following the Advisory Council's brainstorm, the Committee met again in April and June of 2018. First, the Committee met to discuss the Advisory Council's list of issues and to develop its vision and goals. The Committee examined the list of issues from the Advisory Council and then funneled, ranked, and prioritized the issues with the goal of creating a list of reforms with the greatest amount of impact. Once it finished the vetting process, the Committee then developed a clear set of recommendations for reform and issued its report, *Texas Judicial Council Committee Report and Recommendations*, in June 2018.⁴³ The recommendations

41 David Slayton, Civil Justice Initiative, presentation to Judicial Council, June 30, 2017 <https://www.txcourts.gov/media/1438069/tjc-civil-justice-initiative-june-30-2017.pdf>; Minutes for Judicial Council June 30, 2017 meeting, https://www.txcourts.gov/media/1439012/tjc_minutes_final_jun2017.pdf; Texas Office of Court Administration, Civil Justice Initiative, Texas Judicial Council meeting, June 30, 2017, <https://www.txcourts.gov/media/1438069/tjc-civil-justice-initiative-june-30-2017.pdf>.

42 This information is located on the Texas Judiciary's website, <https://www.txcourts.gov/statistics/annual-statistical-reports/>.

43 TEXAS CIVIL JUSTICE REPORT, *supra* note 40.

“We had two active legislators on the Committee and an active Judicial Council. The legislators pick up the Council’s ideas and run with them over at the legislature. There is no expectation that, just because we say so, the legislature is going to do it. But there is an expectation that they are going to take our ideas seriously. There is mutual respect and support.”

*Chief Justice Nathan Hecht,
Texas Supreme Court*

did not include specific rule changes or proposed legislation. Rather, the report stated clearly where the legislature, the supreme court, or the OCA should act to move the recommendations into action. In May 2018, as the Committee was developing its recommendations, key representatives attended the CCJ/COSCA Southern Civil Justice Reform Summit and served as speakers regarding their own reform efforts.

Texas has a well-developed process for reviewing current recommendations from the Judicial Council and Committees and matching those recommendations with current resources, relationships, and avenues for implementation, whether it be by rule changes through the Supreme Court Advisory Committee (SCAC) or through legislative action. On September 14, 2018, the Judicial Council approved and published a *Resolution on Civil Justice Committee Recommendations*, signed by Chief Justice Hecht, requesting the legislature take specific action based on the Judicial Council’s June 2018 Report.⁴⁴ The Committee timed the report—and the Judicial Council timed its review—with the goal of having legislative recommendations developed in time for the beginning of the biennial legislative session in the fall of 2018.⁴⁵

Specific recommendations to the legislature included considering alternatives to the current partisan elections for judges, heightening judicial qualifications by increasing the requisite number of years in practice, requiring that some justices of the peace be licensed attorneys, and simplifying court structures. The Committee also made tailored recommendations for rule changes to the SCAC to improve case management practices and by rule create a business court for complex litigation and amend the rules of judicial administration to require trial courts to submit annual plans on how those courts will manage civil cases.⁴⁶ The Committee’s specific recommendations to the OCA included education for new and existing judges; standardizing template forms, checklists, and scheduling orders to help trial judges manage caseloads; requiring OCA to implement a statewide case management system for trial courts to improve case processing; increasing the use of technology; and expanding resources to self-represented litigants, amongst other recommendations.

The 86th Legislature introduced several bills and enacted laws based on the recommendations from the Committee. Based on the Committee’s

44 Resolution of the Texas Judicial Council, State of Texas, Civil Justice Committee Recommendations 4-6 (Sept. 14, 2018), <https://www.txcourts.gov/media/1442916/resolutions-approved-by-the-texas-judicial-council-september-14-2018.pdf>.

45 The Texas Legislature operates under the biennial system meaning that it convenes its regular sessions in January of odd-numbered years with a maximum length of 140 days for a regular session. On January 8, 2019, the 86th Texas Legislature convened to discuss myriad issues including judicial bills, and concluded its session on May 27, 2019.

46 The supreme court’s rule making process is conducted through the SCAC. The rulemaking process is open to the public and revisions are suggested by the SCAC. The SCAC considers every proposal it receives, including the Court, the Executive and Legislative Departments, bar groups interested in rules of procedure, individual judges and lawyers, and from the public.

recommendations, the Judicial Council recommended re-examination of the current method of judicial selection by partisan election. While a resolution changing how judges are selected in Texas ultimately did not pass, the legislature passed a bill establishing the Texas Commission on Judicial Selection to study and review the methods by which judges and justices are selected for office in Texas, with a report on its findings and recommendations due December 31, 2020. The legislature also increased judicial compensation to attract the best and brightest to the judiciary,⁴⁷ and increased the civil jurisdiction of county courts, among other changes.⁴⁸

Rule change efforts are also moving forward, and the SCAC dove into a deep discussion concerning potential rules changes coming out of the Committee's work during its meeting in September 2019.⁴⁹ The SCAC members discussed changes to the Texas rules of civil procedure for eviction cases, service of process by publication via internet pursuant to recently enacted laws, and the process for determining default judgments.

Texas' efforts continue into the action phase of reform. The Judicial Council has extended the Committee's work and issued a new charge to: 1) "Continue to study the landscape of the Texas Civil justice system, and recommend any necessary reforms to improve access to justice in Texas Courts," 2) "Work with individual jurisdictions to implement pilot programs for Business Courts and Online Dispute Resolution," and 3) "Monitor the Commission on Judicial Selection and recommend any necessary reforms."

COLLABORATION ACROSS BRANCHES

The overarching theme in Texas is the long-standing collaborative relationship between the three co-equal branches of government. The branches work collaboratively to move recommendations from the Judicial Council to the legislature and supreme court and ultimately into action. The judiciary not only coordinated with the legislature from the start of the project, but the Committee also met earlier than anticipated to accommodate the upcoming legislative session so that the legislature would be prepared to draft new bills.

The Texas judiciary and the OCA are also transparent about data, meetings, committees, and information overall. The Judicial Council has its reports, meetings, agendas, and minutes of meetings publicly available on the judiciary's website.⁵⁰ Meetings prior to 2017 are archived on the Texas Bar Association's Texas Supreme Court Oral Arguments & Meetings website page.⁵¹ Beginning in 2017, the Texas Judicial Council meetings are webcast live and archived on the Office of Court Administration YouTube channel.⁵²

47 TEX. FAM. CODE ANN. §§201.105 and 201.205; TEX. GOV'T CODE ANN. §§25.0005(a), (a-1), and (a-2); §25.0015; §§25.0023(a), (a-1), and (a-2); §25.2607(d); §26.006(a); §65.653(b); §74.051(b) and (c); §§659.012(a), (b), (b-1), (c) – (f); §§659.0125(c) and (d); §659.0445(b), §814.103; §834.102; §§839.102(a) and (c); §839.202; §839.2025, and §840.102(a) (West 2019) (House Bill 2384, enacted during the 86th Legislative session in 2019, amends several statutes to increase judicial compensation and participation and allowable contributions to the judicial retirement system; increases the minimum annual state base salary for judges; creates a tiered pay structure based on longevity for district judges, justices, and judges of the courts of appeal, the Texas Supreme Court, and the Court of Criminal Appeals, as well as statutory county court judges, statutory probate court judges, and certain prosecutors; and lowers the years of service required for longevity pay, among other actions).

48 Effective September 1, 2020, the civil jurisdiction of statutory county courts with concurrent jurisdiction with district courts will increase to \$250,000 (TEX. GOV'T CODE ANN. §25.0003(c)(1)); statutory county courts with concurrent district court jurisdiction, where the matter in controversy exceeds \$250,000 require, with exceptions, a panel of 12 jury members in in a civil cases (TEX. GOV'T CODE ANN §25.0007(b), (c)); and also requires that the Supreme Court of Texas amend the expedited rules to provide that cases up to \$250,000 in county courts are expedited cases.

49 SCAC MEETING AGENDA (AMENDED) (Sept. 13-14, 2019), <https://www.txcourts.gov/media/1444739/scac-september-13-14-2019-meeting-agenda-amended.pdf>. See generally SUPREME COURT ADVISORY COMMITTEE, MEETING AGENDA, <https://www.txcourts.gov/scac/>.

50 Texas Judicial Branch, Texas Judicial Council, Meetings & Agendas, <https://www.txcourts.gov/tjc/meetings-agendas/> (last visited Dec. 4, 2019).

51 TexasBarCLE, Texas Supreme Court Oral Arguments & Meetings, <http://www.texasbarcle.com/CLE/TSC.asp> (last visited Dec. 4, 2019).

52 YouTube, Texas Courts, Judicial Council meetings, <https://www.youtube.com/user/TexasCourtAdmin/videos> (last visited March 10, 2020).

“I was really appreciative of the collaborative attitude—the demeanor of the bar and the judges. It was a phenomenal working relationship, even where there were issues that created debate, whether between the judges and the lawyers, or the trial lawyers and the defense lawyers.”

*Representative Jeff Leach,
Texas House of Representatives
Member, Texas Civil Justice
Committee*

The Texas Civil Justice Committee’s final report begins with a review of the landscape data, as to “suggest reforms without first reviewing the landscape of civil litigation in Texas would potentially lead to unwise recommendations.”⁵³ The landscape data provided focus for reforms and helped to illustrate the changing composition of cases in Texas courts. Early conversations with the legislature, with data in hand, were extremely helpful in making the case for reform from the start of these efforts. In addition, by gathering this information in advance, OCA helped the Committee to stay focused on its charge and complete its goals within the tight time frame established by the Judicial Council.

The landscape data also gave focus to who should be involved in the reform process, and Texas broadened its stakeholder representation through the Advisory Council as a result. The separate Advisory Council was a unique aspect to Texas’ approach, and it was a critical component to broader buy-in and input given the small size of the Texas Civil Justice Committee itself. The input gleaned from this broad constituent group created invaluable and crucial buy-in from all involved. Members of the Advisory Council shared their appreciation for the unique opportunity to gather and brainstorm with such a large group, and they took ideas from meetings back to their own jurisdictions to implement immediately where possible.

Legislators were included on the Texas Civil Justice Committee, and on the Advisory Council, to get their input and buy-in from the beginning of the effort. Texas illustrates that this is not a one-time act—investment in the relationship and collaboration between the branches must be an ongoing commitment by all. Because people resist change, it is essential to get people on board across the state and across the aisle as early as possible.

The report outlined recommendations based on impact and priority. The Advisory Council brainstormed hundreds of issues and potential solutions, and it was critical that they were able to think broadly and outside any constraints to reform. At the same time, it was essential that the Committee review that list and narrow it, prioritizing issues to ensure maximum impact.

Because Texas courts are not unified, it is critical to convince the jurisdictions around the state of the importance of reform. When it comes to implementation, pilot projects can serve this same purpose, and Texas has extensive experience in implementing reform through such projects. Illustrative is Texas’ creating a pilot business court.⁵⁴

⁵³ TEXAS CIVIL JUSTICE REPORT, *supra* note 40.

⁵⁴ The Civil Justice Committee has three new charges for action. The second charge directs the Committee to work with individual jurisdictions to implement pilot programs for business courts and online dispute resolution.



THE ROAD TO CIVIL JUSTICE REFORM IN MAINE

Maine submitted a request for technical assistance as part of the CJI Implementation Project in early 2017, with the hope of capitalizing on the opportunity for financial support and expert assistance. Maine had already been exploring the implementation of civil justice reforms, under the leadership of Chief Justice Leigh Saufley and Associate Justice Thomas Humphrey of the Maine Supreme Judicial Court. The issues highlighted in the CJI national report lined up with Maine's experience on the ground, and this inspired them to move forward with civil justice reforms. They were clear in their goals to implement the recommendations, including developing and implementing a differentiated case management system for the district and superior courts, amending the civil rules and developing associated court forms, training, and pilot testing reforms prior to launching the reforms statewide.

Justice Humphrey was instrumental in launching the successful Business and Consumer Docket (BCD) in 2008, and he drew upon that experience in leading the civil justice reform initiative in Maine. The BCD was established in 2008 and piloted procedure rules that included several innovations consistent with the national CJI recommendations, including initial disclosures, proportional discovery, and active case management.⁵⁵

Justice Humphrey, along with the Family Division and Civil Process Manager, began to explore potential broader scale civil justice reforms by first looking at the successes from Maine's BCD, the national CJI Recommendations, and successful civil justice reform efforts and evaluations from other states. The team focused on the recommendations to implement different pathway approaches or "tracks" for cases to ensure the process is right-sized to the needs of the case. Members of the judiciary were added to form a working group, and together they developed a proposal for a pathways approach and draft changes to the rules of civil procedure.

One of the clear challenges in Maine for civil cases is the overlapping jurisdiction between the superior⁵⁶ and district⁵⁷ courts, which can result in forum shopping, confusion for litigants, inefficiency, and delays. To fix the

⁵⁵ See M.R. Civ. P. 130-139 (2014).

⁵⁶ Except for family matters, juvenile cases, and civil violations, the superior court may hear almost any kind of civil or criminal case that may be brought to trial. Me. Rev. Stat. tit. 4, § 105 (2016).

⁵⁷ The district court hears civil, criminal, and family matters and, other than criminal cases, always sits without a jury. In addition, the court hears all juvenile matters and traffic infraction cases. The small claims court is a special session of the district court held in each district on certain days determined by the Chief Judge of the district court. In small claims court, the procedure is simplified, hearings are informal, and parties generally appear without attorneys. Me. Rev. Stat. tit. 4, § 152 (2016).

“We began by looking to many of the rules and procedures of other states that have already been through civil justice reform. We spoke directly with leaders from states around the country. They were wonderful to talk to, and they gave us important insights. None of those states perfectly fit our specific situation, but they gave us information from which we could launch.”

*Justice Thomas Humphrey,
Maine Supreme Court
Chair, Maine Civil
Process Improvement*

overlapping jurisdiction, the team proposed a differentiated case management approach that would include clear pathways within each of the courts. Justice Humphrey also consulted with the court’s Civil Rules Advisory Committee throughout these efforts.

As a complement to these efforts, Maine began to gather its own landscape data to help inform the identification of issues and compare these to the national landscape. Obtaining an accurate landscape proved to be challenging given the judiciary’s case management system, so Maine looked to the experiences of the working group members and the national landscape data as a proxy. Maine adopted a new Odyssey case management system, which is currently projected to be implemented statewide by fall 2020. As in other states, the civil justice reform efforts have run parallel to the technological initiatives of the court.

Maine attended the CCJ/COSCA New England/Mid-Atlantic Region Civil Justice Reform Summit in the spring of 2018, which allowed the team to share their efforts with other states, learn from the experiences of others, and focus on brainstorming next steps. Around this same time, the results of the research reflected thousands of statutory changes would be required to redefine the district and superior courts’ jurisdiction. Given this outcome, Maine took a step back and regrouped, recognizing that changing the concurrent jurisdiction of the courts was not currently feasible and that changes within each of the courts were the most practical approach to achieve needed reform. With this shift in focus, Maine set about finalizing a set of proposed changes for broader dissemination and input.

In September 2018, Maine posted a working draft of the changes to the Maine rules of civil procedure on Maine’s judiciary website for public comment. The proposed rules reflected changes in case management, judicial conferences, scheduling orders, discovery, right-sized processes based on three-track assignments, and principles of proportionality reflected throughout the amended rules. A public hearing was also held in October 2018. The proposals received extensive comments, particularly from the bar. Given these responses, in November 2018, the Maine Supreme Court charged a Civil Process Improvement Stakeholders Working Group (SWG) of attorneys to consider and evaluate the previous comments submitted to the court regarding the working draft and to make unified recommendations to the court.⁵⁸ The charge set forth the SWG’s role to “address further proposals for improvement” and provide “a final report, which shall include proposed amendments to the Maine Rules of Civil Procedure that reflect the unified recommendations of the Bar to accomplish civil process reform.”⁵⁹

The Supreme Judicial Court named SWG’s Chair and an Executive Committee consisting of bar leaders diverse in both geography and practice. The Chair

58 ORDER ESTABLISHING JUDICIAL BRANCH CIVIL PROCESS IMPROVEMENT STAKEHOLDERS WORKING GROUP (Nov. 15, 2018), https://www.courts.maine.gov/maine_courts/committees/civil_process_working_group.pdf.

59 *Id.*

formed four specific subcommittees to address the proposed rules in the following categories that align with the life or trajectory of a civil case: 1) Commencement through Alternative Dispute Resolution; 2) Discovery; 3) Dispositive Motions, Trial, and Post-Trial; and 4) Special Rules (e.g., Rule 80B and 80C administrative appeals, miscellaneous land rules, etc.). The Chair designated a leader from the Executive Committee for each subcommittee. Each subcommittee met in person and by telephone, discussed specific topics, and revised the proposed rules accordingly.

Alongside this effort, Justice Humphrey continued to work with the Judges Working Group, getting additional judges involved from both the superior and district courts. The judges from the Judges Working Group were integrated into the work of the SWG, with a judicial liaison appointed to each of the SWG subcommittees. In addition, the two working groups held a joint session, at which the groups discussed the proposals. The SWG submitted its final recommendations on March 29, 2019.

In April 2019, Maine's Judicial branch conducted a Civil Justice Reform Training Conference for all judicial officers and civil clerks to facilitate the transition to the new civil process.⁶⁰ The clear goal for the civil justice reforms was to create a “[p]roportional civil process that leads to the just, speedy and inexpensive resolution of civil cases.”⁶¹ The conference provided an opportunity to highlight the current issues facing Maine and get buy-in from the judges and clerks as a whole judicial branch.

After the conference, the Judges Working Group further revised the rules and pathways and sent the revisions to the Advisory Committee on the Civil Rules of Procedure, the Stakeholders Working Group, and all judges and magistrates for potential additional comment. Following additional comments from the public and the Stakeholders Working Group, the proposed changes were revised, finalized, and presented as a package to the Maine Supreme Court for possible approval and adoption.

KNOWING WHEN TO SHIFT GEARS IS ESSENTIAL

Maine began with research and a review of other states' efforts, as well as the national recommendations, and this work helped to form a clear direction for the efforts in Maine. While Maine recognized the importance of data to inform these efforts, Maine's historic case management system does not contain all the information needed for such a landscape. Nevertheless, Maine was able to gather enough data to identify a decrease in civil filings and low average judgment amounts, both of which were informative. Maine was also able to look to the national landscape, which provides an important resource for states around the country that are not able to replicate the data collection on a local basis. Maine also recognized that looking at the court landscape alone does not provide a clear picture of the cases that are not filed because of a lack of access, and the input from the business community and other users on their lack of access was also very informative. Maine is implementing a new case management system and is focused on data collection for future information, evaluation, and reforms.

One of Maine's early challenges in reform was tackling the goal of redefining the jurisdiction of Maine's superior and district courts. The goal was to design a streamlined process in the district court, and then put the remaining cases in the superior court, to create a right-sized approach that would address the issues identified. Unfortunately, the research found over 2,000 statutes that tied jurisdiction in specific cases to either court. Making these jurisdictional changes did not make practical sense. The leadership team decided to maintain

⁶⁰ This conference was originally scheduled for November 16, 2018, but it was cancelled and rescheduled due to a snowstorm.

⁶¹ Maine Civil Justice Reform Manual, Training Conference for Justices, Judges, Magistrates and Clerks held Monday, April 29, 2019.

“A lot of thought went in to picking the leadership of our Stakeholders Working Group. The leadership includes both a cross section of practice areas and a group of people who are emerging leaders in the bar. This opportunity for buy-in, education, and engagement has been critical to success here in Maine.”

*Jennifer Archer, Esq.,
Chair, Maine Stakeholders
Working Group*

three tracks and address potential changes by rule for each of the courts rather than wholesale legislative changes. While shifting gears at that point in the process was challenging, success required a commitment to making changes for the benefit of court users rather than perfection in structure. As Elaine Clark shared, “Maine statutes include thousands of references to civil actions and our team initially wanted to deal with each individually. We soon realized that the time and effort to organize and address all of them would be overwhelming and, although a laudable goal, would derail civil justice reform efforts.”

Maine is the smallest of the Roadmap states geographically and by population, with a close-knit and collegial bench and bar. Despite this smaller size, Maine still found it essential to include geographical diversity and both urban and rural representatives within its working groups, as there are different issues in these distinct regions. This has been a common theme across the states regardless of size.

Maine experienced some resistance to change on the part of the bar, which is another common experience across the states’ civil justice reform efforts. Upon publication of the initial working draft of the reforms, there were many comments from the bar. Recognizing the importance of getting additional engagement and buy-in, Maine created the SWG to provide this engagement and input. The Supreme Judicial Court then identified a strong chair and leadership team to lead this effort, and they worked very closely together and with the broader working group members to provide thoughtful input and feedback. In both its work on jurisdictional issues and bar buy-in, Maine recognized when shifting gears was necessary and made the changes needed to continue moving forward toward successful implementation of reforms.

Maine’s judicial conference for the judges and clerks played a critical role in the reform process. The conference was scheduled during Maine’s administrative week, which happens three times each year, providing a unique opportunity to bring together all of the judiciary and clerks. Originally, the training was focused on facilitating the transition to the new civil process, but at the time the conference was held, the rule changes were not yet ready for implementation. Given the additional time needed for the SWG to provide input and feedback through the spring of 2018, the meeting served as an additional opportunity to engage stakeholders, and the feedback was very positive about its value in getting buy-in, education, and overall engagement in the reform process.

Maine also benefited from the hard work of a court staff member, first Elaine Clark and then Laura Pearlman, who each dedicated a portion of their time to this effort. Research and review of other state efforts, drafting of rules, and coordination of reform efforts can be time consuming, and it helped Maine to have a designated person—albeit not full time—to support the efforts. This dedication, on the part of everyone across the team, is essential to ensure reform moves forward toward final implementation.



THE ROAD TO CIVIL JUSTICE REFORM IN MISSOURI

Before Missouri officially launched its civil justice reform efforts, members of the Missouri judiciary attended the three-day Western Region Civil Justice Reform Summit held in Park City, Utah, in May 2017. Missouri was invited to send a representative to the Western Summit, anticipating its hosting of the Midwest Summit in Kansas City in October 2018. Missouri sent Judge Cynthia L. Martin, and one month later she was named a co-chair of the Missouri Commission on Civil Justice Reform, along with Judge Gary D. Witt.⁶² Former Chief Justice Patricia Breckenridge worked closely with Judge Martin and Judge Witt in crafting the Order establishing the Commission, and they carefully set out the vision, goals, and clear direction for the Commission efforts. Judge Gary Lynch, as chair of the Missouri Court Automation Committee, was a key member of these conversations.⁶³ Missouri is integrating Show-Me Courts, a new “record and case management automation system being developed to support the business needs of the court.”⁶⁴ Show-Me Courts is being developed on an incremental basis, and Judge Lynch urged civil justice reform efforts to move forward so that process changes could be identified prior to Show-Me Courts’ design and implementation for civil cases. By timing the efforts in this way, the technology will develop to complement and support the reformed processes rather than developing the technology and then having a mismatch with the reforms.

The Commission’s written goal was to “globally and holistically examine and review current civil practices and procedures and to recommend measures to ensure the fair, affordable, and prompt resolution of civil disputes in the civil justice system—thereby enhancing public confidence in, and meaningful access to, the state court civil justice system.”⁶⁵ The Missouri Civil Justice Reform Order also established clear guidance on how to accomplish this goal, by embracing the *Call to Action* report and recommendations as well as the IAALS and ACTL Task Force report *Reforming our Civil Justice System: A Report on Progress and Promise*.⁶⁶ The Order followed the *Roadmap’s* best practices for implementing reform by calling for the Commission to assess the

62 Order, In re: Commission on Civil Justice Reform (Mo. June 28, 2017) [hereinafter Missouri Civil Justice Reform Order].

63 MO. REV. STAT. § 476.055 (2017) established the Missouri Court Automation Committee tasked with developing and implementing a plan for statewide court automation system. The Committee currently oversees the state’s court technology systems with the goal of an evolving, efficient, flexible, reliable, responsive, intuitive and user-friendly system. The Committee must establish this statewide system while abiding by strict standards for the security and privacy of confidential judicial records.

64 Show-Me Courts, <https://www.courts.mo.gov/page.jsp?id=66913>.

65 Missouri Civil Justice Reform Order, *supra* note 62, at 1.

66 INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS. AND AMERICAN COLLEGE OF TRIAL LAWYERS TASK FORCE ON DISCOVERY AND CIVIL JUSTICE, *REFORMING OUR CIVIL JUSTICE SYSTEM: A REPORT ON PROGRESS AND PROMISE* (2014).

“As leaders, we have to ask the question: Do our courts serve our citizens as they should, do we treat people with respect, and do we have a system that they are comfortable bringing their disputes to? And then we have to work to ensure the answer is yes.”

*Judge Patricia Breckenridge,
Missouri Supreme Court*

current state landscape, identify diverse stakeholders and seek their input, develop specific and targeted recommendations, and develop tools for gauging the effectiveness of the reforms. The Commission’s co-chairs were named with the other members to be chosen later.

On November 28, 2017, the supreme court issued a second Order appointing 25 diverse members to the Commission, as well as liaison representatives from the Missouri Court Automation Committee and the Solo Small Firm Committee.⁶⁷ Commission members included Circuit Judges, Associate Circuit Judges, court clerks, legal aid attorneys, representatives from the Missouri Bar, attorneys, and a legislative member from the Missouri State House of Representatives.⁶⁸ The diversity of Commission membership ensured a broad cross-section of stakeholders with diverse backgrounds, experience, and geographical locations to maximize input and outreach. As Justice Breckenridge noted, “We worked very hard to get self-sufficient, self-motivated, well-respected, incredibly effective leaders.” The Order also authorized the creation of subcommittees if needed. While the number of Commission members is larger than other states, Missouri typically has larger court commissions. Compared to other Missouri Commissions and Boards composed of 50 to 60 members, the number of engaged group members in civil justice reform was relatively small.

In February 2018, the Commission held its first meeting to brainstorm issues. The Commission met multiple times after its initial brainstorming session—twice in 2018 and three times in 2019. The Commission kicked off its first meeting with a presentation on the national recommendations and landscape. The Commission then turned to the issues specific to Missouri, looking to Missouri landscape data gathered by Missouri’s Office of State Courts Administrator (OSCA). The initial landscape data covered 2013 to 2015 and was broken down into categories that roughly approximated the data categories used in the national landscape. Commission members quickly realized it needed to expand the current landscape data to cover at least ten years, breaking down information between circuit, associate circuit, and small claims practice. Commission leadership worked with OSCA to refine and remove certain categories of civil filings outside the scope of the Commission’s work and provided new civil landscape reports capturing a broader set of data. The data reports were given to Commission members in advance of the next meeting.

67 Order, In re: The Commission on Civil Justice Reform (Mo. Nov. 28, 2017) [hereinafter Civil Justice Order on Commission Members].

68 The Commission composition specifically required six judges or commissioners from the circuit courts; two court staff or administrators from the circuit courts who have preferably completed the Missouri Court Management Institute; one representative from a legal service organization which provides legal services in state court civil cases based on financial need; one representative from the Missouri Bar as designated by the Missouri Bar President; six practicing attorneys who are members in good standing of the Missouri Bar representing diverse civil practice areas including plaintiff, defense, in-house counsel; practitioners knowledgeable about Chapter 517 (practice and procedure in civil cases originally filed before associate circuit judges), Chapter 534 (FED actions), Chapter 535 practice (landlord-tenant), and four representatives of the public, to include attorneys, business leaders, legislators, retired judges, or consumers.

The Commission reexamined the initial issues identified by leadership and then expanded on them—based on the collective experiences and insight of the Commission members. The Commission devoted its first two meetings in February and June 2018 to shaping the process for evaluating and interpreting the landscape data, streamlining recommendations relating to technology, and creating two subcommittees to address jurisdiction-specific issues—the Circuit Procedures Subcommittee and the Associate Circuit Procedures Subcommittee. The Commission enlisted the expertise of Judge Gary Lynch to vet ideas involving technology and data gathering reforms across both subcommittees.

The Circuit Procedures Subcommittee concluded that circuit court civil cases did not have extraordinary delays because of compliance with specific time standards authorized by Missouri’s Court Operating Rules for the prompt and fair disposition of cases filed in Missouri’s circuit courts.⁶⁹ The Circuit Procedures Subcommittee decided it needed more information to identify needed areas for reform and implemented two surveys: one for judges and a separate survey for attorneys. The survey responses were low, but from those who did respond, a majority of attorney respondents were satisfied with the current trial docketing procedures and case management in both urban and rural areas. The responding judges also indicated they were satisfied with the trial docketing procedures and case management in circuit courts.

Missouri’s associate circuit court judges see a high volume of landlord-tenant cases, debt collection cases, and other claims with a monetary limit of \$25,000 or less. Associate circuit court recommendations will likely focus on better access for self-represented litigants, assisting litigants through the civil process, and possible rule changes including debt collection and landlord/tenant rules.

In the midst of the Commission’s efforts, the Missouri Legislature passed several bills into law regarding judiciary and civil rules. In July 2019, Missouri Governor Parson signed into law Senate Bill 224, bringing the Missouri Supreme Court Rules into closer alignment with the Federal Rules of Civil Procedure. The amendments limit the scope of discovery by requiring proportionality, limiting the quantity of written discovery that can be served, and the number and length of depositions. The new rules address electronically stored information for the first time and also provide for a clawback provision for inadvertent disclosure of privileged information. The discovery rules took effect on August 28, 2019. Because of these legislative changes, multiple areas of possible reform for the Circuit Procedures Subcommittee were addressed. As a result, the Circuit Procedures Subcommittee shifted its focus to other areas of reform that would complement the new rule amendments, including case management and training.

Missouri hosted the Midwest Regional Civil Justice Reform Summit, held October 3–5, 2018, in Kansas City, Missouri. Commission members provided instrumental participation and preparation for the successful Midwest Summit, which consisted of a dynamic mixture of plenary sessions, workshops, and state team planning sessions devoted to sharing information about the recommendations and providing the opportunity for states to develop an action plan for reform.

69 Case Processing Time Standards established by Missouri Court Operating Rules, “establishes case processing time standards to ensure the prompt and fair disposition of cases filed in Missouri’s circuit courts”, specifically, “civil and criminal cases filed in the circuit and associate divisions of the circuit court”, Mo. Ct. Op. Rule 17.01, et seq. (2000). The time standards contain specific time frames for disposition and methods for measuring compliance.

“The Commission itself was authorized by the supreme court in June but not constituted until November. That was because there was a very thoughtful process that went into the composition of the Commission and picking just the right people. To me that has been a hallmark of our success because we have had some terrific brainstorming discussions, and some significant disagreement along certain points. But just outstanding input.”

*Judge Cynthia Martin,
Missouri Court of Appeals
Co-Chair, Missouri Commission
on Civil Justice Reform*

Missouri’s reform efforts are ongoing—in part because it was the last Roadmap state to be chosen. Yet, Missouri has made great progress towards tailoring recommendations for current court users’ needs. The Commission’s most recent meeting focused on finalizing recommendations and reporting its recommendations to the Missouri Supreme Court, and the Commission submitted a comprehensive preliminary report to the supreme court at the end of December 2019. It contains an in-depth analysis of Missouri’s civil court operations and recommendations for reform, outlined in response to each of the CCJ’s *Call to Action* recommendations. The Commission anticipates submitting its supplemental, and final, report by July 2020. The Commission and judiciary are planning on conducting educational training for the judges and commissioners across Missouri at their annual judicial conference. The Commission also plans on involving the Missouri Bar on education and training for attorneys.

TIMING IS EVERYTHING

For Missouri, the timing of its civil justice reform efforts was critical. Leadership considered other reforms and initiatives within the state, and purposefully launched its civil justice reform efforts to take advantage of—and complement—the other efforts. Knowing what was coming up in terms of civil automation, they knew it was important to act and get recommendations in place to line up with the technological advances. In addition, Chief Justice Breckenridge launched the initiative before her chief justice term ended.⁷⁰ Leadership also put a lot of thought into the creation of the Commission. The *Call to Action* report and recommendations were released during Chief Justice Breckenridge’s term, and she felt it was important to jump in as a first follower in support of these national recommendations. In launching the efforts, the supreme court provided a clear, strong, specific order that was a directive to the members and the work of the committee. The Order also listed out the specific stakeholders who would be included to recognize the importance of diverse voices and memorialize who would be a part of the effort. Similar to early active case management, they felt it was important to put in the time and effort up front to achieve success of the Commission over the life of the initiative. Missouri did lose its legislative representative mid-effort because he lost his re-election bid. While difficult to predict, given that rule amendments were passed through the legislature, it would have been helpful to have appointed a new member to fill that role to support communication between the branches.

⁷⁰ In Missouri, the “chief justice typically is elected on a rotating basis by a vote of all seven supreme court judges to a two-year term.” Missouri Courts, Supreme Court Justices, <https://www.courts.mo.gov/page.jsp?id=133>.

Of the Roadmap states, Missouri had the largest and most physically dispersed committee membership. Because of this, the Missouri Commission met less frequently, with all Commission members traveling to the capital, Jefferson City, for day-long meetings. Many of the Commission meetings were split between subcommittee meetings in the morning and full Commission meetings in the afternoon, and this approach worked very well. The full Commission meetings were focused on brainstorming and tackling broader topics while the subcommittees focused on work in specific areas. Subcommittees also met by phone and in-person in between the full Commission meetings. While face-to-face meetings were a challenge, they were still critical to the work of the Commission and the members made these a priority.

OSCA created Confluence, an OSCA specific project management platform, to allow the Commission to communicate within the platform and maintain the Commission's documents in one location for easy reference. Multiple Commission members noted the usefulness of the platform. The CCJ Civil Justice Improvements Committee had a similar online platform, and it was helpful to the national committee's efforts as well. Confluence is a great example of using technology to make the work of the committee more efficient and effective, particularly when the Commission was so geographically dispersed.

Missouri, like many of the other Roadmap states, ran into issues with data collection and their ability to rely upon the data to inform their efforts. The data obtained raised questions about the accuracy and consistency of the information captured. The Commission questioned how cases were coded at inception and disposition and how to capture the number of self-represented litigants. This is a common problem, and is likely a challenge that states will continue to run into as they gather data to inform reform. Recognizing these challenges, Missouri developed a survey and also relied heavily on the Commission members to speak from personal experience on both sides of the "v." This made the committee membership all the more critical, and Missouri benefitted from a strong, diverse group of Commission members with the experience to inform recommendations. Missouri has incorporated the importance of data collection and reliability into its recommendations for reform, and these recommendations are well-timed for impact given the state's roll-out of Show-Me Courts.



RECOMMENDATIONS AND THEMES



LEADERSHIP

The first step in the *Roadmap*, “Lead,” is a critical component of all successful reform efforts. The initial desire for reform may come from the chief justice, the state court administrator, frontline judges and staff, the bar, or a combination of these; regardless of who urges reform, strong leadership is essential for reform efforts that have clear goals, stay on track, are transparent and inclusive, and get buy-in from all.

The experiences of the Roadmap states confirm that leadership up front is critical. Written charges will help kick off the effort and provide a clear set of goals and transparency to the bench and bar regarding the committee’s purpose. It is essential to get the bench and bar involved early, and a charge is one early step that can help to achieve this goal.

Another important theme is that leadership must be broad and deep. In addition to the Chief Justices, it also must come from the chairs as well as the members of the committee and the staff who play a critical role as well. It is the leadership of the full team throughout the effort that leads to success. For this reason, it is important to be thoughtful at the front end about who will chair the effort and then who from the community will be enlisted to support the effort—as committee members, as support staff, and within the broader community as recommendations are put into action. The chair plays a critical facilitation role, stepping back as needed to take a broader view and refocus the committee when necessary. The chair must also set expectations and provide vision, goals, and clear deadlines. For any group, it is essential to remember the goals and purpose throughout the process, and the chair(s) of the committee and any subcommittees are generally best positioned to maintain this focus.

Change fatigue is an issue for all states, particularly given changes to case management systems, implementation of other technologies, and the other reforms taking place across our legal system. Leadership must consider this when launching efforts and providing needed support. At the same time, these efforts can be complementary and create opportunities, as the Roadmap states demonstrate. States can think about how the efforts intersect as they are underway; for example, where technology upgrades can consider—and build

from—forthcoming civil reforms. Where formal crossover can be created through committee membership—be it to the technology committee, other reform committees, or the civil rules committee—this will assist in coordination and collaboration across the efforts.



ASSESSMENT

Another clear theme is the importance of assessment. There are continuing misconceptions about the types of cases in state court, and data can empower the court and others to identify and implement reforms and provide the evidence needed to support effective reforms. While each state took different approaches to gathering information, this assessment step was useful for all. It provided a common framework for the committee efforts, it helped identify and refine the issues and purpose, and it provided a persuasive body of evidence to use in communicating the committee's conclusions and recommendations to important stakeholders, including legislators. Surveys can also provide the benefit of engaging the bench and bar early in the process, in a way that gets their input and their buy-in. Solving problems requires that they first be accurately defined and data is essential to defining the problem.

The assessment step also highlighted that the data that is currently collected in our state courts does not fully describe the landscape. Efforts to improve data collection are occurring across the Roadmap states and nationally, and this will lead to more informed case management and reform efforts. The states were creative in their approaches to gathering data. Where needed, they also looked to the national landscape, and we encourage other states to do so as well. Where data falls short, it is important to make improved data collection part of the state's recommendations for reform.⁷¹



ENGAGING STAKEHOLDERS

Each of the states approached the creation of committees, subcommittees, and engagement with the broader legal community in a different way. Regardless of how they are engaged, it is critical to include respected members of the bench and bar in these efforts, as their skills will contribute to the outcome, and their leadership will help ensure buy-in from the broader community.

71 See CALL TO ACTION, *supra* note 1, at Recommendation 10 (“As the Landscape of Civil Litigation provided the CJI Committee a representative picture of civil caseloads nationally, each court system should gain a firm understanding of its current civil case landscape. Using technology for this purpose will increase the ability of courts to take an active, even a proactive, approach to managing for efficiency and effectiveness. An inventory should not be a one-time effort. Courts can regularly use inventories to gauge the effectiveness of previous management efforts and ‘get ahead’ of upcoming caseload trends.”).

“I have been with Idaho legal aid services for 20 years and have seen a continuing loss of access to our judicial system. In certain cases types, we have over 90 percent of pro se folks involved. The landscape data—and the idea that the court system is expensive, complicated, and confusing—is not surprising to me. But, it is good for the bar to hear this because not everyone sees the whole picture.”

*Jim Cook,
Executive Director,
Idaho Legal Aid Services
Member, Idaho Civil Justice
Reform Task Force*

“Talk, communicate, and do not be afraid to have conversations with people that you think might disagree with you on certain issues. It is those conversations in which you are going to find the best public policy.”

*Representative Jeff Leach,
Texas House of Representatives
Member, Texas Civil
Justice Committee*

The Roadmap state experiences illustrate the importance of a diversity of committee members. Several states recruited additional members to the committee, or engaged additional viewpoints, over the course of their efforts. To the extent states can look to the landscape and identified goals and make sure there is diverse representation across the initiative from the beginning, this will lay the foundation for success. That said, where additional voices are recognized throughout, it is important for states to be flexible and incorporate them along the way. In addition to racial and gender diversity, diversity across court levels for judges, and diversity across practice areas for attorneys (including legal aid), also consider members who have practice experience in other innovative states, business owners and other system users, court administration and technology liaisons, younger attorneys, and newly appointed judges.

Another important consideration is how best to get input from outside the committee itself. Texas created and engaged an Advisory Council that included a much broader set of voices, including users of the system, to brainstorm issues and provide input early in the process. Design sprints, similar to those IAALS has done through its *Court Compass* project, would provide an excellent framework to integrate user voices into these efforts.⁷² Engaging with other states is another way to pull in additional input. Each of the Roadmap states attended the CCJ/COSCA Regional Summits, and they found these useful for exposure to other state efforts and their own momentum, giving them confidence and direction. States should take advantage of opportunities to get engaged at a national level, sending members to national meetings and engaging with other states.

Once everyone is involved, it is important to create an atmosphere of open and respectful dialogue. The importance of such an atmosphere was emphasized across the states. This atmosphere can be fostered by creating early ground rules for open discussion within the committee, and by establishing guiding principles and goals for the committee work at the first meeting. The Civil Justice Improvements Committee developed a set of eight fundamental principles at its first meeting, aimed at achieving demonstrable civil justice improvements, that guided our work throughout.⁷³

Communication and engagement with the broader legal community are equally important. Multiple people we met with emphasized the importance of transparency so that efforts are not seen as secretive and buy-in is achieved early and throughout the process. In addition to input into the recommendations, this will also build support for when the efforts transition from recommendations to implementation.

72 INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS., LISTEN>LEARN>LEAD, A GUIDE TO IMPROVING COURT SERVICES THROUGH USER-CENTERED DESIGN (2019).

73 See CALL TO ACTION, *supra* note 1, at 7 (listing the fundamental framework and principles relied upon by the Committee).



DEVELOPING RECOMMENDATIONS

Even before getting into the substance of developing recommendations, it is worth a moment to think about the importance of the meetings themselves given that these efforts are largely done by committee. Successful meeting basics are critical. A clear agenda provided in advance is essential, as is the development of next steps and assignments at the end of each meeting. Multiple states noted the importance of having enough time set aside for the meetings so that they were able to fully work through the topics identified to completion, particularly given the travel that was often required to bring the committee together from across the state. Where people are unable to attend they should be included by phone, but there should always be a priority to have everyone attend in person. The regularity of the meetings was also key, along with clear interim and final deadlines. Finally, we would be remiss if we did not acknowledge the wonderful assistants and people behind the scenes who made these efforts successful. As we interviewed committee members, we heard again and again about the enormous help of the assistants to the chairs, law clerks, support staff, and others who were responsive, made materials available in advance of meetings, and gathered data to inform the committee efforts.

In terms of developing state recommendations, many committees used the national recommendations as a starting point for brainstorming, informed by the unique challenges of the states. Several of the states had national representatives attend early meetings to speak and provide the perspective of how the local efforts fit within national reform efforts.⁷⁴ After highlighting the national recommendations and efforts, the next step is to develop a list of issues and possible solutions.⁷⁵ Brainstorm early and think broadly. Several leaders we met with emphasized the importance of not being constrained by the system that we have. The Missouri Associate Circuit Procedures Subcommittee created a running “ideas list” that they added to throughout their efforts, and this is a great idea for continually tracking ideas that come up even past the initial brainstorm.

When developing recommendations and drawing from the work in other states, personal contact is key. In addition to looking at other states’ reports and evaluations, connect with leaders of other state efforts directly to ask specific questions. The Roadmap states all found these connections extremely beneficial, and the Roadmap states are now important resources for other states considering taking up civil justice reform efforts.

74 As part of the Implementation Plan, representatives from IAALS and NCSC worked with the Roadmap states, as well as other states implementing reform, to speak to committees and provide education, resources, and ongoing support. While the Implementation Plan has formally come to an end, our organizations remain committed to providing this support to states as they implement reform.

75 See NAT’L CTR. FOR STATE CTS. & INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS CIVIL JUSTICE INITIATIVE: ASSESSING AREAS FOR IMPACT IN CIVIL JUSTICE REFORM: A QUESTIONNAIRE FOR STATE COURTS (2017), <https://www.ncsc.org/~media/Microsites/Files/Civil-Justice/Assessing%20Areas%20for%20Impact%20in%20Civil%20Justice%20Reform.ashx>.



TAKING ACTION

The charge for committees is often to create a report and recommendations. States need to think about next steps and implementation to ensure the hard work of the committee moves into action with success. The national CJI effort recognized that the implementation step of the reform process was just as important as the recommendations themselves. As states move from developing recommendations to putting them into place, they should consider the same *Roadmap* steps—how will they lead the effort, what are the vision and goals for implementation, how can they engage the stakeholders in this process, and how will they move from vision to action on the ground.

“My recommendation is to engage people early with the tools that are already available for them to start working from. Other states have the opportunity to begin with the end in mind and move more quickly toward reform, with the benefit of all the work that has come before them.”

*Scott Griffith,
Former Director, Research &
Court Services, Texas Office of
Court Administration*



CONCLUSION

For court users who may depend on reforms to stay in their apartment or stop a debt collector from garnishing wages unfairly, time is of the essence, and stakeholders want to see reforms quickly. At the same time, the Roadmap state experiences show that reform takes time. This is a process that cannot be rushed if it is to be successful. Persistence is paramount. Reform may need to come in smaller steps rather than taking on the entire system. In Missouri, where discrete reforms were identified by the subcommittee efforts that could be separated out and implemented immediately, they were sent up to the supreme court immediately. This is one way to bridge the urgent need for reform with the length of the reform process.

Creating a movement starts with leadership, and the first followers are essential. The first followers play a crucial role, publicly showing everyone how to follow and how to achieve success. “If the leader is the flint, the first follower is the spark that makes the fire.”⁷⁶ The Roadmap states raised their hands and jumped into the dance. They were willing to take the lead in implementing the CCJ Recommendations and illustrating to others that they could be implemented successfully to achieve the goal of transforming our civil justice system to deliver justice for all. They have turned the work of the CJI Civil Justice Improvements Committee into a civil justice reform movement across this country. Their efforts reflect the depth and breadth of leadership in their states, from their chief justices to the members of the committees, the court administration, and members of the community. It was our honor to meet with so many and learn about their efforts. With this report, we highlight their hard work and success—and invite others to join in.

⁷⁶ *Sivers, supra* note 10.



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