CHIEF JUSTICE CHASE T. ROGERS
JUDGES ANNUAL MEETING
JUNE 13, 2014

Good morning and welcome to this year's annual meeting. As always, I want to thank you for all of your hard work over the last year. I remain acutely aware that we are very lucky in Connecticut to have the bench that we do.

Moreover, as you well know, you are doing your jobs against a backdrop of significant changes – in the practice of law, in the legal system and in society in general. It has become abundantly clear that in order to continue to fulfill our constitutional responsibilities and despite the fact that change may be difficult, the courts must adapt and make certain reforms. In this regard, as many of you know, we are in the midst of re-engineering our civil system with the goal of better meeting the needs of the people we serve. As has always been our plan, we will also undertake a similar review and analysis of our family system in the near future.

You, as trial judges, will have a critical role throughout this process as we will continue to need your valuable input.

My focus today is on civil matters, where we've concentrated our efforts over the past year. I want to begin by saying that the issues we face in this area are mirrored across the country, as most if not all other state court systems are grappling with the ever-increasing costs of litigation, the greater complexity of substantive issues in cases and the growing numbers of self-represented parties in a system that, until recently, has involved two lawyers and a judge. In fact, while it has not happened here, some other states' legislatures have told the courts that if they don't find ways to increase the efficiency of the system and reduce the cost of litigation, the legislature will have to step in and in some cases they have already felt a need to do so.

The good news is that in Connecticut there is not a problem with delay in getting a trial date on the civil side. In other words, if the parties want a trial they can get one. Instead, the problem we confront is how to manage the litigation process in a way that

reduces costs for the parties. Aside from the obvious why do we care about that? My answer is because we want a justice system that all people with legitimate claims can access and utilize and not be frozen out simply because it's too expensive to pursue or defend their rights. So what are we doing to deal with this problem?

The Branch – through a series of focus groups – has identified four general areas that are the focus of our civil re-engineering efforts. They include: improving litigation management, confronting current discovery issues, enhancing alternative dispute resolution options, and addressing the needs and impact of self-represented parties.

Before I go any further, let me be clear that what I am talking about today involves some steps that we have already taken and a framework for discussion of additional ideas. This is not a finished plan. As part of this effort, you will be receiving a concept paper, which outlines some specific steps that have been implemented and also some ideas and proposals we are considering for re-engineering. Your input as to the viability of these ideas and your support will be critical to our success in addressing each of these four focus areas.

Starting with the first area, I think we can all agree that effective management of litigation throughout the process is critical. More to the point, we heard constantly from the bar and litigants that a lack of uniformity in how cases are managed, scheduled, processed and tried can be a source of tremendous frustration for attorneys and self-represented parties. It's simply not fair and not efficient to have one practice in a particular J.D., and a completely different way of doing business in another. To that end, I've asked the Chief Court Administrator's Office to once again undertake a review of the case management and calendaring practices for short calendar matters, special proceedings, foreclosure calendars, conferences and trials in each judicial district. With the results of such a thorough review, we can then identify best practices that can be implemented statewide.

One example of a possible change may be the development of standards and guidelines for civil presiding judges on the use of staggered scheduling of pretrials and any other events. We don't yet know if this is workable without evaluating the data first.

But we do know, based upon consistent feedback from the focus groups, that some J.D.s are scheduling multiple cases for pretrials and other events all at the same time, resulting not only in significant wait times for the attorneys and the parties but also additional cost and frustration.

We also need to continue efforts already underway to enhance consistency and predictability – which should reduce the cost of litigation. And the cornerstone of that effort at this point is individual calendaring which is well underway.

We've already implemented individual calendaring in Waterbury and New Britain, and Stamford is next, starting this July 1st. Our goal is to have the program statewide by September 2015, and I am optimistic that we can meet our timeline. The civil bar and the judges who have begun this process have been extremely supportive of this change and so far we have not heard any complaints about how it is being implemented.

As I mentioned last year, we know there are many advantages to individual calendaring. To start with, parties will be able to resolve disputes regarding pleadings and discovery through status conferences via telephone, video or in person with a judge who is familiar with the facts, the law and the procedural history of the cases and the parties. Moreover, a judge who has this familiarity will need less time to prepare for arguments, discussions or to enter orders. Another important element of individual calendaring is a firm trial date. Counsel and parties who know that a trial will proceed on the scheduled date, absent highly unusual circumstances, should prepare for the case in a more timely manner. What we can see already from other states that have implemented this change is that it significantly reduces the number of discovery disputes.

In addition, individual calendaring will increase the possibility of settlement at an earlier stage of the proceedings, before positions harden because of time, money and effort expended in the pretrial phase of the case. A judge familiar with all aspects of a case will be in a position to suggest alternatives, whether it is mediation or some other sort of early evaluation of the case.

To ensure that judges assigned to the individual calendaring program have the necessary skills to effectively and efficiently manage an individual docket, judicial administration will look into providing more training on best principles of case management and effective use of alternative dispute resolution.

Regarding the second area, discovery issues, we can't try to reduce the cost of litigation without figuring out ways to streamline what we know is one of the most costly and complicated parts of the litigation process. In this regard, we will be soliciting your input about a number of ideas in order to determine how best to achieve this goal.

What I want to emphasize is we are not only talking about those types of cases that will benefit from active judicial oversight in making sure that delay due to discovery disputes doesn't bog down a case but also the cases where there is no effort to delay the proceedings but the case still requires more extensive discovery because of the number of parties or complexity of issues.

Interestingly, discovery is an area that the federal courts have been focusing heavily on to reduce the cost of litigation. Rule 1 of the Federal Rules of Civil Procedures now states, "That federal rules should be construed and administered to secure the just, speedy and inexpensive determination of every action and proceeding." The cost of litigation is also one of the primary concerns of the Council of Chief Justices for the States because if we don't address this problem we are not providing a justice system that works for the people and we will ultimately become less and less relevant except in criminal proceedings.

Here are some of the ideas that we are going to consider with input from all of our stakeholders. Many states are experimenting with limiting discovery in certain types of cases whether through a tiered approach where the amount in demand dictates the amount of discovery or through proportionality rules that limit the scope of discovery to that which is proportional to the needs of the case based on a number of factors. This proportionality concept is already a rule in the federal courts. States are also experimenting with various types of expedited litigation tracks with a goal of reducing the number of discovery disputes thereby making the entire process less costly. Finally,

the federal court system and some states are expanding the kind of cases where there are automatic disclosures, thereby again reducing the number of discovery disputes. Many of these new programs are either mandatory for certain cases or a party can choose to opt out of.

Turning to the third area we are looking at, I believe that offering parties more effective alternatives to resolve disputes short of trial will be both economical and efficient, thereby, benefitting the parties and the system as a whole. To accomplish this, judicial administration will need to identify additional judges and judge trial referees with the skills and interest to serve as effective mediators. Once these individuals are identified, special training and educational opportunities should be made regularly available to them.

Discussion at the focus groups also included the idea of creating a mediation stand-alone docket, which would ensure that effective and skillful mediation is widely available to all parties, not just those who can afford private mediation.

As a first step for this proposal, the Chief Court Administrator will be soliciting input from judges and judge trial referees to determine whether there are enough judges and JTRs who are willing to serve as mediators for a prolonged period of time.

Finally, the re-engineering of the civil justice system cannot be accomplished without addressing the needs and impact of the ever-increasing number of self-represented parties. Some represent themselves because they lack the money to hire an attorney; others choose to do so. Regardless of the reason, we need to ensure that all self-represented parties have meaningful access to justice. Many of the proposals I have just discussed should help self-represented parties as they navigate the justice system and we will continue to look for ways to get their input as we proceed forward.

What I have outlined for you today are just a few examples of the ideas that we are considering to improve the civil justice system. Ultimately, I see this effort as an opportunity for us to better serve the needs of people who use our courts. I am eagerly looking forward to all of your feedback as we continue on this journey. Thank you again for all of your fine work.

I now would like to turn the podium over to Judge Carroll.

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