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A modest proposal for civil cases in Cook County

By Donald P. Eckler

Donald “Pat” Eckler is a partner at Pretzel & Stouffer focusing on professional liability defense, insurance coverage litigation, and general tort defense. He is the legislative chair of the Illinois Association of Defense Trial Counsel. His views are his own and not those of his firm or its clients.

Until March 17 it could not be fully appreciated how large an effect the physical layout and structure of the Daley Center had on the practice of law and the course of litigation in Cook County’s largest courthouse.

The coronavirus has almost overnight rendered the Daley Center obsolete, and in order for the civil justice system in Cook County to function in anything approaching efficient and to avoid the Daley Center becoming an empty, useless shell, much of how civil cases are handled in Cook County is likely going to have to change.

To appreciate the scope of the changes that are necessary, it is essential to appreciate the volume of the civil cases handled in Cook County generally, and the Daley Center in particular. In 2018, the last year for which statistics are available in Illinois, there were 1,463,995 civil cases pending in Cook County and 940,753 newly filed civil cases. Those cases are principally, though not certainly not exclusively, handled in the Daley Center.

A comparison to understand the sheer scale is helpful. In 2019, the federal district courts saw 286,289 cases filed and a total of 363,474 pending cases; this includes civil and criminal matters. Those federal cases are divided among 93 judicial districts and spread among hundreds of courthouses with more than 600 district court judges who are each aided by several law clerks, a deputy, a court reporter, a court clerk, and a magistrate, who also has the aid of substantial staff. Even accounting for the larger average size and complexity of federal cases, the extreme number of cases pending in Cook County and the Daley Center in particular, demonstrates that “quantity is its own quality.”

An additional problem that federal courts do not have on the same scale as does the civil justice system in Cook County is the number of pro se litigants. Illinois state judges do not have the same tools to rid themselves of pro se filings as do their federal counterparts. In addition, most self-represented litigants in state court are defendants in consumer and economic matters, such as collections, foreclosure, eviction, family law, not plaintiffs, as is the case in federal court and so protection of those individuals often becomes paramount for judges.

Prior to the coronavirus forced shutdown, civil court in Cook County was conducted almost entirely in person. That saw lawyers scurrying between courtrooms, holding matters before one judge in order to be before another judge at the same time, waiting (and often wasting time) for their cases to be called, and needing a shoehorn to get one more person in rooms on the 22nd floor most mornings. Because most court calls were completed in the morning that also meant a large amount of unused space in the afternoons. In the Law Division in particular, the requirement to come back frequently for case management conferences was for a case management system whose (rightful) goal it was to get cases ready for trial by setting deadlines for the completion of the various stages of discovery.

To account for the current circumstances and in order for the civil justice system in Cook County to return to a level of functionality, all of that will likely have to be a thing of the past. The backlog of cases that are ready of trial in the Law Division will continue to pile up, and remote jury trials are fraught with extreme problems that, if conducted, will likely create more problems than they solve. However, remote status conferences and non-evidentiary hearings are proceeding well and at least one bench trial has been conducted in the Chancery Division.

The previous requirement to come to the Daley Center for status conferences does not need to continue, but trials should commence. To accommodate trials in which jurors, witnesses, counsel, the court, court reporters, and court staff can be appropriately distanced, the physical space of the Daley Center should be transformed to combine current courtrooms so that in-person jury trials can be conducted under safe conditions. The remaining single courtrooms should be “hoteled” so that the remaining space is efficiently used only for proceedings that need to be in-person.

As an example, a Chancery Division judge was presiding over a case last year that had multiple counts, some of which were subject to a jury and others could only be decided by a judge. The court tried the jury counts in a Law Division judge’s room with the plan being to move back to his own room once the jury was no longer necessary.

Remaking the Daley Center with larger courtrooms and jury rooms is a long-term solution and conducting remote case management conferences is likely here to stay as it is efficient for all involved in most situations. In the meantime, other large, open, and unused spaces like McCormick Place (unable under the current circumstances to be used at all), should be considered to host jury trials on a temporary basis until the Daley Center is ready to accommodate jury trials again.

Shortly after the shutdown, defense counsel was accused of wanting delay because that, as the claim went, benefited defendants who did not want to try cases. That was untrue then and it is untrue now. The reality is that resolving cases is in everyone’s interest and that can be done if the bench and bar are cooperative, flexible and creative.