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How lawyers can help courts run effectively

By Lynn Duryee

Inside courts today, it's budget, budget, budget. Judges are asked to do a lot more with a lot less. Commissioners, court reporters, bailiffs, research attorneys and administrative support are a fond and distant memory. Veteran judges have added to their busy caseloads not only matters once handled by subordinate judicial officers — small claims, mental health hearings, probable cause determinations — but now are typing their own orders and taking out the trash. What can lawyers do to help?

Comply with case management conference orders.

Between one-third and one-half of the court's case management conferences could be eliminated if parties complied with court-ordered deadlines for serving parties, filing answers or defaults, meeting and conferring with opposing counsel on ADR and timely completion of ADR. Approximately 75 minutes of clerical time is required every time a case is reset on the judge's docket, which costs about $48 and that doesn't include the judge's time.

Diligent lawyers can help the court by (1) timely serving parties and filing appearances or requesting an extension at least five days before the hearing; (2) giving the court realistic time limits at the first CMC for completion of ADR to ensure that work is accomplished before the return date; (3) conferring with opposing counsel early on regarding the selection of the neutral and the scheduling of the mediation or arbitration; (4) completing the ADR process as ordered and advising the court when the case has settled. If counsel cannot complete the ADR as required in the CMC order, circulate a stipulation to reset the CMC. The stipulation should include a showing of good cause along with the name of the neutral, the date of the mediation, and the proposed new date for the CMC.

Bring your order or judgment to court.

A lot of clerical time goes into opening mail, connecting correspondence with the file, routing the file to the judge's chambers, filing the order, retrieving the file, processing the order, and returning it to counsel.

Lawyers can increase the court's efficiency by bringing proposed orders or judgments to hearings. Portions of orders can be left blank or interlineated after the hearing. Some courtroom clerks can file and enter the order on the spot. Remember, the time for advocacy is at the hearing, not in the preparation of the order following it.

Immediately advise the court when your motion or trial settles.

Yes, your judge is happy for you when you settle your case, but still she feels dispirited when she hears the news after spending the previous night reading your six binders of in limine motions.

If your motion or trial will not go forward on the scheduled date, please advise the court as soon as possible so that your judge can use her time on a matter that will.

Take advantage of the discovery facilitator.

Several years ago, Sonoma County implemented a discovery facilitator program to ease the court's burdened law and motion calendars. The program calls for experienced civil litigators to volunteer several hours of time to help embattled litigants resolve discovery disputes outside of court. The program has been so successful that Sonoma judges have heard only a handful of discovery motions in the last several years. Other counties have implemented the program but with less impressive results.

Check to see if your county has one and give it a try. If it doesn't, how about proposing it?

Reserve ex partes for true (and unavoidable) emergencies.

Nothing throws a wrench into a judge's impacted day like a smoking ex parte motion. The urgent, unanticipated papers are presented, the lawyers on both sides are hot and bothered, and now the judge must keep the jury waiting while he studies the motion and hears argument. Judges want to make sure that victims are protected and disasters averted, but easily 75 percent of all ex partes are not true emergencies.

Most matters can be set for regularly noticed hearings. Lawyers can ease the court's budget woes by using ex partes in the rarest of cases and by running their businesses in ways that won't create emergencies for others.

Limit attachments.

There's a reason why the rules of court limit the number of pages in a brief: Judges can only read so much. But for some lawyers, what can't be said in the 15 pages is instead said in an attachment. Judges are frequently treated to hefty doses of deposition transcripts, expert reports and email chains.

The conscientious lawyer will help the courts by editing his writing, summarizing important records, and limiting — or, even better, eliminating — attachments.

Make the most of your ADR process.

Many lawyers complain that mediation has become just another hoop to jump through on the way to trial. They say that the other side wasn't prepared, decision-makers weren't present, mediation briefs were not exchanged in time, their adversary was just looking for free discovery, and that the whole day was a waste of time.

Perhaps a pre-mediation call with the neutral could avoid some of these problems, as well as an order from the court requiring the presence of decision-makers. Many understand now that mediation offers an invaluable opportunity to settle the case early and efficiently. The lawyer who takes the ADR process seriously is helping not only his client, but our burdened courts as well.

Lawyers can help California courts during this difficult period by performing tasks on time and by using ADR opportunities wisely. Your judge appreciates your efforts too, as they help her do her best job for your case and the others on her docket.

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