

**REPORT TO THE  
CHIEF JUSTICE**

**COMMISSION  
ON THE  
FUTURE OF  
CALIFORNIA'S  
COURT  
SYSTEM**

**2017**



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SYSTEM**

**2017**





## COMMISSION ON THE FUTURE OF CALIFORNIA'S COURT SYSTEM

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*Associate Justice, California Supreme Court*

HON. WILLIAM R. MCGUINNESS, *Vice-Chair*  
*Administrative Presiding Justice, Court of Appeal,*  
*First Appellate District*

April 26, 2017

Hon. Tani G. Cantil-Sakauye  
Chief Justice of California  
455 Golden Gate Avenue  
San Francisco, California 94102

Dear Chief Justice Cantil-Sakauye,

We are pleased to submit for your consideration the final report of the Commission on the Future of California's Court System. It represents the committed efforts of 63 commission members to research and analyze innovative proposals for the justice system of the future.

You asked us to identify practical ways to more effectively adjudicate cases, achieve greater fiscal stability for the branch, and use technology to enhance the public's access to its courts.

Five working groups gathered information, studied current practices, and determined what benefits might be achieved by a given change. Importantly, each proposal was also evaluated in terms of the savings to be gained as well as the cost of transition. The commission also recognized the importance of public input, which was solicited through a formal survey, multiple public comment sessions, and targeted outreach.

Our recommendations present new ideas for the branch along with proposals to revitalize and expand a number of existing initiatives. They provide pathways to change in-court practice, procedure, and judicial administration.



We are grateful to each member of the commission who gave most generously of their time, expertise, and wise counsel to these efforts. We particularly acknowledge the Chairs and Vice chairs of the working groups. These leaders drew on decades of experience to guide, motivate, and create consensus. On behalf of the commission members, we also note the invaluable assistance of the Judicial Council's staff. Finally, and on a personal note, we thank you for the opportunity to lead this important initiative.

Your determination to build on our soundest traditions while embracing practical and necessary change will be one of the hallmarks of your tenure as Chief Justice. We are honored to have been of assistance in that visionary leadership and respectfully submit this report for your consideration.

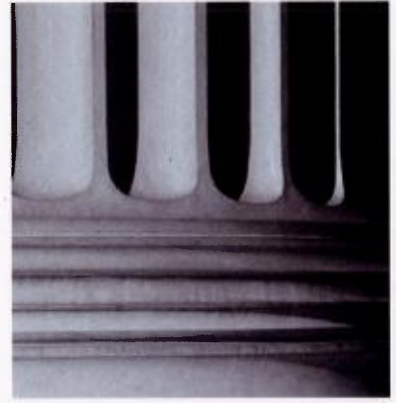
Very truly yours,



Carol A. Corrigan  
Associate Justice  
California Supreme Court and  
Chair of Commission on the  
Future of California's Court System



William R. McGuiness  
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\*Judge Juhas also served as an advisory member to the Family/Juvenile Working Group as cochair of the Family and Juvenile Law Advisory Committee.

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The commission's charge will be to take a fresh look at legal and structural challenges to long-term efficiency and stability for the judicial branch and develop practical, achievable recommendations that may be implemented by the Judicial Council, the Legislature, or the Governor.

—Chief Justice Tani G. Cantil-Sakauye



## EXECUTIVE SUMMARY

In July of 2014, Chief Justice Tani G. Cantil-Sakauye established the Commission on the Future of California's Court System (Futures Commission) to take an in-depth look at the way our trial courts are serving the people of California. The Futures Commission was asked to think creatively about how court operations could be improved and streamlined.

California's court system is the largest in the nation, serving a population of over 39 million. Every year, millions of Californians come to a courthouse, whether to serve as a juror, seek a restraining order, resolve a traffic citation, or litigate a case. What they encounter often differs little from what previous court users have experienced over the decades. Yet, advances in technology, communications, and information processing all present opportunities for the judicial branch to give Californians greater, more efficient, and more responsive access to justice. Those goals have informed the Futures Commission's work.

Bringing change to a branch of government requires vision, careful analysis, and critical evaluation. The Futures Commission began with a

consideration of how the trial courts currently operate, what is working well, and where modifications are advisable.

Five working groups were created to study various aspects of court organization:

- Civil and small claims cases
- Criminal and traffic law and procedures
- Family and juvenile law
- Fiscal and administrative operations
- Technology

Working groups in each area gathered information, and then studied what current practices cost, what savings might be achieved, and what interim costs would be required to make a proposed change. They also considered whether important aspects of the branch's work, and those of its operational partners, might be negatively affected by modification.

Consideration of change in a system that is based on precedent and steeped in tradition can be difficult, particularly as it is unfolding. But the world changes around us and the needs of Californians

continue to evolve. Simply because a given practice has been in place for decades should not stand in the way of achievable improvement.

The recommendations presented seek to provide the Chief Justice with information and proposals she may choose to consider in leading the branch into the 21st century.

### **ESTABLISHMENT OF FUTURES COMMISSION MEMBERSHIP AND WORKING GROUPS**

In creating the Futures Commission, the Chief Justice called together justices, judges, operational officers, and members of the bar. The Futures Commission's 63 members were drawn from around the state and included both those with deep experience and those with fresh insights. Judicial officer and court administrator members have served in large, mid-sized, and small courts in urban, rural, and geographically diverse counties. Attorney members represent private firms of various sizes, public law offices, and particular practice areas. Members also include representatives of judicial branch partners, including probation departments and law enforcement.

The Futures Commission was chaired by Associate Justice Carol A. Corrigan of the California Supreme Court and vice-chaired by Administrative Presiding Justice William R. McGuinness of the Court of Appeal, First Appellate District. For a complete roster of the Futures Commission, see the *Commission Membership* which precedes this summary.

### **HOW THE FUTURES COMMISSION APPROACHED ITS TASK**

While the Chief Justice wanted input on a variety of topics, she also envisioned a focused undertaking, with a report to be delivered in less than three years. The Futures Commission has attempted to meet this charge by seeking broad input from a variety of sources and responding to the Chief Justice's direction with an eye toward a timely response.

#### **SURVEY**

The Futures Commission wanted to ensure that all judicial branch partners and all those interested in its work had the opportunity to make suggestions and provide comment. At the beginning of its efforts, the Futures Commission conducted a survey soliciting ideas on how the branch could be more efficient and effective. It reached out to the legal community, business leaders, and subject-matter experts. The Futures Commission received over 2,000 responses from lawyers, judges, other judicial branch professionals, and those Californians who use the courts.

#### **PUBLIC HEARINGS**

The Futures Commission's working groups considered all the received suggestions, along with ideas for change generated by their own members. The groups then began to formulate proposals that would receive substantive study. The Futures Commission conducted two rounds of live public comment sessions, with five sessions in total. The first round helped sharpen the scope of proposed inquiries; the second presented draft ideas for more in-depth comment. Throughout its efforts, the Futures Commission continued to receive written input. In all, the Futures Commission heard live comment from 95 individuals and,



in addition to the thousands of survey responses, received more than 500 written comments and prepared statements from around the state. Each voice provided insight and perspective further informing the Commission's work.

## WORKING GROUPS

The individual working groups then began to refine their proposals. In all, the groups held over 430 conference calls and 22 in-person meetings. The goal was to present ideas that had been considered in depth, with an emphasis on the practical. This report describes what aspects of trial court administration or operations might be enhanced and why a change is advisable. It presents fact-based information on how current operations are conducted and what it costs to operate in that way. Every effort has been made to analyze what savings can realistically be expected and what costs will be incurred in making a proposed change. Proposals have been framed in terms of actual steps to be taken, rather than on theoretical possibilities. As with any change, some consequences are difficult to foresee with certitude. Most recommendations suggest the establishment of a pilot program in a limited number of counties, so that the challenges of broader implementation can be effectively gauged and planned for. A number of recommendations suggest further study of issues for which comprehensive data or information is currently unavailable.

The 13 recommendations presented focus on increasing access for court users through new technology as well as changes to statutes and rules of court. Additionally, there is a focus on increasing efficiency and reducing costs throughout the court system. Some recommendations emerged in response to new challenges and opportunities confronting courts in California

and across the nation. Others are ideas that have been explored previously, but for various reasons were not advanced or fully implemented. Individually and collectively, the recommendations offer a bridge to the future with efficient modernized courts and expanded access to justice for California's diverse and growing population.

## RECOMMENDATIONS

### CHAPTER 1: CIVIL RECOMMENDATIONS

#### Recommendation 1.1: Revise Civil Case Tiers and Streamline Procedures

The Futures Commission recommends:

1. Increasing the maximum jurisdictional dollar amounts for limited civil cases to \$50,000.
2. Creating a new intermediate civil case track with a maximum jurisdictional dollar amount of \$250,000.
3. Streamlining methods of litigating and managing all types of civil cases.

#### Recommendation 1.2: Increase and Improve Assistance for Self-Represented Litigants

The Futures Commission recommends:

1. Developing an early education program for SRLs in small claims and in civil cases where SRLs are most common (i.e., unlawful detainers, small-value debt collection, automobile accidents, and employment cases).
2. Creating a Center for Self-Help Resources to assist courts in their role as self-help providers.



### **Recommendation 1.3: Integrate Best Practices for Complex Case Management**

The Futures Commission recommends:

1. Establishing and maintaining an online centralized repository and educational resource for effective management of complex litigation.
2. Establishing and maintaining a listserv, or electronic mailing list, of judges who frequently handle complex cases, allowing communications among courts.
3. Continuing to provide judicial education in complex case management.

## **CHAPTER 2: CRIMINAL/TRAFFIC RECOMMENDATIONS**

### **Recommendation 2.1: Reduce Continuances in Criminal Cases**

The Futures Commission recommends reducing continuances in criminal cases by:

1. Creating and implementing training for presiding judges and new judges on the statutory requirements for granting continuances.
2. Requiring presiding judges to adopt policies to conform court practices to existing law.
3. Encouraging courts to track the data on continuances.
4. Encouraging presiding judges to create a local court working group to monitor continuance data and recommend corrective measures when needed.
5. Expanding meetings between local judges and justice partners to include the discussion of limiting continuances.

### **Recommendation 2.2: Reduce Certain Misdemeanors to Infractions**

The Futures Commission recommends:

1. Enabling certain misdemeanors currently punishable by a maximum term not exceeding six months in county jail to be charged by the district attorney as either a misdemeanor or an infraction (“wobblettes”).
2. Allowing plea negotiations to designate the offense as an infraction.

### **Recommendation 2.3: Refine the Adjudication and Settlement of Fines, Fees, and Assessments**

The Futures Commission recommends:

1. Expanding judicial discretion to strike, modify, or waive fines, fees, penalties, and civil assessments based on a defendant’s ability to pay.
2. Limiting the use of civil assessments.
3. Establishing alternative payment methods that are accessible 24 hours a day.
4. Allowing conversion of fines, fees, and assessments to community service or jail if requested by the defendant and agreed to by the court.
5. Creating alternative means to facilitate the conversion of fines, fees, and assessments to jail or community service.

### **Recommendation 2.4: Implement a Civil Model for Adjudication of Minor Traffic Infractions**

The Futures Commission recommends:

1. Implementing a civil model of adjudication for minor vehicle infractions.
2. Providing online processing for all phases of traffic infractions.

## **CHAPTER 3: FAMILY/JUVENILE RECOMMENDATIONS**

### **Recommendation 3.1: Consolidate Juvenile Court Jurisdictions**

The Futures Commission recommends:

1. Establishing a single consolidated juvenile court in California.
2. Providing juvenile court jurisdiction over children and parents in all cases, and creating judicial discretion to provide children and parents with appointed counsel when appropriate.
3. Testing these proposals through pilot projects in diverse courts.

### **Recommendation 3.2: Provide Mediation without Recommendations as Initial Step in All Child Custody Disputes**

The Futures Commission recommends:

1. Providing mediation without recommendations as the first step in resolving all child custody disputes.
2. Exploring, through pilot projects or otherwise, whether additional services and procedures, including tiered mediation, would be effective in complex or contentious cases.

## **CHAPTER 4: FISCAL/COURT ADMINISTRATION RECOMMENDATIONS**

### **Recommendation 4.1: Increase Transparency, Predictability, and Consistency of Trial Court Employment through Study and Reporting of Classification and Compensation**

The Futures Commission recommends:

1. Conducting a uniform classification and compensation study of trial court employees to create common classifications and salary structures across the branch.
2. Creating a branchwide structure that includes regular reporting on compensation and benefits provided for court classifications to bring greater transparency and benefit both trial court employees and management.
3. Requesting that the Judicial Council (Council) reconsider the elements of the Workload-Based Allocation and Funding Methodology (WAFM) formula that include funding based on the actual cost of health benefits paid by each court.

### **Recommendation 4.2: Restructure Fines and Fees for Infractions and Unify Collection and Distribution of Revenue**

The Futures Commission recommends:

1. Increasing criminal base fines for infractions and misdemeanors to proportionate and deterrent levels established by the Legislature and eliminating all add-ons (i.e., surcharges, penalties, and assessments).
2. Requiring that all court-imposed criminal fines be paid to a special state treasury fund.



3. Providing alternative funding to adequately support the judicial system and thereby reduce or preferably eliminate reliance on fines and fees as a source of court funding.
4. Designating one state executive branch entity, such as the Franchise Tax Board, to be responsible for collection of these fines.

**Recommendation 4.3: Propose Legislation to Authorize the Judicial Council to Reallocate Vacant Judgeships**

The Futures Commission recommends that the legislation:

1. Be modeled on Government Code section 69614, which authorized 50 new judgeships in 2006, and Government Code section 69615, which authorized the conversion of subordinate judicial officers.
2. Direct that vacant judgeships be reallocated by the Council under a methodology approved by the Council.
3. Retain the Legislature’s authority to create and fund judgeships and the Governor’s authority to fill them.

Once such legislation is enacted, the Futures Commission recommends that the Chief Justice and the Council develop a reallocation methodology. The methodology should:

1. Incorporate the principles of the Council’s biennial Judicial Needs Assessment Report and methods for subordinate judicial officer conversion under Government Code section 69615.
2. Minimize court disruptions.
3. Address changes in judicial workload needs.

4. Ensure appropriate funding to support reallocated judgeships.

**CHAPTER 5: TECHNOLOGY RECOMMENDATIONS**

**Recommendation 5.1: Expand the Use of Technology in the Courts to Improve Efficiency and Enhance Access**

**1. Current Technology Initiative**

Continuing judicial branch support and implementation of initiatives currently underway by the Information Technology Advisory Committee of the Judicial Council (Council), as reflected in the Council’s *Tactical Plan for Technology (2017-2018)*, including

- Video remote interpreting;
- Remote self-help services for self-represented litigants;
- Cloud services for application hosting and data storage;
- Case and document management systems that support the digital court; and
- Electronic filing.

**2. Remote Video Appearances**

Developing a pilot project to allow remote appearances by parties, counsel, and witnesses for most noncriminal court proceedings.

**3. Video Arraignments**

Authorizing video arraignments in all cases, without the defendant’s stipulation, if certain minimum technology standards are met.



**4. Intelligent Chat Technology**

Developing a pilot project using intelligent chat technology to provide information and self-help services.

**5. Voice-to-Text Language Services Outside the Courtroom**

Developing a pilot project that would use voice-to-text language interpretation services for use at court filing and service counters and in self-help centers.

**6. Innovations Lab**

Establishing an Innovations Lab to identify and evaluate emerging technologies and cooperate with industry experts to tailor them to court use.

**7. Access to the Record of Court Proceedings**

Implementing a pilot program to use comprehensive digital recording to create the official record for all case types that do not currently require a record prepared by a stenographic court reporter.





The Commission on the Future of California's Court System (Futures Commission) was established by Chief Justice Tani Cantil-Sakauye in July 2014. By early 2015 the Futures Commission's Executive Committee and working group members were appointed. (See the timeline below for a high-level overview of activities from 2014–2017.) The

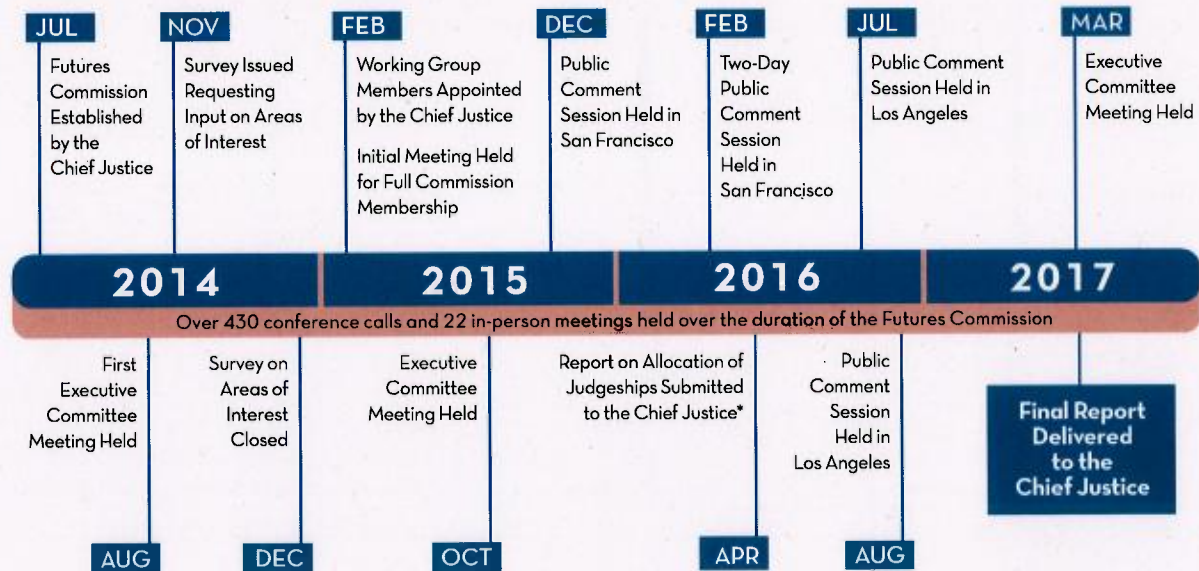
Commission was committed to ensuring that the process was transparent and included input from the public as well as from justice partners and stakeholders. To this end, the Futures Commission focused on sharing information and seeking input through public meetings and other avenues, as discussed on the following pages.

## COMMISSION ACTIVITIES

### WEBPAGE

The Futures Commission established a webpage on the California Courts website at [www.courts.ca.gov/futurescommission.htm](http://www.courts.ca.gov/futurescommission.htm) that provided information about its charge, membership, activities, and public comment sessions.

### Commission on the Future of California's Court System Timeline of Activities 2014-2017



\* Judgeship allocation proposals are included in the Governor's January 10, 2017 budget proposal. The Council is working with the Legislature and the Governor's Office to move the proposal forward.



## SURVEY

In November 2014, shortly after the Futures Commission was established, a survey was developed and distributed to over 450 targeted individuals and entities including various stakeholders/justice partners, court leadership, and the public. The survey solicited suggestions for making the California judicial branch more efficient and effective.

The survey was available in an electronic format, with printable versions provided to respondents without computer access.

The survey solicited responses from the public as well as branch affiliates, including government employees, private or public-interest attorneys, court employees, justice partners, judicial officers, and law school faculty. The survey sought information from the public regarding personal court experiences, as well as input from branch affiliates on court operations and specific case types. A total of 2,080 survey responses was received—89 percent from branch affiliates and 10 percent from the public.

Commission staff reviewed and categorized the open-ended responses. In February 2015 they summarized the responses for the working groups, identifying potential areas for further review and analysis.

## PUBLIC COMMENT

As concepts were developed, the Futures Commission held four public comment sessions in San Francisco and Los Angeles:

- December 8, 2015—San Francisco
- February 8, 2016—San Francisco
- February 9, 2016—San Francisco

- July 22, 2016—Los Angeles
- August 29, 2016—Los Angeles

Over 300 written and in-person comments were received. (For additional details on the concepts presented and a breakdown of the number of in-person and written comments, see *Appendix 1: Overview of Public Comment Sessions*.)

## TARGETED OUTREACH AND CONSULTATION

To gain greater insight and solicit feedback, the working groups reached out to specific justice partners and stakeholders. They also consulted with experts in specific subject areas, including but not limited to:

- Local and statewide legal aid foundations, associations, and self-help organizations
- Other groups, including:
  - ◆ Public Policy Institute of California
  - ◆ National Association for the Advancement of Colored People
  - ◆ Western Center on Law and Poverty
- Civil law firms and organizations, including:
  - ◆ American Board of Trial Advocates
  - ◆ Consumer Attorneys of California
  - ◆ Association of Business Trial Lawyers
  - ◆ Association of Defense Counsel
  - ◆ San Francisco Trial Lawyers Association
- Criminal law firms and organizations, including:
  - ◆ California District Attorneys Association
  - ◆ California Public Defenders Association
  - ◆ Central California Appellate Program
  - ◆ Criminal Justice Legal Foundation
  - ◆ California Attorneys for Criminal Justice
- Law enforcement, including:
  - ◆ California Highway Patrol

- ◆ California Police Chiefs Association
- ◆ California State Sheriffs' Association
- ◆ California Probation, Parole and Correctional Association
- ◆ Chief Probation Officers of California
- Technology companies, including:
  - ◆ Google, Inc.
  - ◆ Microsoft Corporation
  - ◆ Cisco Systems, Inc.
  - ◆ Justice AV Solutions
- The State Bar, county bar associations, and specialized bar associations
- State agencies, including:
  - ◆ California Department of Corrections and Rehabilitation
  - ◆ California Department of Motor Vehicles
  - ◆ California Office of Traffic Safety
- Judicial organizations, court leadership and staff, and Judicial Council advisory bodies, including:
  - ◆ Family and juvenile law specialists, family court services directors, and mental health experts
  - ◆ Trial court presiding judges and court executive officers
  - ◆ Presiding juvenile judges
  - ◆ Judicial Council advisory bodies
  - ◆ Judges associations
  - ◆ California Court Commissioners Association

The Civil, Criminal/Traffic, and Family/Juvenile working groups targeted over 300 specific stakeholders, interested parties, and judicial partners to solicit feedback and comments. They asked many of the recipients to share the request with their colleagues and contacts. Approximately 50 percent of the targeted parties responded and provided additional input.

## FUTURES INBOX

Interested parties were encouraged to submit communications directly to the Futures Commission through a dedicated inbox that received nearly 300 e-mails over the life of the project. Interested parties submitted ideas for commission consideration as well as comments about proposed concepts.

## MEETINGS AND CALLS

To identify, refine, analyze, and develop recommendations, working groups held more than 430 conference calls and 22 in-person meetings over the two-year period.





# APPENDIX

## COMMISSION ACTIVITIES

### APPENDIX 1: OVERVIEW OF PUBLIC COMMENT SESSIONS

#### December 8, 2015—San Francisco

##### INITIAL CONCEPTS

- 1. Judgeships** (Fiscal/Court Admin)  
*Explore a mechanism within the judicial branch for more equitable distribution of judgeships based on population/workload.*
- 2. Trial Court Funding** (Fiscal/Court Admin)  
*Explore a new funding structure for the judicial branch.*
- 3. Collection of Court-Ordered Debt**  
(Fiscal/Court Admin)  
*Realign the court-ordered debt collection process and conduct a comprehensive evaluation of court-ordered debt collection practices and responsibilities.*
- 4. Decriminalizing Traffic Infractions**  
(Criminal/Traffic)  
*Explore decriminalizing traffic infractions and/or moving their processing to an administrative or noncriminal forum.*
- 5. Miscellaneous Comments**  
*Labor • Appointed Counsel • Court Reporters in Family Law*



**February 8-9, 2016—San Francisco**

**INITIAL CONCEPTS**

- 1. One Juvenile Court-Consolidated Juvenile Court Jurisdiction in California** (Family/Juvenile)  
*Consider consolidation of all juvenile court cases (juvenile dependency and juvenile delinquency) under one unified juvenile court.*
- 2. Efficient and Effective Resolution in Family Courts** (Family/Juvenile)  
*Explore a new funding structure for the judicial branch.*
- 3. Trial Court Administrative Support** (Fiscal/Court Admin)  
*Explore and identify the most cost-effective staffing model for the provision of trial court administrative services.*
- 4. Trial Court Employment and Labor Relations** (Fiscal/Court Admin)  
*Explore ways to ensure labor agreements are more consistent from court to court and that labor negotiations are conducted in the most effective and efficient manner, while maintaining appropriate local control of employment decisions.*
- 5. Court Record** (Fiscal/Court Admin)  
*Explore ways to provide a cost-effective official record in all case types.*
- 6. Technology-Enhanced Court Proceedings and Online Transactions** (Fiscal/Court Admin)  
*Explore ways to leverage technology to enhance access to justice.*
- 7. Self-Help Resource Center for Courts** (Civil)  
*Consider developing a judicial branch self-help resource center that serves as a central location for court employees, administrators, and judicial officers to share and obtain self-help resources and provide model approaches for small, medium, and large-sized courts.*
- 8. Using Technology to Increase Access and Self-Help** (Family/Juvenile)  
*Provide all court users with increased access and education through technology.*
- 9. Reduce the Number of Peremptory Challenges in Misdemeanor Criminal Cases** (Criminal/Traffic)  
*Explore reducing the number of peremptory challenges in misdemeanor criminal cases.*
- 10. Reduce Certain Misdemeanors to Infractions** (Criminal/Traffic)  
*Explore reducing time-consuming but less serious misdemeanors to infractions.*
- 11. Civil Case Tiers** (Civil)  
*Consider increasing the maximum jurisdictional dollar amounts for small claims and limited civil cases and developing a new civil tier with streamlined methods for litigating and processing cases with a value greater than those in the limited civil case tier, up to \$250,000.*
- 12. Complex Case Management Model** (Civil)  
*Explore refining case management models utilized for complex cases to incorporate principles developed in dedicated complex departments so that these procedures can be utilized in appropriate cases irrespective of the size of the court.*
- 13. Improved Education and Processes for Self-Represented Litigants** (Civil)  
*Consider developing a case management model for limited civil and small claims cases that combine early education for all self-represented litigants with simplified and streamlined litigation procedures.*
- 14. Reduced Jury Size** (Civil)  
*Explore the benefits of reducing jury size in civil limited, intermediate (proposed), and unlimited cases.*
- 15. Miscellaneous Comments**  
*AB 1058*  
*Judicial Discretion*  
*Judicial Assignments*

July 22, 2016—Los Angeles

INITIAL CONCEPTS

- 1. One Juvenile Court—Consolidated Juvenile Court Jurisdiction in California** (Family/Juvenile)  
*Consider consolidation of all juvenile court cases (juvenile dependency and juvenile delinquency) under one unified juvenile court.*
- 2. Efficient and Effective Resolution in Family Courts** (Family/Juvenile)  
*Implement a statewide, uniform, multi-tiered child-custody mediation process in California family courts, featuring the best practices from existing systems, and provide alternative dispute resolution and other expedited resolution services for all other family law matters.*
- 3. Restructuring Criminal Fines and Fees** (Fiscal/Court Admin)  
*Explore: (1) increasing base fines for infractions and misdemeanors while eliminating surcharges, penalties, and assessments; (2) depositing fine revenue into a single fund for distribution to the courts and state and local programs; and (3) placing overall responsibility for collecting delinquent court-ordered debt in the state executive branch and not the courts and counties.*





August 29, 2016—Los Angeles

INITIAL CONCEPTS

- 1. Fines and Fees: Judicial Discretion and Court Adjudication** (Criminal/Traffic)  
*Explore: (1) increasing judicial discretion to strike, modify, or waive criminal fees and civil assessments based on a defendant's ability to pay; (2) establishing an alternative means to pay fines, fees, and assessments, accessible 24 hours a day; (3) allowing conversion of fines, fees, and civil assessments to jail or community service; and (4) creating an alternative method to facilitate the conversion of fines, fees, and civil assessments to jail or community service.*
- 2. Reduce Certain Non-Serious Misdemeanors to Infractions** (Criminal/Traffic)  
*Explore recommending legislative changes to allow misdemeanors currently punishable by a maximum term not exceeding six months in a county jail to be charged as a misdemeanor or an infraction in the prosecuting attorney's discretion at arraignment or at the court's discretion with agreement of the defendant.*
- 3. Reduce Continuances in Criminal Cases** (Criminal/Traffic)  
*Explore reducing the frequency of continuances by enforcing the use of existing tools to ensure that criminal continuances comply with statutes and rules.*
- 4. Decriminalize Traffic Infractions and Move to an Alternative Forum** (Criminal/Traffic)  
*Decriminalize traffic infractions and move adjudication of these violations to a noncriminal judicial forum.*
- 5. Increased and More Effective Assistance for Self-Represented Litigants** (Civil)  
*Develop a comprehensive approach to facilitating access to justice by self-represented litigants in civil matters through the formalized integration of education and the enhancement of available self-help resources through the creation of an enhanced statewide Center for Self-Help Resources. This center will be dedicated to providing assistance to courts in addressing the needs of self-represented litigants.*
- 6. Revise Civil Case Tiers** (Civil)  
*Consider methods of reducing the cost of litigation and providing increased access to justice, by increasing the maximum jurisdictional dollar amounts for limited civil cases to \$50,000; creating a new intermediate civil case track with a maximum jurisdictional dollar amount of \$250,000; and streamlining methods of litigating and managing all types of civil cases.*
- 7. Complex Litigation Management: Repository and Other Shared Resources** (Civil)  
*Establish an online centralized repository and educational resource containing information on the effective management of complex litigation to be shared and used by judges and research attorneys.*
- 8. Explore Court Reporters' Dual Status, Compensation Discrepancies, and Ownership of Transcripts** (Fiscal/Court Admin)  
*Explore court reporters' preparation of transcripts as part of their court employment and compensation, resulting in court ownership of transcripts. Alternatively, provide that courts may, after purchasing an original transcript, make and sell copies of the transcript.*
- 9. Improve the Consistency, Predictability, and Portability of Trial Court Employment** (Fiscal/Court Admin)  
*To bring greater consistency, predictability, and portability to the judicial branch and local trial court employment systems: (1) consider a uniform classification and compensation study to develop common classification and salary structures across the branch; and (2) review and reconsider the Workload-Based Allocation and Funding Methodology (WAFM) formula, including funding for each trial court's employee benefits.*
- 10. Digital Recording of Court Proceedings to Provide an Official Record** (Criminal/Traffic)  
*Incorporate existing and emerging technologies in preparing an official record of court proceedings in a digital format that is cost-effective and accessible and envisions the record of the future.*
- 11. Miscellaneous Comments**  
*Move Health and Safety Code sections 11377(a), 11350(a), and 11357 out of criminal courts and into the mental health department.*  
  
*Child physical and sexual safety in family court custody decisions.*

- **Recommendation 1.1:**  
Revise Civil Case  
Tiers and Streamline  
Procedures  
(page 19)
- **Recommendation 1.2:**  
Increase and Improve  
Assistance for Self-  
Represented Litigants  
(page 29)
- **Recommendation 1.3:**  
Integrate Best Practices  
for Complex Case  
Management  
(page 37)

## CIVIL RECOMMENDATIONS

Civil courts in California reflect trends seen in civil courts across the nation. The vast majority of cases involve smaller value matters<sup>1</sup>\* primarily related to landlord-tenant and consumer debt collection disputes.<sup>2</sup> Of the nearly 750,000 civil cases filed in California in 2014–2015, over 75 percent were limited civil or small claims. The number of individuals representing themselves is increasing dramatically at all levels. Litigation costs are outpacing the value of cases, thus fewer and fewer cases are being resolved on the merits. These factors undermine the public’s access to justice, diminish the right to a jury trial, and erode confidence in the judicial process. Both the public and the courts benefit when courts implement changes to decrease litigation costs, streamline the process, provide more extensive self-help options to self-represented litigants (SRLs), and take advantage of improved technology to process cases.

Rising litigation costs in all types of civil cases have had a dramatic impact on the public’s access to justice. Studies show these increases are due primarily to the length of time it takes to process cases through the system and the costs associated with conducting discovery.<sup>3</sup> In a recent survey, attorneys nationwide noted litigation costs often inhibit the filing of cases. Attorneys are reluctant to take cases where the costs of representation outweigh the expected financial benefits.<sup>4</sup> As a result, meritorious cases of moderate value are often not filed, or are filed by SRLs.

Attorneys also observed that when cases are filed, litigation costs often force parties to settle even where an evaluation based on the merits

\*Footnotes and citations can be found at the end of this chapter on page 45.



would suggest that the case be tried.<sup>5</sup> This reality negatively impacts the right to resolve disputes before a jury and results in either plaintiffs receiving less than the case merits or defendants giving up the right to show the case had no merit.

Another result of increasing litigation costs has been the dramatic increase nationwide in the number of SRLs in civil matters. In the past 10 years, the total number of civil cases in California has been decreasing, but the number of parties representing themselves in these cases has risen. Although the courts have become accustomed to SRLs in family law cases, other general civil departments are now seeing an increase in self-representation. This trend is most apparent in landlord-tenant and consumer debt collection cases,<sup>6</sup> but SRLs are becoming prevalent in other civil cases, including limited civil, probate, and even on appeal. This trend is expected to continue.

A 2012 study by the National Center for State Courts (NCSC) evaluated over one million civil cases in ten urban areas. It revealed that, in over 76 percent of the cases, at least one party—usually the defendant—was not represented by counsel.<sup>7</sup> Although these data include cases in which defendants defaulted, the sheer numbers and the potential impact on the courts remains striking. Because SRLs typically have little or no experience with the legal system, they are often ill prepared to effectively advocate on their own behalf or navigate the process, undermining both their access to justice and the courts' ability to resolve cases efficiently.

To address these issues, the Futures Commission offers a series of recommendations to improve access to justice, better serve the public, and foster efficient court operations. The goal of the first set of recommendations is to reduce the cost of civil litigation at all levels by streamlining litigation procedures, incorporating proportionality concepts into

the discovery process, and encouraging the use of technology. The goal of the second set of recommendations is to develop ways to assist SRLs and reduce the number of court appearances required to resolve these cases. The goal of the third recommendation is to integrate procedures that expedite the resolution of complex cases and promote effective and efficient decision making.

The changes are aimed at improving access to justice, encouraging attorneys to assist parties who might otherwise go unrepresented, reducing costs, and permitting parties to litigate cases on the merits when appropriate. These changes will also create administrative efficiencies and improve the manner in which the courts serve the public.

One other important goal will be served: In addition to fair and expedient resolution of disputes, the civil courts are responsible for the development of the jurisprudence supporting our system of common law. It is thus vital to the development of the rule of law that the courts be a competitive and desirable forum where litigants can resolve controversies. Alternative dispute resolution (ADR) mechanisms have their place, and may appeal to parties in certain contexts as a means of speedy and convenient resolution. Yet, private dispute resolution mechanisms do not contribute to the development of the rule of law through published opinions, as do our trial and appellate courts.

For this reason, it is important that the courts be accessible, prompt, and economically competitive when compared to other dispute resolution mechanisms. The ability of California's courts to do so is critical to ensuring that the people's system of adjudication contributes to the development of the rule of law for future generations.



**RECOMMENDATION 1.1:**  
REVISE CIVIL CASE  
TIERS AND STREAMLINE  
PROCEDURES

**T**he Futures Commission urges that existing civil procedures be modified to reduce litigation costs, facilitate the early exchange of information, and establish a new tier of cases. Accordingly, the Futures Commission recommends:

1. Increasing the maximum jurisdictional dollar amounts for limited civil cases to \$50,000.
2. Creating a new intermediate civil case track with a maximum jurisdictional dollar amount of \$250,000.
3. Streamlining methods of litigating and managing all types of civil cases.

## **BACKGROUND**

Several decades ago, court unification created one level of trial court in California but retained three separate procedural tracks for civil cases, divided according to the amount in controversy: small claims, limited civil, and unlimited civil cases. Simpler procedures generally apply to cases with lower amounts in controversy.

- Small claims procedures are intended to resolve disputes without attorneys. The current jurisdictional limit is \$10,000 for individual claimants and \$5,000 for other claimants. Procedures are informal by statutory mandate and intended to make it easy and convenient for individuals to resolve their disputes in court.<sup>8</sup> (Code of Civil Procedure section 116.110 et seq.)
- In limited civil cases, \$25,000 or less is at issue. Except for unlawful detainers, simplified procedures and discovery limits generally apply. Jury trials are, with some exceptions, conducted as expedited jury trials, with a shorter time frame and smaller jury than in larger cases.<sup>9</sup> (Code of Civil Procedure section 630.02.)
- Unlimited civil cases are those in which more than \$25,000 is at stake. The jurisdictional limit between unlimited and limited civil

cases has not changed since 1986. Due to inflation, a case worth \$25,000 in 1986 would be worth over \$55,000 in 2017.<sup>10</sup>

## RECOMMENDATIONS

To increase access and improve efficiency, the Futures Commission recommends:

1. Increasing the maximum jurisdictional dollar amounts for limited civil cases to \$50,000.
2. Creating a new intermediate civil case track with a maximum jurisdictional dollar amount of \$250,000.
3. Streamlining methods of litigating and managing all types of civil cases.<sup>11</sup>

Should these recommendations move forward, it will be vital to work with stakeholders, particularly bar groups and legal aid providers, to ensure that the procedures are fair and equitable. For each tier, the focus of any changes should remain as follows:

### SMALL CLAIMS CASES

- No change in jurisdictional limit or procedures generally. The Futures Commission considered recommending an increase in the jurisdictional limit for small claims cases, but ultimately declined to do so based on comments received and input from Judicial Council (Council) advisory committees. If cases of higher value were subject to the informal and expedited procedures of small claims court, the right to jury trial and representation by counsel would be lost in a certain strata of cases where litigants currently enjoy those rights.
- Providing more alternative dispute resolution (ADR) options, including online ADR programs.

- Allowing remote appearances by parties and witnesses via telephone or video technology.
- Providing video remote interpreting where in-person interpreters are not available.<sup>12</sup>

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*Due to inflation,  
a case worth  
\$25,000 in 1986  
would be worth over  
\$55,000 in 2017.*

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### LIMITED CIVIL CASES<sup>13</sup>

- Raising the jurisdictional limit to \$50,000.
- Providing an information sheet to all plaintiffs at time of filing, which must also be served on all defendants, with the following information:
  - ◆ Description of early education program and other self-help resources.
  - ◆ Flow chart or checklist of applicable civil procedures, with targeted versions for high-volume case types (unlawful detainer, debt collection, and auto accident cases).
- Discovery
  - ◆ Mandating bilateral early disclosure of factual information supporting claims or defenses, identification of witnesses, and production of key documents.
  - ◆ Reducing current limits on written discovery requests from 35 to no more than 15 to 20.
  - ◆ Developing form interrogatories expressly directed to each of the high-volume case types.



- ◆ Maintaining current limit of one deposition per side.
- Alternative dispute resolution
  - ◆ Providing more opportunities for ADR and/or early neutral evaluation of cases.
  - ◆ Providing different ADR options and timing based on the type of case, particularly for the three types of high-volume cases.
  - ◆ Providing options for online ADR, with oversight to avoid abuse resulting from financial imbalance of parties.
- Remote appearances
  - ◆ Providing for video and telephonic appearances for law and motion hearings, case management conferences if requested, and any other nonevidentiary hearings.
  - ◆ Providing video remote interpreting where in-person interpreters are not available.
- Expanding mandatory expedited jury trials to include unlawful detainer cases.

### INTERMEDIATE CIVIL CASES (NEW TIER)

- Cases with value between \$50,000 and \$250,000.
  - ◆ Permitting parties to opt out for good cause, as provided for in limited civil cases.
- Factual discovery proportional to value of case, as set forth below:
  - ◆ Mandating bilateral early disclosure of factual information supporting claims or defenses, identification of witnesses, and production of key documents.
  - ◆ Limiting each side to taking 20 hours of depositions.
  - ◆ Limiting total written discovery requests to 35 (interrogatories, requests for production of documents, and requests for admission).
- Developing additional Council form interrogatories expressly directed to specific case types.
- Maintaining current general proportionality provisions for discovery of electronically stored information.
- Permitting parties to seek leave of court for additional discovery on showing of good cause and proportional to value of case.
- Expert witnesses
  - ◆ Limiting expert witnesses to two per side, subject to expansion for good cause.
  - ◆ Requiring longer time before trial for disclosure of experts, to facilitate depositions if needed.
- Case management conferences
  - ◆ Retaining court discretion on whether to hold a case management conference.
  - ◆ Allowing courts to waive case management conferences where appropriate for financial reasons or when other effective case management strategies have been implemented.
  - ◆ Allowing counsel to appear by phone or video unless court determines an in-person appearance is necessary.
- Remote appearances
  - ◆ Encouraging video and telephonic appearances for law and motion hearings, case management conferences if requested, and any other nonevidentiary hearings.
  - ◆ Encouraging video appearances for appearances of witnesses and parties at trials and evidentiary hearings, with consent of all parties.



- ◆ Providing video remote interpreting where in-person interpreters are not available.
- Alternative dispute resolution
  - ◆ Providing more opportunities for ADR and/or early neutral evaluation of cases.
  - ◆ Providing different types/times for ADR based on the type of case.
  - ◆ Providing options for online ADR.

**UNLIMITED CIVIL CASES  
(CASES OVER \$250,000)**

- Expert witnesses
  - ◆ Providing longer time before trial for disclosure of experts, to facilitate depositions if needed.
  - ◆ In cases with claims over \$1 million, requiring experts to provide a report of all opinions about which they intend to testify. The report should include all facts in support of the opinions and be produced when experts are disclosed.
  - ◆ Allowing parties to make a single motion for partial summary adjudication of facts, similar to procedures permitted under rule 56 of the Federal Rules of Civil Procedure, but limited to material facts only.
- Remote appearances
  - ◆ Providing for video and telephonic appearances at law and motion hearings, case management conferences, and any other nonevidentiary hearings.
  - ◆ Providing for video appearances for appearances of witnesses and parties at trials.
  - ◆ Providing video remote interpreting where in-person interpreters are not available.

**RATIONALE FOR THE  
RECOMMENDATIONS**

**SMALL CLAIMS PROCEDURES**

The Futures Commission's recommendations relating to small claims focus on making the courts more accessible by increasing education and facilitating self-help efforts and using technology to allow small claims parties to conduct their court business remotely. Travel costs, work absences, and other costs associated with attending a court hearing can deter self-represented parties from filing or defending actions, particularly in small claims court, where no counsel are permitted. Allowing parties to appear remotely, by phone or video, can ease these burdens.<sup>14</sup>

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*If more cases come within  
the ambit of the existing  
economic litigation procedures,  
the cost of litigation  
could be reduced and  
public access increased.*

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The Futures Commission also recommends providing online ADR, either as an alternative or adjunct to in-person ADR. Currently, courts in British Columbia, Canada, are working on both aspects of dispute resolution for small claims courts. An ADR program is already in place<sup>15</sup> and a separate online civil resolution tribunal is under development.<sup>16</sup> In Southern California, small claims advisors for two different courts (the Legal Aid Society of Orange County and the Department of Consumer and

Business Affairs in Los Angeles County) are developing or using online ADR for small claims cases and other cases involving lower dollar amounts. Like the British Columbia system, the programs allow the settlement attempts through online communications, asynchronous e-mail or text messaging, or live chat. The parties may also seek assistance from mediators via video remote appearance technology. These options allow parties to resolve their own cases without having to go to the courthouse to do so.<sup>17</sup>

### CHANGING JURISDICTIONAL LIMIT FOR LIMITED CIVIL CASES

The Futures Commission's focus on changing the limited case jurisdictional limit takes into account the changes in the value of the dollar since jurisdictional amounts were last increased in 1986. If more cases come within the ambit of the existing economic litigation procedures, the cost of litigation could be reduced and public access increased.

Changing the jurisdictional limit can also result in efficiencies for the courts. Because more cases would be subject to these provisions, in-person case management conferences would not be required (see California Rules of Court, rule 3.722(e)), and expedited jury trial rules will apply, resulting in smaller juries and less time for jury selection and deliberation (Code of Civil Procedure section 630.02).

### THE NEW INTERMEDIATE CIVIL CASES TIER

Providing a new tier for cases between \$50,000 and \$250,000 reflects the changing value of the dollar over the years, but more importantly, reflects an attempt to slow the increasing cost of litigation. While it is difficult to calculate the cost of litigation, one study shows that the *median* cost for attorney and expert witness fees on an

automobile case through trial is \$43,000;<sup>18</sup> for a premises liability case, \$54,000; for a real property case, \$66,000; for an employment case, \$88,000; for a contract case, \$91,000; and for a malpractice case, \$122,000.<sup>19</sup> That study also found that, while the trial itself is the most time-intensive stage of litigation, discovery is the second most time-intensive stage by far. Moreover, because almost 80 percent of unlimited civil cases resolve before trial,<sup>20</sup> the time spent in discovery is the major generator of litigation costs. Reducing the time spent on discovery and trial could reduce the cost of litigation as well as provide speedier resolutions. The intermediate tier is designed to ensure that discovery for cases is proportional to the value of the case.

### RECOMMENDED DISCOVERY REVISIONS

The proposed requirement that each party make an initial disclosure of factual information and key documents is a significant change in how discovery currently occurs in California. It will have less impact in limited cases than in higher-value and intermediate tier cases, but will be significant in all case types. The key is that the parties will be provided with more information about the other side's claims without having to initiate formal discovery requests. This shift will reduce costs and permit both sides to evaluate cases early in the process.

This proposal is broader than Federal Rule of Civil Procedure 26(a)(1) initial disclosure rules. It would require the *production* of documents, not merely their description. The majority of attorneys surveyed nationally have not found that the federal description provision reduced discovery or saved clients' money. However, Arizona requires more extensive initial disclosures, including documents. A survey of lawyers using Arizona's procedures produced



far more positive results.<sup>21</sup> The proposal is also in line with the recommendations recently made to the Conference of Chief Justices by the Civil Justice Improvements Committee, which include recommendations for robust mandatory initial disclosures followed by tailored, proportional discovery.<sup>22</sup>

In 2011, the State of Utah developed an approach similar to the one proposed here. Utah's rules provide that proportionality is the key principle governing discovery. They mandate comprehensive initial disclosures, including documents and physical evidence, and provide for tiered amounts of discovery based on the amount in controversy.<sup>23</sup> A recent study of the impact of these rules found that for cases in which an answer was filed, the "revisions have had a positive impact on civil case management in terms of both reduced time to disposition overall, and decreased frequency of discovery disputes in non-debt collection and non-domestic cases."<sup>24</sup> The study concluded that the increase in discovery disputes in smaller debt collection cases following the new initial disclosure requirements might "confirm judicial beliefs that these types of cases are now being litigated on a more even playing field between collection agencies and debtors—a positive effect."<sup>25</sup>

A similar mandatory exchange of information was included in a Colorado court pilot project to simplify civil procedure and decrease discovery costs in civil cases with claims under \$100,000. In that project, the comprehensive initial exchange was the *only* discovery provided unless the parties agreed to more. Project evaluators concluded that the exchange definitely controlled discovery costs, and would be more fully effective if opt-outs were not permitted. Litigants noted that a limited amount of targeted discovery in addition to the initial exchange would aid in more efficient resolution either by settlement or dispositive motion.<sup>26</sup>

The proposal here takes both of those factors into account: mandating the initial exchange in all limited and intermediate civil cases, but also allowing some further discovery in proportion to the size of the case.<sup>27</sup>

The proposal here would also allow for parties to seek expansion of the limits on discovery where good cause exists.

### EXPERT WITNESSES

The limitation on the number of experts in the new intermediate tier is a further attempt to achieve proportionality. As with the other proposed limitations, a party would be able seek expansion of the limit for good cause.

For experts in cases involving claims over \$1 million, the proposal includes a new requirement: to prepare a report with more detailed disclosure of opinions and supporting facts. This, along with a longer time interval between disclosures and deposition deadlines in all unlimited cases, is intended to make expert witness depositions more efficient. Because of the expense involved in preparing such reports, this requirement is proposed only for higher-value cases.

### REMOTE APPEARANCES

Technology can provide a less expensive and more effective way for parties and counsel to make court appearances. Statutes and rules of court currently permit granting a request for telephonic appearances at nonevidentiary hearings in most civil cases including unlawful detainer and probate matters, unless a court finds good cause to require a personal appearance.<sup>28</sup> This rule should be expanded to include video appearance and to permit remote appearances at trials and evidentiary hearings in all civil tiers.<sup>29</sup> Remote



appearances when appropriate can substantially reduce costs.

## OTHER RECOMMENDATIONS

- Providing procedural checklists to the parties in limited cases will significantly assist SRLs. Better education for SRLs should produce fewer missed deadlines and hearings on Orders to Show Cause. Most checklists could be developed on a statewide basis by the Council, permitting courts to tailor them as needed.
- As noted above, most limited cases are subject to mandatory expedited jury trials. (Code of Civil Procedure section 630.02.) Currently, unlawful detainers are exempted from this requirement, even though they result in more jury trials than any other type of limited civil case.<sup>30</sup> Including these cases under the provisions of the mandatory expedited jury trial statute would reduce party cost and increase court efficiency.
- Robust case management conferences, held early in the case, are useful tools for expediting the litigation process.<sup>31</sup> However, resource and budget constraints can limit a court's ability to provide such conferences. Therefore, this recommendation retains existing case management rules. For limited cases, this approach allows judicial review of the case management conference statements without requiring the parties to attend a conference. (California Rules of Court, rule 3.720(e).) In intermediate or unlimited cases, conferences should generally be held, unless the court decides not to do so.<sup>32</sup> Telephonic and video appearances should be permitted for such conferences.
- Another area of focus is the use of ADR. In recent years, many courts were forced to reduce or even eliminate court-provided ADR programs due to fiscal constraints. Although such programs may increase court expenditures, they also offer long-term benefits for both the courts and the parties. ADR programs help to resolve cases more quickly, reduce court workloads, save litigants' time and money, and improve user satisfaction with court services.<sup>33</sup> ADR programs also fulfill standard 10.70(a) of the California Standards of Judicial Administration, which provides that all trial courts should implement mediation programs for civil cases as part of their core operations. The most effective and efficient type of ADR differs among case types. While day-of-trial mediation or an online settlement negotiation program may be most effective in small claims cases, earlier neutral evaluation or mediation may be more effective in other cases, avoiding unnecessary discovery or dispositive motions. Settlement discussions are critical aspects of effective case management.
- To ensure that the jurisdictional amounts remain in step with inflation, the Council should charge its Civil and Small Claims Advisory Committee with reviewing the jurisdictional limits of the civil tracks every five years, and recommend whether higher limits should be sought based on changes in the value of the dollar and any other relevant factors.

## COSTS TO IMPLEMENT

Some of these recommendations will require expenditure of both time and resources and could result in some loss of revenue. For example, as noted above, increasing the jurisdictional amount for limited cases would result in more cases included at the lower filing fee rate.<sup>34</sup> Some implementations will require changes to the court case management system with commensurate costs for programming changes. Allowing for video remote appearances would require more video equipment, as discussed further in *Chapter 5: Technology Recommendations*. Developing and maintaining statewide checklists and flow charts for parties in limited civil cases will require efforts by Council staff and advisory committees, and possibly input from experts in this area.

Returning ADR programs to their prior status and expanding them will require a return to higher levels of funding. In years past, courts were able to seek grants from funds overseen by the Council to directly support superior court ADR programs for civil cases. From 2008 to 2011, funds in the amount of \$1.74 million a year were made available to courts, with up to \$7,500 for a planning project and up to \$100,000 to implement or maintain a new mediation or settlement program or to maintain or improve an existing program.<sup>35</sup> Similar funds would be required to return ADR programs to prior levels and refocus them in light of the increasing number of SRLs.

Online ADR programs can be less costly than in-person programs, but will still require funding.<sup>36</sup> The ADR program in Orange County is being developed under a \$150,000 Technology Initiative Grant from Legal Services Corporation. That program, created with the assistance of the Justice Education Society of British Columbia, will include the use of volunteer mediators. They

will be trained by a community mediation group funded from civil filing fees. Online ADR programs could also be good candidates for the Council's Court Innovations Grant Program, should that program continue over the coming years. For long-term stability, funding should be made part of the judicial branch budget and provided on an ongoing basis rather than through grants.

## PUBLIC COMMENT

### CHANGES TO JURISDICTIONAL AMOUNTS

Commenters were mostly opposed to raising the small claims jurisdictional amount. These cases are often handled by temporary judges, without a jury trial or assistance of counsel. The Futures Commission is not recommending an increase in jurisdictional limits at this time.

Comments received on increasing the limited jurisdiction amount to \$50,000 were few and mixed. The California Commission on Access to Justice approves of the increases and the proposed discovery changes for limited cases. Some individual attorneys were opposed.

### NEW INTERMEDIATE TIER AND DISCOVERY CHANGES

Many who provided comments on the new intermediate tier, including the California Chapters of the American Board of Trial Advocates, either agreed with the concept or did not formally oppose it. Many were interested in working on the details of implementation. However, some commenters, including the Consumer Attorneys of California and some individual attorneys, opposed specific discovery limitations and changes regarding experts. Others raised concerns about implementation in noneconomic cases. The Futures Commission revised the original concept and



proposes expert witness reports only in cases with claims over \$1 million.

Some Commission members expressed concern that permitting summary adjudication of facts in unlimited civil cases would increase litigation costs and burden the courts. The majority were satisfied this type of motion will facilitate settlements and narrow the scope of trials. To minimize any disadvantages, this type of motion would be limited to one per case and to material facts.

As noted above, it will be critically important to work with stakeholders concerning the details of all proposals to ensure fair implementation.

## FEASIBILITY OF BRANCHWIDE IMPLEMENTATION AND PILOT PROGRAMS

It is envisioned that these this recommendations will be most effective if implemented statewide. However, they represent major changes in the judicial branch and might be better tested on a pilot basis. Participation by one or more large, medium, and small counties would provide data on effectiveness and identify areas where further changes might be appropriate.

Any implementation would require the following statutory changes:

- Permitting video remote appearances by parties and witnesses in small claims trials will require amending Code of Civil Procedure section 116.520 (regarding presenting evidence at trial) or some other provisions within the code.
- Increasing the limited jurisdiction amount will require amendments to Code of Civil Procedure sections 85 and 86.
- Amending the discovery provisions in limited cases to require an initial exchange

of documents and information will require amending Code of Civil Procedure sections 93 through 95, and possibly others.

- Requiring that parties in limited civil action be provided checklists or other information about case processes will require a new rule of court.
- Including trials in limited unlawful detainer cases within the mandatory expedited jury trial procedures will require amendments to Code of Civil Procedure section 630.02 and to the rules of court.
- Adding a new intermediate tier will require new statutory provisions similar to Code of Civil Procedure sections 85 and 86 for limited cases, along with new statutes delineating applicable procedures and discovery limits similar to Code of Civil Procedure sections 90 et seq., and revised filing fees.
- Amending the provisions regarding the timing and content of expert witness disclosures and discovery as well as motions for summary judgment in unlimited cases will require amending several sections in the Code of Civil Procedure.
- Providing for expanded video remote appearances will necessitate either a new code section or amendments to the current provisions regarding telephonic appearances.

Legislative authority would be needed for a pilot program, but the statutory change would not be as extensive.

Provision of online or other types of ADR programs by an individual court would not require any legislative or rule change, and could be implemented by courts across the state if funding is provided.



The Orange County and Los Angeles County online ADR programs are essentially functioning as pilot programs now. Evaluation of those programs over the next few years should provide more information as to whether specific rules regarding oversight of such programs should be developed.

The factors to consider in measuring success in a pilot program are best left to those who implement the proposal. However, the Futures Commission offers the following as potential factors to evaluate.

For small claims:

- **Online ADR programs:** Compare the number of parties using the program with the rate of cases being resolved before trial, and measure the level of parties' satisfaction.
- **Video remote appearances:** Consider the number of parties choosing to take part in such a program and the level of satisfaction for the parties and judicial officers.

For limited civil cases, track:

- The number of filings of limited cases
- The number of defaults
- The time to complete discovery in limited cases
- The time to disposition of cases in limited cases
- The cost of discovery
- The satisfaction levels of parties, attorneys, and judicial officers with changes in discovery rules

For new intermediate tier cases, track:

- The number of cases filed in the new tier
- The number of pretrial appearances compared to unlimited cases
- The time to complete discovery compared to unlimited cases
- The time to case disposition compared to unlimited cases
- The cost of discovery
- The satisfaction levels of attorneys and judicial officers

## CONCLUSION

The rising cost of litigation has outpaced the value of cases and has resulted in fewer cases being resolved based on their merits. These changes erode the public's access to justice and confidence in the judicial process. Amending civil case procedures to reduce costs and improve court efficiencies is a step toward improving access to justice statewide and in assisting the growing number of SRLs attempting to navigate an overwhelming court system.

**RECOMMENDATION 1.2:**  
INCREASE AND IMPROVE  
ASSISTANCE FOR  
SELF-REPRESENTED  
LITIGANTS

Civil litigation across America is changing, with more parties coming to court on their own. As the National Center for State Courts (NCSC) recently concluded, “The idealized picture of an adversarial system in which both parties are represented by competent attorneys who can assert all legitimate claims and defenses is an illusion.”<sup>37</sup> While this observation has long been true in family law cases, it is increasingly so in other civil matters as well. Figures from a 2013 NCSC survey show that there were self-represented litigants (SRLs) in over 76 percent of civil cases nationally.<sup>38</sup> A 2003 California survey showed that the SRL rate in unlawful detainers was 34 percent, and up to 90 percent if landlords were excluded from the count. In some other types of civil litigation the rate was as high as 50 percent.<sup>39</sup>

Today, most of the civil cases in which SRLs appear and the great majority of civil cases overall have a low monetary value. The 2013 NCSC survey of civil courts shows that the average judgment obtained in all civil cases was \$10,000.<sup>40</sup> The California experience is similar. Seventy-five percent of civil cases filed in fiscal year 2014–2015 involved claims of under \$25,000, with most claims under \$10,000.<sup>41</sup> Given the proliferation of lower value cases and the increasing cost of litigation, it is not surprising that more parties are unable to afford attorneys and are forced to represent themselves. This is particularly true in unlawful detainer and small debt collection matters.

Although the case values are low, the legal processes are not simple, making self-representation challenging. SRLs face a variety of challenges, including the technicalities of specialized legal language, applicable rules and procedures, complex requirements for notice and proof of service, and procedural rules that vary among types of cases. SRLs’ lack of knowledge of due dates and filing timelines can cause them to be unprepared and to incur unnecessary, time-consuming continuances or outright dismissal of their cases. Also, SRLs frequently do not understand court orders or how to enforce them. These barriers can inhibit



informed decisions about cases or the forfeiture of meritorious claims and defenses.

The inability to afford legal representation should not preclude litigants from obtaining justice. The challenge is to make sure the courts are accessible to all. As the neutral adjudicator, the court is not in a position to advise or represent SRLs. However, the court system does have a role in ensuring that SRLs are provided with the knowledge necessary to better represent themselves. This approach not only provides more meaningful access for SRLs, but also allows courts to run more efficiently and effectively, enhancing the experience and just outcomes for all court users.

The Futures Commission recommends:

1. Developing an early education program for SRLs in small claims and civil cases where SRLs are most common (i.e., unlawful detainers, small-value debt collection, automobile accidents, and employment cases).
2. Creating a Center for Self-Help Resources (Resource Center).

## BACKGROUND

Currently, there are limited resources to help SRLs. The “Equal Access” webpage on the California Courts website, maintained by the Judicial Council (Council), includes video tutorials and instructional materials, access to “smart” forms (automated document assembly), and assistance in creating self-help programs.<sup>42</sup> However, it is a static webpage and infrequently updated. Council staff also assist with various partnership projects between courts and legal services providers, but again resources are insufficient to provide adequate assistance to this important population.<sup>43</sup>

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*“The idealized picture of an adversarial system in which both parties are represented by competent attorneys who can assert all legitimate claims and defenses is an illusion.”*

National Center for State Courts  
*The Landscape of Civil Litigation  
in State Courts*

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This is particularly true in areas beyond family law and restraining orders.

Having a structure to help SRLs navigate court processes benefits both courts and litigants. In 2004, the Council adopted a *Statewide Action Plan for Serving Self-Represented Litigants*. This plan recognized that court-based assistance should be a core function. It included a recommendation for court-based self-help centers in each court. In 2008, the Council adopted a rule of court identifying court-based assistance to SRLs as a core court function. (California Rules of Court, rule 10.960.) *Guidelines for the Operation of Self-Help Centers in California Trial Courts* were issued by the Council that same year and reaffirmed in 2011. While there are now self-help centers in courts throughout the state, only about a quarter of the necessary funding has been made available.<sup>44</sup>

Currently, due to fiscal issues, self-help centers have been consolidated with the family law facilitators and provide help primarily in family law matters, restraining orders, and occasionally guardianships or conservatorships. While some



provide assistance with small claims and unlawful detainers, only a few provide any assistance in other civil matters.<sup>45</sup>

## RECOMMENDATIONS

The Futures Commission recommends:

1. Developing an early education program for SRLs in small claims and civil cases where SRLs are most common (i.e., unlawful detainers, small-value debt collection, automobile accidents, and employment cases).
2. Creating a Center for Self-Help Resources.

### EARLY EDUCATION PROGRAMS

Early education can help litigants understand how cases are generally processed and the basic substantive laws relating to their cases. SRLs can become better informed in a manner becoming increasingly common: online, 24 hours a day. Elements of this recommendation include:

- Developing an education program for SRLs in small claims and civil cases, designed to be completed before the case is filed or within 30 days of filing a complaint or answer.
  - ◆ The program should be available online, via video and text. It should be integrated with smart complaint and answer forms that can be completed online, or at courthouse kiosks for those without access to technology.<sup>46</sup>
  - ◆ It is not recommended that this program be mandatory, but should be strongly encouraged in an information sheet provided to all SRLs at the time the case is filed and served.
  - ◆ If possible, incentives should be provided for completing the program within a

certain time frame (e.g., early trial preference or early neutral evaluation).

- ◆ Course curriculum for this program should include available alternative dispute resolution processes, an overview of civil procedure, and requirements for parties before, during, and after trial. Flow charts of the steps required to proceed to trial would be particularly helpful and should be given to every party at the time of filing or service.
- Developing additional targeted information for high-volume case types (unlawful detainer, auto accident, consumer debt collection), including checklists for pleadings and the mandated exchanges of information recommended in this report.
- Developing virtual self-help centers with “real-time” interaction via chat or telephone support<sup>47</sup> as well as access to electronic resources like video tutorials and online clinics.
- Developing a summary of resources available within the courts and the local community.
- Developing targeted education partnerships with law libraries, law schools, local bar associations, volunteer attorneys, and legal services organizations.

### CENTER FOR SELF-HELP RESOURCES

The branch should also consider the creation of a Resource Center to increase the scope of SRL services, expanding services currently provided by the Center for Families, Children, and the Courts. Resource Center activities should include the following:

- Coordinating and convening self-help providers throughout the state, and facilitating relationships with local courts.<sup>48</sup>
- Connecting with established community organizations that currently provide services to SRLs and others.
- Developing and publishing best practices and guidelines for providing SRL assistance in all civil cases.
- Providing substantive and technical assistance to courts implementing programs and technology for self-help tools.
- Providing ongoing expertise to support court self-help centers.
- Maintaining, updating, and expanding the California Courts Online Self-Help Center to provide 24/7 assistance to SRLs.
- Developing and maintaining interactive self-help programs, such as the early education programs recommended in this report.
- Developing and maintaining online support for e-filing modules as they are implemented by the courts, including online chat or telephone support.
- Developing an online small claims advising program for courts unable to support in-person small claims assistance, integrating website e-filing, online chat, and telephone support.
- Developing training programs and materials for non-lawyer facilitators to help SRLs in self-help centers or elsewhere.
- Creating a virtual clearinghouse of self-help resources covering all applicable case types.
- Maintaining and updating the “Equal Access” webpage on the California Courts website by providing self-help materials, videos, and other online resources.
- Providing language access information and assistance for self-help providers.

## RATIONALE FOR THE RECOMMENDATIONS

### BENEFITS AND EFFICIENCIES ACHIEVED FROM EARLY EDUCATION PROGRAMS

Most SRLs do not choose to go to court without counsel, but are forced to do so by economic realities.<sup>49</sup> Addressing some of the barriers faced by SRLs is challenging, but well worth the effort. Judicial officers and court staff can do their jobs more effectively and efficiently when litigants understand the process and correctly prepare filings. In many cases, courts experience long lines at front counters as SRLs try to file documents, only to be turned away when the filing is incomplete or procedurally improper. In many cases, these parties appear repeatedly. In many situations, SRLs and the courts may experience continuances and clogged calendars when litigants are unaware of legal requirements or unprepared for the proceedings. This is especially troubling when litigants have taken time off from work or incurred childcare expenses, only to be told to come back for a future hearing. SRLs frequently misunderstand orders and judgments, leading to unnecessary motions and needless appeals.

Providing critical information and support early in the process allows outcomes based on the merits unhindered by procedural mistakes. This also reduces the court workload and allows for more efficient case processing. Research on self-help efforts in family law matters has shown that providing services through one-on-one interaction with SRLs can save an average of 5 to 15 minutes of hearing time for every hearing held in the case, and one to one-and-a-half hours of court



staff time related to providing assistance to SRLs and to reviewing and rejecting judgments.<sup>50</sup> The most effective information is provided in multiple modalities: in person, telephonic, and online support, available 24 hours a day, seven days a week. Many SRLs have jobs or family responsibilities. Providing self-help assistance onsite during court operating hours is not effective in reaching this population.

Recommendations to the Conference of Chief Justices urge that litigants in high-volume civil cases “have access to accurate and understandable information about court processes and appropriate tools such as standardized court forms and checklists for pleadings and discovery requests.”<sup>51</sup> The Institute for the Advancement of the American Legal System recommends that courts “increase availability of targeted self-help resources,” “explore virtual and innovative means of delivering self-help resources,” and “facilitate litigant awareness of available resources.”<sup>52</sup>

### **BENEFITS AND EFFICIENCIES ACHIEVED FROM THE RESOURCE CENTER**

The Resource Center will be particularly beneficial for smaller courts with reduced staff and resources.<sup>53</sup>

In 2004, the Council’s Task Force on Self-Represented Litigants made three key findings in this area:

1. Court-based, staffed self-help centers, supervised by attorneys, are the optimal way for courts to facilitate the timely and cost-effective processing of SRL cases.
2. It is imperative for efficient court operation that well-designed strategies to serve SRLs and effectively manage their cases are incorporated and budgeted as core court functions.
3. Partnerships between the courts and other governmental and community-based legal and social service organizations are critical to providing the comprehensive services needed.<sup>54</sup>

As the number of SRLs increases, so does the need to effectively provide assistance while easing the corresponding demands on court time and resources. The implementation of a holistic approach to provide education and access will help SRLs navigate the litigation process. At the same time, providing courts with significant technical assistance will maximize the efficient use of administrative and judicial resources.

## **COSTS TO IMPLEMENT**

### **EARLY EDUCATION PROGRAMS**

The primary costs for education programs stem from the development of videos or interactive educational programs to be embedded in court webpages. Several such videos would be appropriate. Depending on the topic and issues covered, the videos will range from a single 15- or 30-minute piece or shorter videos on different aspects of litigating civil cases. Videos should be developed for limited and intermediate civil actions. They should cover the major types of cases in which SRLs are most likely to appear: unlawful detainer, auto accident, consumer debt, and employment law cases. The cost for a 30-minute video would range from \$60,000 to \$65,000.<sup>55</sup>

The additional work needed to implement the early education programs, including the development of and assistance with the updating of proposed smart forms and informational sheets, would be included within the work of the proposed Resource Center and the respective advisory committees.



## THE RESOURCE CENTER

Development of these programs will involve an investment by the judicial branch. A proposed staffing model<sup>56</sup> for the Resource Center would require current Council staff plus approximately \$1.5 million per year for new personnel. There would also be a one-time cost of approximately \$100,000 to convert the current self-help website to one enabled for mobile devices.

Development or expansion of self-help centers to provide the needed assistance will likely require additional funding. In 2006–2007, the Council conducted a survey of trial courts to assess the funding needs for fully staffed, civil self-help centers. The consolidated total yearly budget necessary to fully meet the needs of both the public and the courts was \$44,404,373. That level of funding has never occurred. Currently, state-wide funding for self-help centers in the courts is \$11,200,000 annually; courts also receive Assembly Bill 1058 funding for family law facilitators totaling \$15,040,301 annually.

Some courts fund self-help services from their local budgets, but many have been forced to reduce services due to significant reductions in funding. The self-help centers that exist are overcrowded and lack the means to expand. Once early education programs and new civil tiers are implemented, an evaluation of local needs based on case analytics and coordination with the services to be provided by the Resource Center should be conducted.

## PUBLIC COMMENT

Several groups and a few individuals commented on these proposals. The California Commission on Access to Justice, the Legal Aid Association of California, and the Legal Aid Foundation of Los Angeles support expansion of self-help services and increased funding for self-help centers. The legal services groups would like to be involved with the proposed Resource Center.

The California Judges Association (CJA) raised concerns about the funding needed to develop and support these programs. The CJA also questioned whether providing education to SRLs involves providing legal advice. The Futures Commission notes that assistance to SRLs, including providing information and education, has been recognized as a core court function. (See California Rules of Court, rule 10.960.) Courts do have to strike a balance between providing information and aiding a party in litigation. That balance is struck by providing general information rather than making specific recommendations on procedural or strategic choices in a particular case.

## SIMILAR PROPOSAL IMPLEMENTED ELSEWHERE

The Futures Commission studied several groups that furnish enhanced services to courts and self-help providers:

- *Center on Court Access to Justice for All*—An NCSC resource center offering information and assistance to advance access to justice, especially for low-income individuals. The center addresses a variety of areas including forms simplification and automation; accessible online information; e-filing; training of judges, clerks, and other court staff; using federal IV-D funding in child support cases; developing

a JusticeCorps volunteer program; setting up self-help centers or hotlines; and using pro bono assistance to help SRLs. See [www.ncsc.org/microsites/access-to-justice/home](http://www.ncsc.org/microsites/access-to-justice/home).

- *Sargent Shriver National Center on Poverty Law*—The Shriver Center provides national leadership to secure justice and improve the lives and opportunities for people living in poverty. Its work includes an Advocate Resources and Training Program that trains and connects equal justice providers nationwide to strengthen capacity and help drive systemic change. See <http://povertylaw.org/>.

## FEASIBILITY OF BRANCHWIDE IMPLEMENTATION

The early education programs could be developed on a statewide basis initially, then tailored to specific court procedures as courts choose to implement them. The Resource Center could oversee the development of the programs, with assistance from local self-help centers and input from pertinent Council advisory committees. The Resource Center itself would be, by definition, a statewide resource.

No specific legislation or rule-making is required to move this recommendation forward, although an increase in funding would be required.

Although factors for evaluating the success of the early education program would best be left to the group charged with implementing it, the Futures Commission suggests the following as potential factors for evaluation:

- Early education program measures:
  - ◆ Time from filing to case conclusion.
  - ◆ Number of hearings on discovery disputes.
  - ◆ Time consumed by trials or hearings.
  - ◆ Requests for relief from defaults.
  - ◆ Continuances necessitated by incomplete pleadings or failure to follow procedural requirements.
  - ◆ Number of defaults in consumer debt collection cases.
  - ◆ Level of satisfaction of SRLs and judicial officers.
- Resource Center evaluates:
  - ◆ Effectiveness of provider outreach activities, measured by meetings, webinars, conference calls, and other means connecting stakeholders, including local, statewide, and national legal services providers, law schools, law libraries, and court self-help centers.
  - ◆ Effectiveness of community outreach activities, measured by the number of contacts with established community organizations serving SRLs, including legal services providers and other community-based entities such as houses of worship, community-based hospitals, and social service programs.<sup>57</sup>
  - ◆ Breadth of technical assistance provided, measured by the number of technical assistance contacts with court-based self-help resource centers.
  - ◆ Effectiveness of technical assistance provided, measured by a survey of self-help center administrators.
  - ◆ Utilization of the online tools accessed through the California Courts Online Self-Help Center and “Equal Access” webpages, and other sources of assistance.



- ◆ Levels of satisfaction with courts and self-help centers, through a survey of court administrators, self-help center staff, and targeted bench officers adjudicating cases with numerous SRLs.
- ◆ Levels of satisfaction with legal services providers, measured through a survey of those who participate in the Resource Center convening activities and those using the center's online tools.

## CONCLUSION

Most civil cases in California's trial courts have a low monetary value and many have at least one self-represented party. The judicial process can be overwhelming for SRLs and challenging to navigate. Additional education programs for SRLs will allow them to make better-informed decisions and litigate their cases effectively. Implementing these recommendations will improve access to justice and increase court efficiencies, resulting in outcomes based on the merits of the litigation.

### RECOMMENDATION 1.3:

#### INTEGRATE BEST PRACTICES FOR COMPLEX CASE MANAGEMENT

Complex court case management techniques have demonstrably enhanced effective decision making and expeditious resolution of complex cases. During the nearly 15-year Complex Civil Litigation Program, judges in the six participating courts developed case management techniques, robust judicial management tailored to the needs of a particular case, sustained judicial supervision, and focused progress toward resolution. Using Judicial Council (Council) funding under an allocation from the State Trial Court Improvement and Modernization Fund, the six courts handled these cases in courtrooms devoted solely to complex litigation. Judges participated in annual training presented by the Council's Center for Judicial Education and Research (CJER). Complex cases continue to be filed in large numbers. (See the following *Number of cases* section.) With the funding allocation no longer available, however, there is a greater need to make complex case management techniques and other strategies developed by the participating courts available to judges in other courts that may occasionally have complex cases. This can be done through continued judicial education and by providing written materials in an online repository.

Although complex cases are more often filed in large courts and assigned to dedicated departments, they are sometimes filed in small- and medium-sized courts. To address these issues, the Futures Commission recommends:

1. Establishing and maintaining an online centralized repository and educational resource for effective management of complex litigation.
2. Establishing and maintaining a listserv, or an electronic mailing list, of judges who frequently handle complex cases, allowing communications among courts.
3. Continuing to provide judicial education in complex case management.



## BACKGROUND

A complex case is defined in the California Rules of Court as “an action that requires exceptional judicial management to avoid placing unnecessary burdens on the court or the litigants and to expedite the case, keep costs reasonable, and promote effective decision making by the court, the parties, and counsel.” (California Rules of Court, rule 3.400(a).) Because complex cases ideally require exceptional judicial management beyond that in more common civil cases, many judges have not developed expertise in the area. In small courts, complex case filings are rare, and in large courts, the bulk of complex cases are often assigned to a small number of judges. A judge unfamiliar with complex case management would greatly benefit from resources to help effectively manage the case.

A complex case must first be identified. The criteria for designating an action as a complex case are listed in rule 3.400. Such a case is likely to involve:

- Numerous pretrial motions raising difficult or novel legal issues that will be time-consuming to resolve;
- Management of a large number of witnesses or a substantial amount of documentary evidence;
- Management of a large number of separately represented parties;
- Coordination with related actions pending in other counties, states, countries, or federal courts; or
- Substantial postjudgment judicial supervision. (California Rules of Court, rule 3.400(b).)

Specific types of cases are identified as provisionally complex—absent a judicial determination that a particular case does not so qualify. Provisionally complex cases have claims that involve the following:

- Antitrust or trade regulation claims;
- Construction defect claims involving many parties or structures;
- Securities claims or investment losses involving many parties;
- Environmental or toxic tort claims involving many parties;
- Claims involving mass torts;
- Claims involving class actions; or
- Insurance coverage claims arising out of any of the claims listed directly above. (California Rules of Court, rule 3.400(c).)

A judicial determination of complexity is made after a party designates a case complex, or a court on its own motion decides that an action is complex. (California Rules of Court, rules 3.401, 3.402, and 3.403.) In many courts, a complex case remains in the pool of unlimited civil cases. It may or may not be individually assigned to a judge and may or may not receive specialized management.

When a complex case is not actively managed, it will not be expeditiously resolved and it is likely to affect a court’s overall efficiency. An “unmanaged” complex case can demand significant time on the law-and-motion calendar, to the detriment of all civil cases. Providing the tools and resources for active complex case management benefits all courts and court users.

## HISTORY OF THE COMPLEX CIVIL LITIGATION PROGRAM

The Complex Civil Litigation Program began in 2000 and included six courts. It was designed to give judges training and resources to manage complex civil cases effectively and efficiently. Participating courts agreed to have one or more courtrooms dedicated solely to complex cases; provide trained and experienced judges and appropriate support staff; employ advanced technology to achieve prompt, cost-effective, and fair resolutions; and apply an appropriate case management infrastructure. The program was established largely in response to a study of business leaders, judges, and attorneys examining whether specialized courts should be created for business cases. The study concluded that a better approach would be to enable courts to handle a broader range of public disputes and be responsive to periodic fluctuations in caseloads. Thus, the Complex Civil Litigation Program was created. Simultaneously, the Council approved the following:

- Distributing the *Deskbook on the Management of Complex Civil Litigation* to all judges and charging the Council's Civil and Small Claims Advisory Committee with ongoing responsibility for updating the deskbook.
- Providing a special judicial education curriculum on complex civil case management.
- Adopting new California Rules of Court, effective January 1, 2000, including a rule that defines a complex case.
- Amending relevant rules and seeking conforming legislation.

After a 2003 evaluation by the National Center for State Courts (NCSC), the Council approved

continuing the program and identified characteristics that should be present in participating courts: assignment of each complex case to a single judge to handle all aspects of the litigation; judges who have experience, interest, and expertise in handling complex civil litigation; innovative case management techniques; technology designed for

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complex cases; and additional experienced court personnel, including a dedicated research attorney for each department. These program characteristics were maintained in the six program courts until the program's funding allocation was discontinued at the end of fiscal year 2014–2015. Judicial education in complex litigation has been offered at least annually since establishment of the program and continues to be offered by CJER. It currently has spaces for 30 judges to attend. Participation is no longer restricted to judicial officers from the six original courts that participated in the program.



Any judicial officer may attend if she or he has a designated complex civil assignment or hears cases designated as complex under the California Rules of Court.

For a number of years, CJER maintained an online Complex Civil Litigation Toolkit. The complex toolkit provided an online repository for information to guide complex litigation management. Gradually it became difficult to obtain information for posting in the toolkit. The materials were limited and did not include bench aids, checklists, or case management resources specific to complex cases. Because there was very little traffic to the webpage, CJER dismantled the complex toolkit and migrated the articles into the general civil law toolkit in July 2015.

### FUNDING MATTERS

During the last years of the program, a total of \$4 million was allocated to the six participating courts. The funding is no longer available, but the six courts have continued to operate complex litigation departments, demonstrating the value of having courtrooms and judges dedicated to complex case management.

### NUMBER OF CASES

Based on an extrapolation from the total amount of complex case fees collected,<sup>58</sup> there are about 4,000 to 6,000 complex cases filed in California courts annually.<sup>59</sup> Figure 1 below shows the totals for all courts.

Total filings for the five-year period numbered more than 23,000. There is no indication that the number of complex cases will decrease in the near future. Complex case filings are numerous and are filed in 52 out of the 58 trial courts. Of the 17 courts with between 6 and 15 judges, all have complex cases in their caseloads. The five-year total for these courts is 625, for a mean of 7 per court per year. This demonstrates the need for effective management of complex cases by judges around the state. Judges in the program during its 15-year run developed specialized tools and methods for management of complex civil litigation and a body of expertise. Judges in dedicated complex litigation departments continue to do so. That knowledge can and should be shared.

### RECOMMENDATIONS

The Futures Commission recommends:

1. Establishing and maintaining an online centralized repository and educational resource for effective management of complex litigation.
2. Establishing and maintaining a listserv, or an electronic mailing list, of judges who frequently handle complex cases, allowing communications across courts.
3. Continuing to provide judicial education in complex case management.

**Figure 1: Complex case filings in California trial courts**

2011-2012	2012-2013	2013-2014	2014-2015	2015-2016
4,518	5,908	4,365	4,042	4,559

## RATIONALE FOR THE RECOMMENDATIONS

### THE COMPLEX CASE REPOSITORY WILL ASSIST JUDGES IN SHARING BEST PRACTICES AND BENEFIT THE COURTS AND COURT USERS

The 4,000 to 5,000 complex cases that are filed annually in California courts need active management to expedite cases, reduce costs, and promote effective decision making by the courts, parties, and counsel. Establishing a repository of current materials on complex case management will help achieve these outcomes. Judges with experience in managing complex litigation will be the main contributors to the repository. Judges new to the area can access the repository to locate orders governing case management, discovery, coordination of multiple cases, and other specialized topics, including class certification and approval of class settlement. Templates, outlines, and editable orders will be available for tailoring to specific case needs.

The repository could be located on the Judicial Resources Network, a password-protected website for judges and court professionals containing judicial toolkits developed by CJER, a variety of reference materials, and links to other resources and websites.

### A LISTSERV OF JUDGES WILL FACILITATE COMMUNICATIONS

The listserv would be a judges-only network with safeguards to limit access to ensure that a judge does not participate in a discussion regarding a case from which he or she is or would be recused. Judges who do not regularly handle complex litigation could seek advice through the network as well.

### ONGOING EDUCATION IN COMPLEX LITIGATION

Judicial education is a necessary and important complement to written materials. Current CJER civil education courses in introductory and advanced complex case management should be maintained and expanded.

### OTHER RESOURCES FOR MANAGING COMPLEX LITIGATION

Existing resources on complex case management include the Federal Judicial Center's *Manual for Complex Litigation* guides, the National Judicial College's *Resource Guide for Managing Complex Litigation*, and the Council's *Deskbook on the Management of Complex Civil Litigation*. The deskbook is updated annually by the Council's Civil and Small Claims Advisory Committee and published by LexisNexis. It is available in loose-leaf book form and online to LexisNexis subscribers.

The repository would differ from and complement these three benchbooks by offering current content that is used in California courts. It could be updated more frequently than the benchbooks and include a variety of case management approaches from different judges. The repository would include a current roster of California judges experienced in complex litigation who are willing to be resources for judges new to this area.

### COSTS TO IMPLEMENT

Regularly maintaining the repository will be crucial to its utility. Materials based on statutes, rules, and case law will be most useful if they are recently drafted. Maintenance will require the assignment of Council staff. All materials posted to the repository website should be dated so the user can check for subsequent developments in statutes and case law. Judges and research



attorneys who submit materials for posting will be encouraged to provide updates to content. It may be helpful to establish criteria for when materials should be removed or updated. Automated methods can be used to identify outdated content.

The proposed repository would require staff to (1) identify those judges sitting in complex assignments or hearing complex cases, (2) actively seek materials for posting, (3) coordinate material review, and (4) periodically monitor the materials to ensure that they remain legally accurate. In addition, web content staff would be involved in constructing and posting to the website. CJER has recommended that a consultant attorney be hired to oversee the implementation of the repository over an estimated six-month period. The estimated cost is \$72,500.<sup>60</sup> The estimated cost for web content staff to assist in constructing the repository is \$13,140.<sup>61</sup> Ongoing maintenance for the repository is estimated to take two to four weeks per year and would be absorbed by current staff.

An alternative approach would be to model the repository after CJER's section of the website called "By Judges For Judges," where judges share information. CJER staff do not review or vet the materials, nor do CJER attorneys update and maintain the materials. Typically, the judges who submit the materials are responsible for their maintenance. With this approach, Council staff would do steps (1) and (2) outlined above, ensure that materials include a submission date, and create a toolkit of judicially created resources. New materials could be solicited at educational programs and content would be purged periodically. This option would require a current staff attorney to dedicate between 20 and 40 hours, costing approximately \$3,565. Ongoing maintenance would be minimal and would be absorbed by current staff and added to the workload.

## PUBLIC COMMENT

Strong support is anticipated from judges in complex assignments who are generous in sharing techniques and practices they have developed. Judges who only occasionally have complex cases in their caseloads welcome information from those more experienced. The Futures Commission also expects support from the Trial Court Presiding Judges Advisory Committee. During the public comment session, a prominent plaintiffs' attorney provided a written comment, expressing, "A standard set of rules and a standard set of educational materials would provide great benefit to those handling complex cases." He further stated the view that both judges and lawyers should participate in the development of this concept and be able to access the repository. The president of the California Chapters of the American Board of Trial Advocates expressed interest in the concept. He suggested that early identification of legal issues for resolution in a limited evidentiary hearing could reduce the complexity of cases.

## FEASIBILITY OF BRANCHWIDE IMPLEMENTATION

The repository would be implemented through either the Judicial Resources Network or CJER Online. A pilot is not necessary. All information can be effectively disseminated statewide.

The launch of the repository should be accompanied by communications to all courts describing its purpose, summarizing its content, and promoting its use. After the repository has been operational for six months to a year, its success can be measured through data analytics and surveys. All CJER courses ask participants to evaluate the course. Participants can also be asked to evaluate the repository.

## CONCLUSION

Complex civil cases differ vastly from typical civil matters and require “exceptional judicial management to avoid placing unnecessary burdens on the court or the litigants and to expedite the case, keep costs reasonable, and promote effective decision making by the court, the parties, and counsel.”<sup>63</sup> Many large courts are able to manage these cases effectively with a dedicated complex litigation department presided over by an experienced judge. This is not the case in small- and medium-sized courts where complex matters are less common. Creating a repository where complex case management techniques can be stored and shared would allow judges and research attorneys to easily access and share information. Further, providing a listserv and education courses for judges encourages communication and ensures information is up-to-date and accurate.





## NOTES

### CHAPTER 1: CIVIL RECOMMENDATIONS

#### INTRODUCTION

1. Judicial Council of California, *2016 Court Statistics Report: Statewide Caseload Trends 2005–2006 Through 2017–2015* (2016), 90. In addition, the Budget Services office of the Judicial Council reports that 75% of the limited civil cases filed involved claims for under \$10,000.
2. National Center for State Courts (NCSC), *The Landscape of Civil Litigation in State Courts* (2015), iii.
3. *Ibid.*, 2 (time devoted to discovery is the primary cause of delay in the litigation process), citing C. Gerety, *Excess and Access: Consensus on the American Civil Justice Landscape* (Institute for the Advancement of the American Legal System (IAALS), 2011) (summarizing results of a survey of members of the American College of Trial Lawyers, the American Bar Association, Section of Litigation, and the National Employment Lawyers Association).
4. C. Gerety, *Excess and Access*, 9.
5. *Ibid.*
6. According to Judicial Branch Statistical Information System reports, in 2014–2015, as many as a third of limited civil cases had a self-represented defendant, with the numbers significantly higher in landlord-tenant cases. Almost 10% of the limited civil cases were brought by self-represented plaintiffs.
7. NCSC, *Call to Action: Achieving Civil Justice for All—Recommendations to the Conference of Chief Justices by the Civil Justice Improvements Committee* (2016), 4–5.

#### RECOMMENDATION 1.1: REVISE CIVIL CASE TIERS AND STREAMLINE PROCEDURES

8. No answer is required in small claims cases, no discovery is authorized, only bench trials are permitted, and hearings are held under relaxed rules of evidence and procedure. (Code of Civil Procedure sections 116.310–116.540.)
9. Special demurrers are eliminated, and motions to strike limited. Discovery by each party is limited to 35 written discovery requests in total, one deposition, and certain other discovery. Plaintiffs may use a case questionnaire to elicit fundamental factual information about the case. Either party may request pretrial exchanges of witness and exhibit lists. Parties may offer evidence by affidavits or declarations under penalty of perjury. (See Code of Civil Procedure sections 90–98.)
10. This value was calculated using the CPI Inflation Calculator from the Bureau of Labor Statistics, [www.bls.gov/data/inflation\\_calculator.htm](http://www.bls.gov/data/inflation_calculator.htm).
11. Using technology to facilitate the creation of digital records of court proceedings in limited, intermediate, and unlimited civil cases would also provide efficiencies in litigation for parties and the courts. That recommendation is addressed in more detail in *Chapter 5: Technology Recommendations*.
12. The proposal to provide video remote interpreting in all case tiers where no in-person interpreter is available conforms to the recommendations in the Judicial Council's *Strategic Plan for Language Access for the California Courts* (2015), recommendations 12–15. Recommendation 16 in that plan—to develop a pilot project for video remote interpreting—is currently being implemented by the Council's Information Technology Advisory Committee. See *California Judicial Branch Tactical Plan for Technology (2017–2018)*.





13. Many aspects of this proposal, including the provisions for simplified forms and checklists, mandated exchange of information early in the case, language assistance, and remote appearances, can be found among the recent recommendations to the Conference of Chief Justices. (See *Call to Action: Achieving Civil Justice for All*.) The recommendations for the multiple tiers here are generally consistent with those recommendations as well. Both sets of recommendations are intended to streamline processes to address the differential in court time and litigant expense appropriate in different types of cases. Under the proposal here, cases are initially assigned to a tier based on an amount in controversy, although a case may be moved to another tier for good cause. Under the recommendations to the Conference of Chief Justices, cases are assigned to different tiers based on a triage system in which each case is individually reviewed by the court upon filing.
14. This recommendation is in line with the recent recommendations made by the Civil Justice Improvements Committee to the Conference of Chief Justices. See *Call to Action: Achieving Civil Justice for All*, recommendation 13.4 (Judges should promote use of remote audio and video services for case hearings and case management meetings). It also aligns with the technology recommendations made by the Futures Commission.
15. Small Claims BC (British Columbia) Online Dispute Resolution, [www.smallclaimsbc.ca](http://www.smallclaimsbc.ca), is a web-based application providing parties with tools to help them settle online, without going to court. The program provides a secure, confidential web-based platform for online negotiation before any claim is filed. It also allows for mediation via video conference or telephone. If the parties reach an agreement, they can use the program to create a legal agreement, including payment terms and alternatives if the terms are not met.
16. British Columbia's online adjudication program, still under development, includes both online ADR and adjudication of cases, via a new court, the Civil Resolution Tribunal (CRT), [www.civilresolutionbc.ca](http://www.civilresolutionbc.ca). The CRT, with its own rules and decision makers, will be optional for all small claims cases (most cases under \$25,000) and mandatory for all "strata" (condominium homeowner association) cases. As currently proposed, the first CRT level, with no or minimal charge to the parties, is an online ADR program on a platform called the Solution Explorer. The second level, with a more traditional filing fee, provides online adjudication. The United Kingdom is also considering a similar program for small civil cases. See United Kingdom Civil Justice Council, *Online Dispute Resolution for Low Value Civil Claims* (Jan. 2015).
17. The Los Angeles County program has been fully operational for 24 months. The program administrator reports that during that time, 382 cases used one or more aspects of the program's online dispute resolution platform, including online messages exchanged through a mediator (no direct party contact); mediation with the parties together online via instant chat messaging; back and forth bids and counteroffers via text messaging; and video mediation. Almost 85% of the cases that entered the program were resolved without a hearing. The Orange County program is still in development, preventing current evaluation.
18. The range in fees is wide: for auto cases in the 75th percentile range, the fees averaged over \$100,000.
19. See P. Hannaford-Agor and N. Waters, "Estimating the Cost of Civil Litigation," 20 *Caseload Highlights* 1, 7 (Jan. 2015).
20. 2016 *Court Statistics Report*, 94 (Superior Courts, table 5b).
21. See IAALS and American College of Trial Lawyers, *Reforming Our Civil Justice System: A Report on Progress and Promise* (2015), 19, citing IAALS, *Survey of the Arizona Bench and Bar on the Arizona Rules of Civil Procedure* (2010), 19–26.
22. *Call to Action: Achieving Civil Justice for All*, recommendation 4.3 (for simpler cases, in what it refers to as a "streamlined pathway" similar to the limited case procedures) and recommendation 6.3 (for more involved cases, in what it refers to as the "general pathway"). The Civil Justice Improvements Committee also calls for mandatory initial disclosures in complex cases (see recommendation 5.4). The Futures Commission concluded that appropriate discovery in such cases can be determined by the parties and judicial officer under current rules regarding complex litigation. (See California Rules of Court, rules 3.400 and 3.750.)
23. Rule 26 of the Utah Rules of Civil Procedure. In cases with claims of \$50,000 or less, each party is limited to 3 hours of deposition, no interrogatories, 5 requests for production, and 5 requests for admission. In cases with claims over \$50,000 but under \$300,000 or nonmonetary relief, parties are limited to 15 hours of deposition, 10 interrogatories, 10 requests for production, and 10 requests for admission. In cases with claims of \$300,000 or more, each party is limited to 30 hours of deposition, 20 interrogatories, 20 requests for production, and 20 requests for admission. (Rule 26(c)(5) of the Utah Rules of Civil Procedure.)
24. P. Hannaford-Agor and C. Lee, *Civil Justice Initiative—Utah: Impact of the Revisions to Rule 26 on Discovery Practice in the Utah District Courts* (NCSC, 2015), 53.
25. *Ibid.*
26. C. Gerety and L. Cornett, *Measuring Rule 16.1: Colorado's Simplified Civil Procedure Experiment* (IAALS, 2012). The initial results led to development



- of the Colorado Civil Access Pilot Project, applicable to all business cases and now implemented as law in Colorado. Under those rules, the initial exchange of documents may be followed by other discovery requests, which must be proportional to the value of the case. See C. Gerety and L. Cornett, *Momentum for Change: The Impact of the Colorado Civil Access Pilot Project* (IAALS, 2014).
27. A mandatory exchange of information and documents, followed by proportional discovery, are principles enunciated by the American College of Trial Lawyers Task Force on Discovery and Civil Justice in a project it undertook with the IAALS. See IAALS and American College of Trial Lawyers, *Reforming Our Civil Justice System: A Report on Progress and Promise* (2015), 19–24.
  28. See Code of Civil Procedure section 367.5 and California Rules of Court, rule 3.670.
  29. The Futures Commission is not recommending such appearances in limited civil cases. Abuses could occur in light of the imbalance of financial resources in many of those cases, particularly in unlawful detainer and debt collection.
  30. Judicial Branch Statistical Information System reports show that almost half of the cases reported as disposed by jury trial are unlawful detainer cases.
  31. See *Reforming Our Civil Justice System*, 7 (calling for a robust case management conference at “the beginning of a case in all but those very few cases that do not require or are not amenable to such a conference”) and *Call to Action: Achieving Civil Justice for All*, 26 (except for very simple cases, cases generally need more case management and a judge may need to be involved from the beginning to move them forward and guard against cost and delay).
  32. This approach would conform to the current rule allowing for emergency exemptions from mandatory case management conferences. (See California Rules of Court, rule 3.720(b).)
  33. The 2004 legislatively mandated Early Mediation Pilot Programs study found that:
    - An average of 58% of the unlimited cases and 71% of the limited cases mediated in these programs settled as a direct result of early mediation;
    - In two courts with good data for comparison, the study showed a reduction of between 24% and 30% in the trial rate;
    - Motions and hearings were reduced between 11% and 48%;
    - By reducing the trial rates, motions, and other court events, judge were made available for other cases;
    - Attorneys in cases that settled at mediation estimated savings between 61% and 68% in litigant costs; and
    - Attorneys in mediated cases were more satisfied with the services provided by the courts, *regardless of whether their cases settled in mediation.*
- See Judicial Council of California, *Evaluation of the Early Mediation Pilot Programs* (2004), xix–xxii, [www.courts.ca.gov/empprept.pdf](http://www.courts.ca.gov/empprept.pdf).
34. Without a change in the filing fee structure, the creation of this tier could result in some loss of revenue to the courts. Currently, the filing fees for higher-value limited cases is currently \$65 less than for unlimited cases. Some idea of the impact of changes in the jurisdictional amount can be gathered from the impact of previous changes. When the jurisdictional amount for municipal court cases tripled from \$5,000 to \$15,000 effective July 1, 1979, approximately 8%–10% more cases were filed the following year. When the jurisdictional amount increased from \$15,000 to \$25,000 effective January 1, 1986, the impact was a 3%–4% increase in filings. (See *Judicial Council Report on Raising Municipal Court Jurisdiction and Economic Litigation from \$25,000 to \$50,000* (Oct. 24, 1995), 3, 10–11.) This suggests that doubling the jurisdictional amount from \$25,000 to \$50,000 might produce a 5%–7% increase in cases filed as limited cases. Further analysis will be required to determine the fiscal impact. It may be appropriate to apply different fees within this tier as is currently done in limited cases where a lower fee applies to cases below \$10,000.
  35. Judicial Council of California, *Report on Annual Dispute Resolution (ADR): Use of Remaining Fiscal Year 2010–2011 Judicial Administration Efficiency and Modernization Fund Allocation for ADR Projects* (2011). After 2011, the annual amount of funding made available to support mediation and settlement programs was reduced to \$75,000 a year.
  36. Development of an online adjudication program for small claims or other civil matters, either statewide or as a pilot, would require significant funding. If current resources are not available, such a program should be considered in future planning.

#### RECOMMENDATION 1.2: INCREASE AND IMPROVE ASSISTANCE FOR SELF-REPRESENTED LITIGANTS

37. *The Landscape of Civil Litigation in State Courts* (2013), iv.
38. *Call to Action: Achieving Civil Justice for All*, 4–5 (recommendations by the Civil Justice Improvements Committee to the Conference of Chief Justices), citing *The Landscape of Civil Litigation in State Courts*.
39. Judicial Council of California, *Task Force on Self-Represented Litigants: Final Report on Implementation of the Judicial Council Statewide Action Plan for Serving Self-Represented Litigants* (Oct. 2014).
40. *The Landscape of Civil Litigation in State Courts*, 24. This was of judgments greater than zero. Most judgments are at the lower end of the range, with an



interquartile range from \$1,273 at the 25th percentile to \$5,154 at the 75th percentile. Even considering only courts of general jurisdiction, the figures were low (mean judgment amount of \$24,117, with \$2,270 at the 25th percentile and \$14,273 at the 75th percentile).

41. Of the nearly 750,000 civil cases filed in California in 2014–2015, over 75% were limited civil or small claims. (See *2016 Court Statistics Report*, 90.) In addition, the Budget Services office of the Judicial Council reports that 75% of the limited civil cases filed involved claims for under \$10,000.
42. The “Equal Access” webpage is available on the California Courts website at [www.courts.ca.gov/programs-equalaccess.htm](http://www.courts.ca.gov/programs-equalaccess.htm).
43. On the Judicial Council staff there is currently a single, senior attorney who devotes only a part of her time to providing coordination and subject matter expertise for self-help programs. Other individuals provide various types of support on a part-time basis. This limited staff support restricts the ability of courts and other self-help providers to maximize even those resources. Current staffing is insufficient to allow effective dissemination of information about ongoing self-help services in various courts, or similar programs elsewhere.
44. *Task Force on Self-Represented Litigants: Final Report* (Oct. 2014).
45. An interactive map showing the self-help centers throughout the state, with links to information about the services they provide, is posted on the California Courts Online Self-Help Center at [www.courts.ca.gov/selfhelp-start.htm](http://www.courts.ca.gov/selfhelp-start.htm). Neighborhood Legal Services of Los Angeles County, which staffs the self-help centers at 10 Los Angeles courthouses, reports SRLs were assisted in over 380,000 matters between 2014 and 2016. Twenty-two percent were non-family-related civil matters. Within that category, about 85% focused on unlawful detainers or civil harassment restraining orders. Other civil complaints, including consumer cases, represent only 2% of all matters in which assistance was provided during that period.
46. An example of an interactive program for small claims cases is RePresent, designed to teach SRLs what to do before court and how to proceed to trial. Developed by Northeastern University School of Law, the program is hosted at <https://ctlawhelp.org/represent>, a website that provides free legal information to low-income SRLs in Connecticut.
47. See also the technology recommendations in this report.
48. The Resource Center would also continue the services currently handled by Judicial Council staff, including coordinating services provided to the courts in grant-funded and partnership programs such as JusticeCorps and programs under the Equal Access Fund grant program.
49. N. Knowlton, *Cases Without Counsel: Our Recommendations After Listening to the Litigants* (IAALS, 2016), 6.
50. Judicial Council of California, Center for Families, Children & the Courts, *The Benefits and Costs of Programs to Assist Self-Represented Litigants: Results from Limited Data Gathering Conducted by Six Trial Courts in California's San Joaquin Valley* (May 2009) (prepared by John Greacen, Greacen Associates, LLC), 12–13.
51. *Call to Action: Achieving Civil Justice for All*, recommendation 11.3.
52. N. Knowlton, *Cases Without Counsel*, 1.
53. *Task Force on Self-Represented Litigants: Final Report* (Oct. 2014).
54. *Statewide Action Plan for Serving Self-Represented Litigants* (2004), 1.
55. Production of a video would include the following steps:
  - Determine the topics and information to be presented.
  - Identify existing video models.
  - Identify and gather subject matter experts to develop the video.
  - Develop the script.
  - Work with the Judicial Council's Center for Judicial Education and Research (CJER) to identify the production needs.
  - Plan, film, and edit the video.
  - Translate the video into Spanish.
  - Share the video with self-help centers and courts across the state.

The following factors were taken into consideration to calculate the estimated expense for a 30-minute video, based on the hours and cost for videos recently produced by the Judicial Council: 80–100 hours of work by a staff attorney; spoken and written Spanish translation services; 80 hours of work by a consultant to develop the script; and filming and postproduction by CJER staff or an outside vendor. Translation into other languages would entail additional cost.
56. One model for the Resource Center would be to add the following to staff currently working on SRL issues:
  - Analyst and supervising attorney to provide small claims assistance through live chat, phone, and e-mail support. The analyst or supervising attorney would also build a database of common answers in a variety of languages, expand the self-help website, and explore online dispute resolution options for small claims.
  - Analyst to provide live chat, phone, or e-mail assistance to people who have basic questions about online forms and document assembly programs

such as HotDocs or Odyssey Guide & File; make specific referrals to the self-help website; and identify problems where more detailed legal help is needed.

- Attorney with family law background to provide assistance to self-help center staff (online chat and services).
  - Attorney with general civil background to provide assistance to self-help center staff (online chat and services).
  - Analyst to help with various program maintenance, and migration to mobile-enabled sites.
  - Media producer to create and maintain instructional videos.
  - Translation contract for basic translating of self-help materials.
  - Subject matter expertise contracts to secure assistance with instructional materials and website content.
57. In some communities, the first point of contact for those ultimately seeking access to the courts is not a traditional legal services provider or governmental entity. Rather, potential court users first seek assistance from other trusted sources in the community, including places of worship, social service agencies, hospitals, and other health care providers.

### RECOMMENDATION 1.3: INTEGRATE BEST PRACTICES FOR COMPLEX CASE MANAGEMENT

58. Information provided by Judicial Council Budget Services.
59. The exact number of complex cases filed each year in California courts is not known, as case management systems do not collect this information. The total amount of statutorily required fees paid in cases determined to be complex is used as a proxy for the number of complex cases filed.
60. To calculate the cost for a consultant attorney for six months, staff was given an estimated rate of \$100 an hour and determined the full-time equivalent to be 1,450 hours per year.
61. The positions include an application development analyst for approximately 20 hours and a business systems analyst for approximately 120 hours.
62. California Rules of Court, rule 3.400.



