

Advancements in the Maine Superior Court

By Nancy Mills

A continuing theme in the history of the Maine Superior Court¹ is the effort by the bench, bar and legislature to reduce delay in bringing cases to a final resolution. In 1838, a petition to abolish the Court of Common Pleas stated that “it is a well known fact that when a case is entered at the common pleas, it is a rare instance that judgment is obtained in a shorter time than two years.” In 1868, Governor Joshua Chamberlain advocated the creation of the Cumberland County Superior Court because of the 2,000 actions ready for trial, which could not be reached for at least two years. In petitioning for establishment of the Kennebec County Superior Court, the Kennebec County Bar stated in its petition that the current facilities “are utterly inadequate for the fulfillment of the constitutional guarantee that ‘right and justice shall be administered promptly and without delay...’” (1877). Similar arguments in

Under the project, all civil actions in Cumberland County, except for divorces, are specially assigned upon filing to one of four Superior Court justices involved in the project. The assigned justice handles all aspects of the case, including all motions, conferences, discovery disputes, trial, and post-judgment matters until final resolution. Each year, the Single Justice Assignment Project justices were each assigned to three two-month terms in Cumberland County.

From the justices’ perspective, single justice assignment makes sense for a variety of reasons. The justice becomes familiar with the case, the lawyers, and the parties from the outset. Particularly in a complicated case, there is no duplication of the learning curve on the part of several justices. The justice is not bound by prior rulings by another justice.

From the lawyers’ perspective, single justice assignment also makes sense.

The process of bringing a case to trial is expedited. The lawyers, to some degree, are able to know what to expect in a case. The lawyers have

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other parts of the state finally prompted the establishment of a statewide Superior Court in 1930.

The effort to expedite the administration of justice continues today in the Superior Court. Toward that end, two developments are noteworthy because they have been successful and because no fiscal note is attached.

Single Justice Assignment

In 1993, the Single Justice Assignment Project began in the Cumberland County Superior Court.

a specific justice to contact for discovery disputes and other issues that arise before trial. Frequently, a date certain for trial can be given.

The court system and the parties also benefit from single justice assignment. For them the project brings, to quote former Chief Justice Appleton, a reduction of “delay, expense and vexation...” The expansion of trial terms from one month to two consecutive months was a significant factor in increasing efficiency. Cases are resolved when they are exposed to trial. Pending

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motions, vacations, and conflicting schedules can be accommodated without removing a case from the trial list. Only the most imaginative attorney can present a reason for being unavailable for trial during a two-month period.

Continuation of the Single Justice Assignment Project in Cumberland County is supported by the bench and bar. Its success has resulted in expansion of the project to York, Androscoggin, Kennebec, and Penobscot counties. In the remaining counties, attorneys, clerks, and justices are encouraged to consider special assignments of complicated or multi-party litigation, especially real estate, commercial, and malpractice cases.

Settlement

An informal but innovative approach to settling cases began several years ago in Cumberland County. The justices involved in the Single Justice Assignment Project began presiding over settlement conferences in civil cases not assigned to them. The settlement conferences were typically scheduled for an entire day. Strict rules were enforced regarding mandatory attendance by parties, attorneys, adjusters, and those with decision-making authority.

After early initial success in Cumberland County, several Superior Court justices attended a course in settlement techniques at the National Judicial College. Those justices then presented a two-day seminar to all Maine judges regarding settlement.

The Single Justice Assignment Project is ideally suited to this approach to settling cases. Because the case is assigned to another justice, the settlement justice can pursue settlement vigorously, confident that he or she will not be required to preside in any way over the case. This approach to settlement has expanded beyond the counties in which the Single Justice Assignment Project is in effect. Cases from all counties are referred, sometimes by attorneys and sometimes by judges, to one judicial secretary, who arranges the settlement conference. Assignment of cases for a settlement conference has also been expanded to include District Court cases, particularly family matters, in which a significant amount of court time is requested. If appropriately conducted, a settlement conference gives a party an opportunity to tell his or her story in a way that may not be possible in court. The opportunity for a litigant to go into a justice's cham-

bers and speak directly to him or her, as opposed to any other mediator, cannot be underestimated.

As with the Single Justice Assignment Project, this approach to settlement has been well received by the bench and the bar. The obvious advantages of settling a case include savings in attorney fees and litigation-related expenses, and the elimination of delay and uncertainty. A less obvious advantage is the sometimes very creative terms that can be incorporated in a settlement that would not be and could not be incorporated in a jury verdict or court decision. For example, a settlement in a divorce case can include an agreement that one spouse will pay for a child's college education; a judge could not mandate such payments. Payment of money can be structured in a settlement; jury verdicts are not structured. Apologies for wrongdoing can be negotiated; juries do not have the authority to require the tortfeasor to say he or she is sorry. Confidentiality provisions, dismissal of other cases between the parties, and sunset provisions can be incorporated in a settlement but not in a jury verdict form.

In 1913, Justice Leslie C. Cornish studied the issue of delay in Maine courts in response to a request for both a law court and a nisi prius court. He stated that

"from the fact that this paper has to do wholly with the subject of expedition in court procedure, I beg of you not to infer that I deem this feature of prime and over shadowing importance. On the contrary, I regard the right, rather than the quick decision, to be the desired goal. Whether the final result be reached in six weeks or six months,

is not in the great majority of cases so important as that the result, when reached, shall be correct and just.... Improvements are always possible in human affairs.... But we must not forget that change is not necessarily improvement, and that movement is not always progress. Every real advancement you and I must readily welcome.”

Fortunately for all, the history of the Maine Superior Court is highlighted by efforts to expedite access to the court and resolution of cases; efforts to improve the quality of justice have been, in large part, unnecessary. The Single Justice Assignment Project and the development of a procedure for settlement conferences in the Superior Court are part of that effort to improve efficiency and to reduce delay. The new alternative dispute resolution requirements soon to be implemented are another part of this effort.

The judiciary must be vigilant, however, in maintaining an honest dialogue with the bar and the public to implement those procedures that are effective not only for the courts but for the court’s customers. Efficiency is only a means to an end and not an end itself. For now, the Single Justice Assignment Project and settlement conference practice are real advancements that have been and continue to be welcomed. 🐟

In 2001, Nancy Mills was appointed Chief Justice of the Maine Superior Court, where she has served since 1993. Prior to that Justice Mills served as a judge in the Maine District Court, practiced law at Wright & Mills, and served as an assistant district attorney in Prosecutorial District IV.

ENDNOTE

- I. Retired Superior Court Justice Herbert T. Silsby II wrote the definitive “History of the Maine Superior Court” for the *Maine Bar Bulletin* in 1980. See Silsby II, “History of the Maine Superior Court,” *Maine Bar Bulletin* 14 (1980): 4-5. The historical facts and quotes in this article came from Justice Silsby’s articles.