

## IV. RECOMMENDATIONS

It was not the intent of the authors nor were there sufficient resources available to attach causality to the various external and internal factors for the filing and workload trends presented in this report. Consequently, the report serves primarily as a detailed description of caseload trends, and as a starting point for future research on factors likely to influence workload. Based on the extensive amount of research put into this report, the authors provide some general guidelines or “lessons learned” about the nature of the agency’s filings data and some issues to consider when using this data for program evaluation or to support policy. This section ends with some recommendations for improving the agency’s management information system, and possible areas for future research.

### A. Guidelines For Using Filings Data

*A longer-term perspective on filing trends would enhance understanding of a court’s long-term resource needs.*

This assessment started with an expectation of focusing on filings from the 1990s, but a number of important insights were gained by examining the 20-year span. With the exception of probate, mental health, and criminal infractions, filing patterns over the past 20 years tend to be cyclical. That is, filings in a court tend to go up for several years and then trend down for a few years before going up again. Even over this extended 20-year period, it is difficult to identify the “true” long-term trend, which could be any of the following:

1. Relatively “flat,” with periodic increases and decreases, but overall not much different at the end than at the beginning.
2. A new, different plateau following the sudden shift, with subsequent increases and decreases starting from and occurring around the new level.
3. A long-term trend that is generally “up” or generally “down.”

When one is in the middle of an “up” cycle or a “down” cycle, one cannot predict with any certainty when the cycle will reverse or even if it will reverse at all. By looking back over a number of years, however, one begins to see patterns that at least provide clues whether the recent trend is nearly over or has just started. The experience of this analysis suggests that a sufficient amount of historical filings data is needed to understand the factors that influence a court’s current caseload. For example, a review of three years of data does not allow a sufficiently broad perspective and context with which to understand a court’s current caseload let alone provide enough information to anticipate future trends. By gaining a deeper understanding of current filings levels, staff will be better able to anticipate future filings and workload changes and therefore future court resource needs.

*Consider using techniques to smooth out variability in the filings data from year to year.*

In general, filing patterns over the past 20 years tended to be cyclical. More important, however, there were sometimes dramatic increases or decreases (50% or more) in filings over just one or two years. Depending on the filing pattern for a specific case type, filings data for the current year might not be an accurate “snapshot” of a court’s current caseload level, especially if it has just experienced a significant increase or decrease from the year before. Because it is not possible to know whether this dramatic increase or decrease is simply a one-time spike in the data or a true shift in a court’s caseload, staff should consider using various statistical techniques to smooth out any variability in the filings data from year to year.

A straightforward yet powerful option involves using a “moving average,” which would assess data for X years each time, but each year’s figure would be the average of the previous three, four, or five years. This would lessen the impact of a sudden, significant change while indicating whether over time the trend is up, down, or about the same. The Public Policy Institute used running three-year averages to good advantage when it assessed trends involving the four major racial and ethnic groups in California.<sup>182</sup> A similar approach might be useful for the AOC.

*Understanding the trends in Los Angeles is critical to understanding statewide trends.*

Some of the data cited throughout this report illustrate that for some case types, Los Angeles drives the statewide numbers. In a few instances, a decrease in filings in Los Angeles more than offset increases in other courts, so that statewide filings showed a decrease even though many courts had actually experienced an increase in filings. There are also examples when other courts defined the statewide trend and Los Angeles experienced a change in filings counter to the statewide trend. In either case, the impact of changes in Los Angeles must be taken into account when statewide resource-allocation decisions are being made.

## **B. Recommendations**

*The AOC should continue the work started in this assessment of identifying trends and tracking their impact on filings and workload.*

Trend identification and analysis of court performance measures was an area of active study in some academic circles and in some state administrative offices in the 1980s. The interest in and resources for this type of analysis generally have waned in the last 20 years, however. This assessment reopens the topic in California and provides a foundation from which to build. It is a beginning, but hardly a full exploration of every possibility. More precisely, many of the factors influencing both filings and workload

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<sup>182</sup> Belinda I. Reyes, Ed. *A Portrait of Race and Ethnicity in California: An Assessment of Social and Economic Well-Being* (San Francisco, CA: Public Policy Institute of California, Inc., 2001).

are dynamic and should be tracked over time in order to gain a fuller understanding of their import and the nature of their influence. New external and internal factors will probably emerge in coming years to add to or change the factors identified in this assessment.

*The AOC should consider contracting with academic institutions to supplement the research capacities of the AOC and the trial courts.*

There were several instances during this study when the capacity to undertake a short, ad hoc study using data in case files would have been very helpful. The new JBSIS statistical information system will, in time, provide a significant amount of the data now missing regarding workload. Even then, however, there will be occasions when an “on the ground,” ad hoc study might be helpful, either to assess whether there is a statewide trend or to assist in determining the extent of its impact.

Because these studies will be sporadic and the time frame for completing them probably limited, people familiar with courts and court records will be needed to do the legwork in the surveyed courts. At least one urban court in another state has engaged a professor in a local university to serve as a “special projects” consultant. This professor has an annual retainer contract. He uses students to assist with case-file or computer-record review when and as needed, so court staff do not have to divert time and attention from daily operations. A similar arrangement might work for the AOC.

The AOC could enter into “requirements” contracts—that is, a contract to provide service when needed by the Judicial Council at a predefined price—with two or three in-state academic institutions for special research projects. One professor in an institution could coordinate the work of the others under the guidance of R&P. If the contracts are with the state university or college campuses, professors from different disciplines and schools could be called on as appropriate; it would provide more flexibility than contracts with individual professors. The AOC would be able to build a cadre of knowledgeable researchers without making long-term staffing commitments. The schools would be providing a public service and an educational opportunity for both faculty and students. If appropriate, the professors could advance their interests through publication of their work. Both the AOC and the professors would be able to call on a number of eager, short-term research assistants (i.e., students), if needed. The arrangement would enable the AOC to respond to important but ad hoc and short-term needs without over-staffing R&P.

*The data elements in JBSIS should be examined in light of the analyses in this report to ensure that needed data elements are being captured.*

A number of data elements related to workload were not available for this assessment. In many cases, the new JBSIS information system will provide the missing data within the next three to five years. There are also data collection efforts currently underway by the AOC to supplement the monthly statistical reports. Those efforts may well fill gaps in

JBSIS related to workload measures. Therefore, it may be more helpful here to identify the types of data that would be most useful in assessing workload, particularly that of court staff. AOC staff and trial court statistical experts then can consider these as part of the ongoing review of JBSIS and other AOC data collection efforts.

JBSIS already contains the capacity to analyze data by case type. The information suggested below may vary by case type, so any future analyses should continue to review workload by case type as well as, if possible, court-wide. It is not necessary to collect all workload data continuously. Periodic “snapshots” may be as effective in some instances as constant data collection and analysis. The “snapshot” study is another area in which the academic contractors suggested above, might be helpful.

The following are types of data useful for assessing trial court workload:

- Data documenting demands on judicial time, especially in trials, predisposition hearings, and postdisposition hearings not associated with a new filing;<sup>183</sup>
- The number and nature of courtroom appearances by parties per disposition;<sup>184</sup>
- Staff time generating mandated notices to parties and others and reports for government and other entities;<sup>185</sup>
- Number of and time for case-related ancillary proceedings involving court staff, such as mediations and coordination in problem-solving courts;
- Mandatory and voluntary training: purpose and time required;
- Number and length of interpreted proceedings: in courtrooms and outside courtrooms;
- Number of courtroom proceedings and their length in cases in which litigants have used the Family Law Facilitator and/or a court’s self-help centers;<sup>186</sup>
- Number and length of public contacts (in-person and telephone) from parties and attorneys and from nonparty citizens or businesses; and
- Number of motions and time required for review of motions by research attorneys in cases with attorneys, and cases with self-represented litigants.

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<sup>183</sup> On a regular basis, the number of each type of courtroom proceeding can be collected. The length of bench and jury trials should also be collected regularly. The *time* associated with all other courtroom proceedings can and should be collected periodically as part of the judgeship needs reviews.

<sup>184</sup> The time required for these should be collected periodically.

<sup>185</sup> As with demands on judicial time, the number of these items should be collected regularly, while the time each type consumes is collected periodically.

<sup>186</sup> Ideally, these data could be contrasted with similar cases in which the self-help center or the facilitator was not used. This type of comparison also should be attempted for mediations and cases eligible for problem-solving courts but not served by them.

*The Judicial Council should establish standards regarding data collection and evaluation criteria for problem-solving courts.*

Evaluation questions, criteria, and data analyses for problem-solving courts show very little consistency, either for the same type of court or across different problem-solving efforts. This makes cross-court comparisons and even assessments of the value added by these efforts very challenging and not possible in some cases. It also makes it very difficult to assess those elements that contribute to the success of a program and those elements that should be avoided. Courts with existing programs and courts about to implement programs find that inconsistencies in the data analysis make it hard to improve their own performances by using such data. Finally, the inconsistencies also leave the door open for critics to question both the value and cost of these efforts.<sup>187</sup>

There are good reasons why one would collect different data and ask different questions for different problem-solving courts. But there also are a limited number of questions that are relevant and important for all problem-solving courts. The Judicial Council would benefit from a knowledgeable group of researchers, judges, and court staff identifying a limited number of questions every problem-solving court should be able to answer in its evaluation report and a core set of data elements every such court should collect and publish in its evaluation. Evaluations could and should go beyond these minimum items, but all should include the items identified by this working group and adopted by the council. In addition, funds for these evaluations should be included in the budget, because the lack of funding has been cited at times by courts as the reason that evaluations are limited or not pursued.

#### *Areas for future research*

Several issues or questions surfaced during this study that could not be pursued, either for lack of time or lack of data. Some that seem worthy of future attention include:

- The relationship between population growth and filing and workload changes. Is the key factor the percent of growth, how quickly the growth occurs, demographic elements of the growth, or something else? Is the impact of growth immediate for all case types or immediate for some case types but delayed for others?
- The circumstances under which the size of a court seems to be a basis for a differential pattern of filings, in contrast to regional variations.

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<sup>187</sup> Both in California and elsewhere there are judges and key staff who avoid evaluations or limit their scope for fear that an evaluation might document a lack of success for a program in which they have invested a great amount of time, energy, and, possibly, political capital. While understandable from a human level, these fears often are misplaced. They also weaken the institution's ability both to learn from weaknesses in a program and to convince policymakers in the other branches and the general public that the effort is worth retaining and, maybe, expanding. It is critical to an informed and wise use of resources that the judiciary make every effort to address and overcome the fears of those who might want to forestall or limit needed evaluations.

- A fuller understanding of the economics of law practice and its influence on filings and litigation practices.
- Economic and effective measures of staff workload trends over time.
- A means for tracking the workload impact of statutory changes after a statute takes effect as a supplement to the “judicial impact” statements currently prepared for some bills prior to passage.
- Trends in probate filings and workload and the relative contribution of conservatorships and guardianships to workload compared to estates and will contests, and the impact of changes in tax laws on estate and will contest filings.
- Why small claims filings have fallen so dramatically and uniformly for almost the entire 20 years studied even as the jurisdictional limit was increased three times between 1980 and 1991.
- The changing needs of aging courthouse visitors and how best to respond to those needs.