GUIDELINES FOR BEST PRACTICES

IN

DELAY REDUCTION AND CASE MANAGEMENT

Task Force on Delay Reduction and Case Management

October 1, 2004

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INTRODUCTION

These Guidelines have been prepared by the Task Force on Delay Reduction and Case Management of the Judicial Council (see list of Task Force members on the next page) and are intended to reflect the best national and local practices that may be used by district court judges to reduce delays and improve case management in their respective courts. The Guidelines are not comprehensive but selective, and reflect the views of the majority of members of the Task Force.

Most of the materials contained in the Guidelines have been provided by the members from their own experiences and practices in their respective courts or developed as a result of their discussions at Task Force meetings. Some materials have been obtained from non-copyrighted publications of the American Bar Association and the National Center for State Courts. Copyrighted materials have been obtained from the American Academy of Judicial Education and the Aequitas Corporation who have generously given the Task Force permission to include their materials in the Guidelines.

Standard 2.1 of the Louisiana District Court Performance Standards and Objective 2.1 of the Strategic Plan of the District Courts both state that the trial court should encourage timely case management and processing. The Code of Professionalism in the Courts (Section 11 of the General Administrative Rules of the Supreme Court) states that judges should make all reasonable efforts to decide promptly all matters presented to them for decision. Based on these aspirational standards, judges should take responsibility for reducing backlogs and or a pending inventory. They should also control

the cost of justice and minimize the waste of court time. In short, district court judges should take responsibility for effective case management.

The purpose of the Guidelines is to assist Louisiana district judges in their continuing efforts to manage their cases effectively and to reduce unnecessary delays. The Guidelines are not rules and, therefore, should not be used as a basis for litigation or sanctions or penalties. Nothing in these Guidelines alters or detracts from existing disciplinary codes or alters the existing standards against which judicial misconduct may be determined.

Copies of the Guidelines are available upon request from the Judicial Administrator of the Supreme Court or from the Supreme Court's website: www.lasc.org.

LIST OF TASK FORCE MEMBERS

TASK FORCE ON DELAY REDUCTION AND CASE MANAGEMENT

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PART I

MISSION STATEMENT

TASK FORCE ON DELAY REDUCTION AND CASE MANAGEMENT
MISSION STATEMENT

The mission of the Task Force on Delay Reduction and Case Management is to develop a "best practices guide" for reducing court delays and improving case management in district courts.

PART II

SOURCES AND CAUSES OF DELAY AND INEFFECTIVE CASE MANAGEMENT

A.

COURT DELAY REDUCTION TASK FORCE SURVEY

Court Delay Reduction Task Force Survey

Criminal Courts

1. **What aspect of the prosecution results in the most delay in a criminal proceeding?**

- Misinterpretation of the constitutional and statutory victims' rights legislation to require that the victim determine the appropriate sentence.

- Generally being unprepared and unavailable to discuss cases in advance of court date.

- Defense stalling.

- District Attorney continuing cases, failing to pursue pleas.

- Indigent defender not seeing clients.

- Uncontested continuances.

- Continuances by counsel who are not prepared.

- Too many cases to handle.

- There are numerous problems that cause delay in the 21st JDC, many being case specific. Delay frequently is defense oriented, to put off the inevitable. However, multi-parish, general jurisdiction does play a part.

- Pre-trial motions.

- Defense attorney enrolling,

- Defendant being billed and continuances by joint motion.

- D.A. resetting of cases ready for plea-trial.

- ADA's are very willing to join with defense lawyers in motions for continuance.

- DNA analysis very delayed.

- Waiting for the District Attorney to file a bill, which is sometimes dependent upon the crime lab's test results, especially in drug prosecutions.

- Numerous joint continuances of scheduled hearings and trials.

- Continuing discussions.

2. Are any appearances conducted by video between the jail and the courtroom? If so, which ones?

- No, and given the location of the jail just across from the courthouse, it is better to do the hearing in person.

- One hundred percent of the official complaints by defendants are filed against the defense attorney.

- Some arraignments, some bond hearings and motions.

- Yes, 72 hr. hearings in Vermilion Parish.

- No.

- Yes, when the monitor works. Some judges handle jail call by video, others by phone, but almost all handle bond reductions by video in the one parish where the video works.

- Yes, felony arraignments.

- Yes, 72 hr. hearing and arraignments of defendants still in jail.

- 72 hr. hearings and jail arraignments.

- Yes, 72 hr. hearings held Monday – Friday.

- Arraignments of pre-trial detainees held twice weekly.

- Yes, the initial appearance.

3. How often are jury terms scheduled, and what is the average number of cases docketed for trial on each term?

- Once a month on average, sometimes one will have two dockets while another month may have none (85 – 120) on each docket.

- We have convinced the judges to do just criminal for one year (i.e. four judges at a time) and then rotate to civil. That worked very well but apparently the judges felt there were political disadvantages to this proposal.

- While my experience with jury pool selection is limited to Orleans and Jefferson Parishes, and the Orleans Federal District Court, Jefferson has a system that I consider greatly superior to any other that I have heard about. In Jefferson, jurors are

required to report for one day only every two years, unless selected to serve on a jury. The benefits of this are great. Not only does it relieve jurors of personal problems and inconveniences caused by lengthy waits for jury selection, but it also means that better jurors are often available (representing a more even cross-section of the community) because people are not motivated to desperately avoid jury service due to its great inconvenience. I have appeared numerous times in Jefferson Parish for the required one day, and found it to be very tolerable. I have never been selected for a petit jury, but have heard comments in the jury pool that citizens are quite willing to serve the time necessary to be a juror without rancor. They believe the system is equitable and makes only a reasonable demand upon their time.

- Once a month – 100 average.

- One week per month in Acadia & Vermilion. Most weeks in Lafayette. (Average docket – 50).

- All depends on the judge. Usually at least once a month. My dockets are usually between 60-100 cases. I schedule 15 weeks a year.

- Ours is a three-parish district with eight (8) judges and one hearing officer who shares courtrooms. We have eleven (11) criminal jury terms set per year. Additional weeks may be added to accommodate a capital murder case. Those eleven weeks are split amongst the three parishes, with approximately one a month. Cases docketed may range from 1-3 for the two weeks of criminal juries in St. Helena Parish, up to 80 cases per week in Tangipahoa Parish (five weeks per year), and Livingston Parish falls somewhere in the middle (four weeks set on the calendar per year for criminal juries).

- Two to three weeks monthly (50+).

- Every week.

- Weekly.

- Almost weekly. About 25-30 cases are on the trial docket, but only about 8-10 on the priority list.

- 46 times a year. The average number of cases docketed for trial on each term varies between 5 and 20, all of which is dependent on the so-called "priority list."

- Monthly.

4. Are guilty pleas taken and defendants sentenced pursuant to plea agreements on the morning of trial?

- Yes, and also pleas are taken on pre-trial dates.

- Yes.

- Sometimes.

- Yes.

- Yes, but defendants on the priority list must plead as charged, supposedly.

- Occasionally.

- Sometimes.

5. Other than arraignments, preliminary examinations, hearings on pre-trial motions, and trials, are criminal cases docketed and the defendants brought to court for any other purpose? If so, what?

- No, (except for 72 hours hearings held in the jail courtroom by the commissioner and revocation/writs of *habeas corpus* held on pre-trial dates).

- Pre-trial days at which plea offers are to be made/reviewed (Plea Day).

- No.

- Revocations and post conviction relief.

- Pro se motions.

- Sentencing; probation revocation hearings.

- Yes, plea changes.

- They are brought to court for sentencing, when PSI's are ordered.

- Occasionally for determination of status, i.e. we try to get new cases on the same track as an older case, probation revocation hearings, etc.

- Yes, motions to revoke, to determine status.

6. Are pre-trial conferences held prior to trial? If so, when?

- Yes, but these conferences are solely for the purpose of working out plea bargains. The conferences are set from two to five weeks before the trial date.

- Yes, when scheduled by the judge.

- Yes, approximately one week.

- Seldom – most plea-bargaining done directly with D.A.

- Depends on the judge. When I am able, I schedule them with just my IDB lawyers the week before a criminal trial docket.

- Yes, conferences may be held on a Duty Week felony motion day, or on the Monday pre-trial date.

- Month preceding trials.

- Yes – at least two weeks to trial.

- Yes, week prior to scheduled trail and during court week.

- During the general appearance week, in chambers, and at the bench, as time permits.

- Irregularly.

- Not often, but sometimes.

Family Courts

1. What aspect of the case results in the most delay in a family matter?

- Discovery.

- Custody and community property litigation.

- Unavailability of counsel and/or withdrawing of counsel.

- Attorneys asking for continuances.

- Most problems solved – special cases requiring more discoveries or professional assessments are the exception.

- So many want to go to trial.

- Attorneys do not seem to try to work things out before a court date.

- Many attorneys never communicate with their clients prior to the rule date, and they do not communicate/correspond with opposing counsel. Most cases could be resolved if there were an exchange of information/ideas.

- Court's calendar due to cases being scheduled far to long.

- Too many continuances and requests for five day trials.

- Attorneys' schedules.

- Unrealistic time estimates

- Failure to complete a trial.

- Pre-trial investigations.

2. Are contradictory matters, confirmations of default, and trials on the merits scheduled for hearing on the same day and beginning at the same time? If no, how are they scheduled?

- Yes, defaults and consents are taken with priority. Trials lasting more than one (1) hour are specially set.

- Rule days are set for contradictory matters.

- No – 1 or 2 days for preliminary matters, and merits thereafter.

- Depends on the judge. All of mine are set at the same time on the same day.

- There are slight variations by Judge/Division. Prior to the uniform rules being adopted, many of us started our rule day at 8:30 a.m. and handled preliminary matters such as in chamber adoptions, etc before the docket. This allowed attorneys to handle matters in our court before going to another court or another parish. In the 21st JDC generally, rules and confirmations are set on Monday at 9 a.m. and pre-trial conferences are set for 1:00 p.m. Trials are set for "week of" settings based on the pre-trial conference. Bench trials are backed up behind juries, and domestic/ community property cases that are complicated. They may be carried over from the rule docket to fill out the week. If the docket is too crowded and some cases are "bumped", those cases take priority on the next available docket.

- Yes.

- Sometimes.

3. Do the judges take advantage of court ordered mediation or the appointment of special masters? If so, how frequently?

- Not frequently.

- I find that mediation/special masters are not used.

- Yes, almost all cases without allegations of abuse are sent to mediation.

- Special masters are used in court cases only.

- Hearing officers pre-try all family matters.

- Seldom necessary since our system employs hearing officers.

- Yes, I order mediation in all custody cases. In difficult property settlements, I also will send to a special master.

- Yes, 5% of the time when it seems likely to help.

- Not enough.

- Rarely.

- Not often.

4. Do the judges place time limits on the presentation of evidence?

- No.

- Frequently, to the last party to present the case, when time is running short, and the first party has presented a lengthy case.

- Not specifically.

- No formal limits are established.

- Not usually.

- Rules – I frequently have 40 to 50 (one week 75) rules set per week. Our rules are generally heard on Mondays. Rules are generally given 20 minutes per side. If the case needs more time, it may be scheduled after pre-trial conferences, set for later in the week if jury and bench trials settle, or set for another week as a pre-trial conference on the trial docket. For domestic/community property trials, I try to have the attorneys prepare any stipulations regarding evidence and/or witnesses in advance and present with their opening.

- Very seldom – usually on same attorney.

- Yes.

- Yes, some do.

- Sometimes.

5. Do the judges allow oral argument and if not, under what circumstances is it restricted?

- No.

- Yes.

- Yes, oral arguments.

- Yes, if time is short, I will restrict time limits.

- Yes, very little restriction until the judge's patience runs out.

6. Are pre-trial conferences held prior to trial? If so, when?

- We have hearing officer conferences prior to trial at least two weeks before trial.

- Pre-trial orders would be very helpful in family court. We do not have them and this results in confusion which could be eliminated with a pre-trial order.

- Yes, usually immediately before the trial (morning of trial).

- Yes, pre-trials are held on the day of trial unless the parties accused request otherwise.

- Hearing officer conferences are set within 21 days of filing any family matters.

- Seldom scheduled – often held on date of trial or hearing.

- Usually the morning of the hearing.

- Yes, cases in our district are scheduled on a week of basis. Pre-trial conferences are held on the Monday of the trial week beginning at 1:00 p.m.

- Yes – prior to trial.

- Yes, pre-trial conferences are usually held on the morning the rule is scheduled to be heard.

Civil Courts

1. What aspect of the case results in the most delay in a civil matter?

- The failure to have a discovery/scheduling order that the court will hold the litigants to.

- Obtaining jury trial dates, particularly in parishes other than Lafayette (i.e., St. Martin Parish that only has two civil jury trial weeks per year per judge).

- Too much paper pushing in big defense firms.

- Pre-trial discovery and appeals.

- Discovery causes the most delay including the scheduling of it and the disputes surrounding it.

- Assembling the jury venue.

- Discovery proceeding.

- Selection of an unreasonable trial date.

- Attorneys wanting continuances.

- Last minute motions. Attorneys waiting until late to complete discovery.

- Joint continuances.

- Discovery not being answered and attorneys not communicating.

- Discovery.

- Attorneys' schedules.

- Delay in discovery that results in attorneys unprepared for trial.

- Pre-trial discovery and preparation.

2. Are contradictory matters, confirmations of default, and trials on the merits scheduled for hearing on the same day and beginning at the same time? If not, when are they scheduled?

- I am not sure I understand. It depends on the jurisdiction.

- Any matter requiring testimony and other evidence are scheduled at the same time on the same day.

- No, but contradictory matters (both with and without witnesses) and default confirmations are scheduled for hearing on the same day and time.

- Usually.

- Frequently, after sounding the docket, judges do not release lawyers to return later in the day, but make everyone sit and wait while others argue.

- No - defaults are heard by the duty judge. Contradictory matters are normally set on Fridays, and trials are set Monday – Thursday.

- Contradictory matters are held at a minimum every other Friday. Defaults are generally handled by the duty judge. Trials in the merits are set daily, Monday – Thursday.

- Most times they are, but an attempt is always made to accommodate lawyers' schedule.

- Court is convened at 9:00 a.m. daily.

- Rule days are separate from merits days.

- Rules, etc. scheduled Monday mornings – merits begin that afternoon and continue until completed – all cases for the week set same day.

- Depends on the judge. I handle motions on two Fridays a month. I will handle short confirmations of default any day at 9:00 a.m.

- All jury trials are scheduled on a Monday. Judge trials may be set Monday – Wednesday. I have jury trial weeks and judge trial weeks.

- Rules - Mondays, Motion Hour - Tuesday through Friday.

- Yes.

- Sometimes.

3. Do the judges take advantage of court ordered mediation or the appointment of special masters? If so, how frequently?

- Not in my experience.

- While litigants frequently use mediation, it is extremely rare for the court to order it (less than one percent of cases).

- Very infrequently.

- Yes, occasionally. I encourage mediation.

- Mediation is used but would be used more frequently if judges were allowed to order it without an attorney requesting it. Special masters are used in complex cases.

- Yes, when requested and agreed to by all counsel.

- When possible.

- Special masters are appointed in complex litigation, primarily class actions, once the parties and the court decide it would facilitate resolution of the case. This is done on a case-by-case basis.

- Mediation is encouraged when settlement conferences are unsuccessful.

- No.

- Seldom necessary.

- Rarely – sometimes in a succession case.

- Yes, as often as possible.

- Yes, 5% of the time.

- Not enough.

- Rarely.

- Not often, but sometimes.

4. Do the judges place time limits on the presentation of evidence?

- To some degree. It depends on the judge.

- No.

- Yes, sometimes very unfairly.

- Normally I do not. However, if its repetitive, I do limit it. Also, I request that the attorneys tell how long a matter should take. I will limit them if they substantially exceed the time they estimated.

- No, trial dates are set based on the availability of the court and counsel. An agreement is made with regard to the number of trial days needed.

- Not that I can recall.

- No formal limit.

- Rarely.

- Generally no. Request as many stipulations as to facts, evidence, etc, as possible.

- Some do.

- Yes.

- Sometimes.

5. Do the judges allow oral argument and if not, under what circumstances is it restricted?

- Generally oral argument is, and should be, allowed.

- Always.

- Usually not very restricted.

- Yes, oral argument may be prohibited under the uniform local rules in certain instances.

- Yes, oral argument is permitted during rules as well as at trial.

- Generally, opening and closing statements in bench trials are not necessary.

- Yes.

- Yes – restricted on case-by-case basis.

- Yes – cases in our district are scheduled on a week-by-week basis. Pre-trial conferences are held on the Monday of the trial week beginning at 1:00 p.m.

- Yes.

- Yes, minimal restriction.

- At times.

6. Are pre-trial conferences held prior to trial? If so, when?

- Generally not. If so many times it is the day of the trial.

- These are almost always available upon request. Without requests, however, pre-trial conferences are rarely held and, if held, are frequently a waste of time (i.e., what actually occurs is a trial scheduling/deadline conference which 50 percent of the time is handled by the law clerk).

- Almost always. Usually within a week of trial.

- Settlement conferences are held 15-30 days prior to trial.

- Yes, at the setting of the trial date and at any time requested by the attorney.

- Yes, pre-trials are held to pick trial dates.

- The court conducts settlement conferences prior to trial when requested.

- Pre-trials may also be held on the morning of trial to discuss settlement.

- Yes, pursuant to pre-trial order.

- Ordinarily, when the trial is set, a pre-trial conference is held.

- I am available throughout discovery and prior to trial at the request of the parties, otherwise, the next meeting is the morning of the trial.

- In all jury cases, approximately one month prior to trial.

- Not usually in bench trials unless the parties believe it will assist in settling the case.

- Mandated by some judges in jury trials – others as needed or requested.

- Yes – judges differ. I set mine approximately 3 weeks prior to trial. Some judges set trial dates at a pre-trial conference.

- Preceding month.

- Prior to trial.

- Yes, status conferences to set trial date and impose a scheduling order can be held once issue is joined in the case. Pre-trial conferences may be held at any time.

- Yes, 60 – 90 days prior to trial.

B.

FACTORS THAT CAN LENGTHEN TRIALS UNNECESSARILY OR MAKE THEM LESS EFFECTIVE

FACTORS THAT CAN LENGTHEN TRIALS UNNECESSARILY OR MAKE THEM LESS EFFECTIVE

1. Inexperienced lawyers
2. Poorly prepared lawyers
3. Lengthy voir dire questioning
4. Cumulative/repetitive questioning
5. Exhibits not marked in advance
6. Late or absent witnesses
7. Tardy lawyers
8. Overuse of sidebar conferences
9. Unnecessary interruptions
10. Unnecessarily long opening and closing arguments
11. Unprepared judges
12. Use of unedited depositions
13. Failure to obtain stipulations to uncontroverted facts
14. Attorney scheduling conflicts
15. Witnesses (especially experts) with scheduling conflicts
16. Unnecessarily long recesses and lunch breaks
17. Difficulty in transporting criminal defendants and witnesses from jail or other secure facility to the courtroom
18. Failure to resolve motions in advance of trial
19. Lack of limits on time allowed for lawyers to present case and make arguments
20. Lawyers' tactics designed to lengthen trials

PART III

ABA TRIAL MANAGEMENT STANDARDS

Trial Management Standards

1. Judicial trial management – general principle: the trial judge has the responsibility to manage the trial proceedings. The judge shall be prepared to preside and take appropriate action to ensure that all parties are prepared to proceed, the trial commences as scheduled, all parties have a fair opportunity to present evidence, and the trial proceeds to conclusion without unnecessary interruption.

2. The trial judge and trial counsel should participate in a trial management conference before trial.

3. After consultation with counsel the judge shall set reasonable time limits.

4. The trial judge shall arrange the court's docket to start trial as scheduled and provide parties the number of hours set each day for the trials.

5. The judge shall ensure that once trial has begun, momentum is maintained.

6. The judge shall control voir dire.

7. The judge's ultimate responsibility to ensure a fair trial shall govern any decision to intervene.

8. Judges shall maintain appropriate decorum and formality of trial proceedings.

9. Judges should be receptive to using technology in managing the trial and the presentation of evidence.

Trial Management Standards

1. Judicial trial management – general principle: the trial judge has the responsibility to manage the trial proceedings. The judge shall be prepared to preside and take appropriate action to ensure that all parties are prepared to proceed, the trial commences as scheduled, all parties have a fair opportunity to present evidence, and the trial proceeds to conclusion without unnecessary interruption.

Commentary: Trial time on a court's docket is its most valuable and scarce resource. It is the *joint* responsibility of bench and bar to use that time wisely and effectively! The objective of "managing" a trial is to effectively and efficiently present to the trier of fact the admissible evidence and applicable law relevant to the issues to be decided. The goal is not simply to reduce the number of trial hours or make a trial move faster, although very often trials do conclude in fewer hours when managed.

A trial is the ultimate event in our system of justice, and certainly is one of the most visible and expensive for all concerned. It is thus important that trial proceedings be conducted without unnecessary delay or disruption and kept focused on the legitimate purpose of the trial. While a trial may be sought for political, economic or unrelated personal reasons, the trial should be maintained as the opportunity for litigants to present evidence upon which the trier of fact decides specific issues. The trial judge is the individual in the best position to see that this occurs. Counsel's role is that of advocate and, while counsel are officers of the court, they do act in an adversary role and often have other objectives or priorities. The time when the judge acted the role of a referee who sat back and waited until someone asked for a ruling is past. The judge is responsible for determining not only the appropriateness but the extent of the evidence presented to the trier of fact. Judges not only have the authority and the responsibility to manage individual trials, but the responsibility to those who desire access to the court to have an opportunity to present their case. Also, the availability of trial time is often a variable that moves a case toward resolution.

The 7th Circuit Court of Appeals in *MCI Communications v. American Tel. & Tel. Co.*, 708 F.2d 1081 (certiorari denied by the U.S. Supreme Court) in 1983 on the subject of the trial judge's ability to impose limits on evidence presented for time allowed stated:

> Litigants are not entitled to burden a court with an unending stream of cumulative evidence.... As Wigmore remarked, "It has never been supposed that a party has an absolute right to force upon an unwilling tribunal an unending and superfluous mass of testimony limited only by his own judgment and whim.... The rule should merely declare the trial court empowered to enforce a limit when in its discretion the situation justifies this." Accordingly, Federal Rule of Evidence 403 provides that evidence, although relevant, may be excluded when its probative value is outweighed by such factors as its cumulative nature, or the "undue delay" and "waste of time" it may cause. Whether the evidence will be excluded is a matter within the district court's sound discretion and will not be reversed absent a clear showing of abuse.... The circumstances of each individual case must be weighed by the trial judge, who is in the best position to determine how long it may reasonably take to try the case. (p.1171)

The trial judge, in performing the responsibility of a trial manager, is not only responding to the public's expectations, but to the litigants'. There is no rule or formula that applies to all trials. The judge must exercise discretion addressing the specific needs or issues of each case which requires

consultation with counsel. The judge must know the factual basis of the case, understand the issues to be determined, and be prepared to apply the law. However, while each case may be different, all cases require management in some respects, and certain concepts can be appropriately modified and applied to each case, as discussed herein. It is also important that the judge communicate in advance of trial his or her expectations regarding trial procedures to counsel and consider counsel's expectations and needs in determining how best to manage the trial.

There is no doubt that it is the judge's responsibility to see that all parties receive a "fair" trial. The following excerpts from *On Trial* address *fairness:*

> The major conclusion is that trial length can be shortened without sacrificing fairness by increasing continuity in trial days and by judicial management of each phase of the trial.
>
> Assessing whether fairness suffers on the way to expedite trials is complicated by the fact that fairness in this context is in the eye of the beholder. Unlike the overall pace of litigation, there are no national norms of reasonable time for trial duration.

In this study, we learn that the great majority of judges and attorneys perceive neither lack of fairness nor injustice in those courts where trials are conducted more rapidly than elsewhere. . . The time has arrived for judicial management of all phases of trial. Judicial control is the single factor that distinguishes courts in which similar cases are tried more expeditiously than elsewhere. Attorneys desire, and may in the foreseeable future demand, more judicial control of the trial process. The following statement is in our judgment a fair reflection of current citizen expectation:

> Nobody wants summary justice. That, however, need not be the alternative. The alternative should be reasonable dispatch, without dilatory tactics and self-indulgence by lawyers, and with judges who are able—and want to—keep things moving. Why is that too much to ask for? It ought to be taken for granted. (Edwin Newman "The Law's Delay," San Francisco Chronicle, June 3, 1987).

Our endorsement of trial management by judges rests first upon the demonstrated effectiveness of judicial management in expediting case processing at both the pretrial and trial stages and the fact that all steps in the trial process are amenable to some judicial control. The conclusion is further supported by the favorable effect upon time consumed in trial when courts protect trial continuity; define areas of dispute in advance of the trial; conduct the examination of prospective jurors, set reasonable time limits; and prohibit evidence that is repetitive, cumulative, unnecessary, or needlessly lengthy. And greater judicial control does not appear in fact or perception to impair the fairness of trials.

2. The trial judge and trial counsel should participate in a trial management conference before trial.

Commentary: There is no one agreed upon and preferred method for insuring that a case is ready to be tried. A simple case with two experienced counsel may require nothing more than the setting of a trial date. A more complex case will require a series of conferences or hearings addressing a variety of legal or factual issues as well as lengthy formal conferences. In between these two examples are the bulk of cases whose trial readiness can be addressed through what can best be called a "trial management conference". It is the purpose of the trial management conference to insure that counsel are prepared, but the conference also allows the trial judge to prepare to preside.

Optimally, the trial management conference should be held 10 - 20 days before trial commences. Counsel should have prepared their case for trial by this time, and this conference gives counsel additional incentive to prepare for trial. Given this lead time if problems do arise, court and counsel have the time to fashion appropriate remedies or take steps at the conference to resolve conflicts. It is understood that some judges and lawyers believe there is no need for such a conference in a simple case, which may be true. However, in those cases which are indeed totally prepared for trial, the conference will only take a few minutes and is an opportunity for both the court and counsel to review trial procedures and assure trial readiness.

The order setting a trial management conference shall require counsel to confer before the conference to review the matters that will be covered and accomplish certain tasks. This reduces the time needed for a conference and allows court and counsel to confirm those subjects

not in controversy and address matters requiring the court's attention.

Some have voiced concern that such a conference is not feasible for a master docket, a judge that "rides a circuit" holding trials in various locations, or a court that sets a large number of cases for trial and chooses a "trial date" on the day of trial.

Courts utilizing "master dockets" have adopted procedures for assigning cases to the trial judge in advance of the scheduled trial date, so that a trial management conference can be scheduled and held. Some master docket courts have adopted systems whereby a number of cases are assigned to a particular judge a month ahead of the anticipated trial date to accommodate case and trial management. In those courts that set a number of cases for trial on a particular day, pretrial procedures can help determine which case will go to trial. Often it is a "review" or the setting of a trial management conference that resolves the case. If a "trial case" must be chosen the morning of trial, it is recommended that the trial be scheduled to start later in the morning so that the trial management conference may be held. Circuit riding judges can hold the conference in a convenient location, at a time close to the trial, or (while not preferred) by telephone conference with counsel at the courthouse.

Each jurisdiction has its own form of a document litigants must file to disclose issues, witnesses, exhibits, etc., (pretrial statements, trial readiness certificates or trial disclosure statements), and those documents often set the framework for this conference. It is critical to emphasize that the trial management conference is not a "settlement conference." It is a conference devoted to trial issues. While any opportunity to achieve or encourage a settlement should not be ignored, counsel must understand that negotiation should be consummated before the conference.

"Hurry Up and Wait; a Nuts and Bolts Approach to Avoiding Wasted Time in Trial" by Harry Zeliff published in the Summer, 1989 *The Judges' Journal*, discusses the concept of a trial conference and the subjects to be covered. The following are examples of important matters:

- (1) EXHIBITS: confirm that they have been appropriately marked, each counsel has reviewed, stipulations as to authenticity and admissibility obtained; verify that the exhibits are appropriately organized to be presented at trial; and discuss how they will be used and presented to the jury during trial;
- (2) WITNESSES: review the scheduling of witnesses to insure that there will not be a break in the presentation of testimony; address any legal problems or conflicts with the potential witnesses; review the nature of the testimony to avoid duplication or determine what can be presented by stipulation, offer of proof, etc.;
- (3) ISSUES: determine what issues of law or fact are really in dispute and those which are not a part of the litigation;
- (4) TIME LIMITS: review time needed for each segment of the trial and set such time limits as appropriate after consultation with counsel to allow preparation within limits set;
- (5) PENDING MOTIONS: review all pending motions and make formal rulings as appropriate or defer until trial those which require evidence, etc.;
- (6) JURY INSTRUCTIONS AND VERDICT: review to determine which instructions the parties agree are appropriate; rule on any objection to those which deal with matters of law; and clarify the parties' position on those instructions which will have to be ruled upon after evidence has been received. Judges who have followed this procedure indicate that most of the instructions can be settled at this conference, leaving the trial judge free to concentrate on those which pose questions of fact or law. The same is true for the form of the verdict, leaving only the determination of whether to include or exclude a few issues;
- (7) SPECIAL TRIAL NEEDS: this is the time to determine whether or not an interpreter is needed, how to utilize technology and who will supply the necessary equipment, whether written or video depositions are appropriately edited, whether offers of proof or stipulations to be submitted have been reduced to writing, and determine any issues that need to be addressed in an en camera hearing or special proceeding that need to take place during trial, including how and when such hearings will be held;
- (8) VOIR DIRE: the procedure to be followed during voir dire can be reviewed, along with questions the court will ask and any special areas that counsel wish to review so court can determine the appropriateness of such questions, etc.; and

- (9) MISCELLANEOUS: while this is not a settlement conference, it is an opportunity to determine the status of settlement negotiations, insuring that all appropriate methods or approaches to resolution have been pursued, and determine whether or not the parties still wish to proceed to a jury trial and obtain a waiver of jury if appropriate, and to verify that the number of hours set for the trial are sufficient.

This conference is the opportunity for the trial judge to discuss with counsel how the judge conducts the trial, particular procedures and expectations regarding counsel's conduct as well as any concerns of counsel regarding potential trial problems. The length of the conference depends on the particular case and the various areas that need to be addressed. Those judges who are fortunate enough to have "law clerks" or other qualified staff can delegate to him or her certain portions of the trial conference (marking of exhibits, review of courtroom and procedures, use of technology in the courtroom, etc.).

A trial management conference is not only for a jury trial. In a trial to the court, in addition to the benefits discussed above, the trial management conference allows the judge to identify the issues to be covered in the court's opinion. Some judges require counsel to submit "verdict forms" or "proposed findings of fact and law" at the conference. This prepares the judge to rule from the bench at the conclusion of the trial in some cases or provides the groundwork for issuing a timely written opinion.

Lastly, it may be helpful to have the judge's "protocol" or statement of trial procedures reduced to writing and provided to counsel before the trial management conference, as this can shorten the conference and give counsel an opportunity to seek clarification.

3. After consultation with counsel the judge shall set reasonable time limits.

Commentary: The purpose of time limits is to set expectations and determine the appropriate time needed for various segments of trial. Time limits allow the court to plan the trial date and allow counsel to plan their presentations. While time limits are often interpreted negatively as a limit on counsel rights, one could substitute "expectations" for "limits" and perhaps avoid the concern. However, trial time is scarce, and time limits are useful in determining how that time is allocated. Further, the judicial system operate on the concept of "time limits". Statutes of limitations define the time period in which a type of action can be brought. Rules of procedure set forth times in which lawyers must file certain documents, and setting the trial involves a time limit as the case is placed on a calendar for a certain number of days.

Many courts already informally impose such limitations by discussing their expectations with counsel or by subtle references to how long it usually takes for a certain presentation and obtaining counsel's agreement.

The *On Trial* research found support for imposing limits on the time allowed for various segments of trial as long as they were based upon the particular case, made in advance of trial to allow for preparation, and sufficiently flexible to allow for exceptional circumstances.

There are a number of appellant decisions analyzing the use of time limits in which the following general statements are made:

- TRIAL LENGTH: The circumstances of each individual case must be weighed by the trial judge, who is in the best position to determine how long it may reasonably take to try the case.... The time limits should be sufficiently flexible to accommodate adjustment if it appears during the trial that the court's initial assessment was too restrictive.

- VOIR DIRE: The trial court may impose reasonable restrictions on the exercise of voir dire examination... The trial court has broad discretion to determine the scope of voir dire. The trial court should not unreasonably and arbitrarily impose limitations without regard to the time and information reasonably necessary to accomplish the purposes of voir dire. Limitations in terms of *time* or *content* must be reasonable in light of the total circumstances of the case.

- ARGUMENT OF COUNSEL: The trial judge has considerable discretion to set limitations on arguments in the management of a trial. (1) In a relatively simple prosecution it is not unreasonable for counsel to anticipate that the trial judge will assume, unless advised to the contrary, that an extended closing argument

is not required. Obviously it would be preferable for the trial judge to alert counsel as early as possible of any time limitations on closing argument. In the absence of such warning, counsel may be at a disadvantage if unable to change plans instantly, and there fore unable to make as effective an argument to the jury. (2) It is a generally recognized principle of law that the trial court has the power, *in its discretion*, to limit counsel's time for argument. No rule or formula can be applied to all cases. Each case must turn on its own facts. The following factors generally determine the appropriateness of a given time limitation: length of trial, number of witnesses, amount of evidence, number and complexity of issues; instructions, amount involved, gravity of the offense, etc.

Judges are encouraged to review court rules, rules of evidence and case law in their particular state, as it appears that most states have addressed in some form or another the authority or discretion of the trial judge to impose limits. It should be kept in mind that the judge does need information and input from counsel, and the limitation must be reasonable, related to the particular case, and *adjusted to meet circumstances which may arise.* The judge can address concerns as well as protect the record by simply stating in setting time limits that "additional time will be granted if the need arises". It is also important that the judge "fairly" enforce the limitations and require that all parties comply.

Time limits are not a cure-all for lengthy trials but (1) a tool for setting expectations on how a trial will be conducted, (2) emphasize the importance of maintaining momentum, (3) avoid unnecessary and inappropriately long presentations, (4) encourage self-imposed limits on cumulative witnesses or evidence, (5) discourage other "delay", and (6) instills the attitude that the trial will be efficiently presented on the part of both court and counsel.

As discussed in standard six on momentum, it is important that judge and counsel periodically review the progress of the trial to note whether presentations will indeed be made within the limitations set or if there is a need for imposing limitations. During a trial it may be appropriate to set time or subject matter limitations on presentations to address a variety of situations (i.e.: failure of counsel to respond to court orders, repetitive or irrelevant questioning, inappropriate behavior, witness availability problems, etc.).

It is also very useful and appropriate to advise the jury of the time "agreed upon" and set. For example, after the judge concludes his or her voir dire, the court should advise the jury of the amount of time that each counsel will have for questions. A similar approach can be followed before opening or closing statements and other segments of the trial when limitations have been imposed.

4. The trial judge shall arrange the court's docket to start trial as scheduled and provide parties the number of hours set each day for the trial.

Commentary: *On Trial* noted the difficulty of getting a trial started on time. Other matters on the court's docket, getting prospective jurors to the courtroom, obtaining the presence of defendants in custody, addressing last minute "problems" and a variety of other reasons or excuses are often cited. The real problem may be the judge's calendar or unrealistic expectations as to when the court or parties can be ready to start. If the problem rests with another entity (sheriff or local official), then the judges in that circuit or district need to raise the matter with the responsible party. The trial conference, as discussed in these standards, is a good opportunity to anticipate, review and address these potential problems and set the expectations that the trial will begin at the scheduled time. Once the expectations have been set and the case called for trial, the judge must accept his or her responsibility to "deliver" and start the trial on time and provide the appropriate hours.

Judges, counsel and court personnel believe there is usually a minimum of 5 hours devoted each day to a trial. The *On Trial* study revealed that often only 3 to 3 1/2 hours were actually being devoted to trial. There are many reasons for the differences in perception and reality, and these can often only be determined after a judge analyzes how time is actually spent. Judges are urged to keep track of the hours *actually* devoted to a trial and note events which take time away from a trial. A judge must be cognizant of the various demands on time and willing to monitor what actually occurs if trial time expectations are to be met.

It is important that the judge communicate expectations to court staff as to what will occur during each court day. Court staff can assist the judge in maintaining the desired schedule.

If a court has difficulty in either beginning at a certain time or providing the desired number of hours, the judge needs to review the method of scheduling matters on the calendar. Usually the problem arises when a judge attempts to do too much or does not analyze the types of matters to be handled and adjust the calendar accordingly.

Finally, the responsibility of counsel is not being ignored but the judge must communicate to counsel when court sessions will be held and respond appropriately if counsel fail to comply. While one immediately thinks of imposing sanctions, it is submitted that other "subtle" responses such as having the parties in court and waiting for the "tardy" counsel to arrive will suffice.

5. The judge shall ensure that once trial has begun, momentum is maintained.

Commentary: Standards four and five are related but really address different situations. Standard four stresses starting on time and providing a certain number of hours, whereas maintaining momentum means managing what is done during those hours.

"Momentum" is consistently acknowledged as the most important concept in trial management. It involves and incorporates part or all of each of the standards set forth herein: such matters as having court staff handle or defer requests for conferences with the judge; cooperation by a multi-judge court to take hearings or handle other matters when needed; the clerk's responsibility for the length of recesses, advising the jury to be ready to return to court, getting counsel back in court, and advising the judge that it is time to reconvene.

However, momentum addresses more than these matters. During a trial, a judge should periodically review with counsel the progress of the case, availability of witnesses, etc. While no one likes to inconvenience witnesses, it is often better to have witnesses waiting and available when needed than to have the jury, parties and counsel in court wait. When necessary, witnesses can be taken out of order or parties can even present their cases out of order.

When they begin their questioning, counsel should be instructed and prepared to proceed to conclusion. Excessive requests for time to consult with co-counsel, parties, or other such interruptions should not be tolerated. The court can address such problems through a friendly suggestion or brief side-bar conference, or if need be, at a recess on the record with clear instructions from the court on how to proceed in the future. If at all possible, the court should set recesses at the conclusion of the examination of a witness and advise the jury what will occur when court reconvenes after the recess (i.e.; counsel will call new witness, counsel has finished direct examination and opposing counsel will commence their cross, etc.!). If the examination is going to carry over after the recess, the court should confirm the next area of questioning and upon reconvening remind the jury where the questioning had ceased, announce the next area of inquiry and instruct counsel to proceed with questions in that area. This prevents counsel from repeating previous questions and once again reminds counsel of what is expected.

Objections by counsel are often a source of interruption, but are a legitimate activity that requires a prompt ruling by the court. Counsel should be aware of the court's requirement that objections be concise and in appropriate legal terms so that the court can summarily rule. It is submitted that there is no need for frequent side-bar conference or recess to argue matters outside the presence of the jury, as counsel often request. If the judge believes he or she is sufficiently informed on the issue, the ruling can be made, giving counsel the opportunity to supplement their record at the next recess.

There should be a designated place in the courtroom for exhibits. Counsel should be requested to obtain the exhibits they need for the upcoming presentations and then return them after they are used. If counsel is going to use a number of exhibits with a witness, they should appropriately arrange all the exhibits and place them before the witness. This prevents counsel from perpetually pacing up to the witness stand and back each time he wishes to have a witness review an exhibit. It is important that at the trial management conference, the use of exhibits during the trial be reviewed with appropriate in-

structions to counsel. Large exhibits should be located where the jurors can see them, and instead of taking the time to view individual exhibits during the presentations, the jury can review them during a recess, under direction not to discuss the exhibits among themselves. If counsel has prepared individual packets of exhibits for jurors, the jurors should be told when to pick up the packet and directed to review the specific exhibits and, when finished, close their exhibit books and put them down so as not to distract the jurors during presentation.

6. The judge shall control voir dire.

Commentary: This standard does not endorse or reject the idea that the trial judge should exclusively conduct the voir dire, as is common to federal courts. The trial judge should analyze the purpose of voir dire and determine how best to conduct it. The approach that appears to be finding favor with most courts has the judge conduct a substantial part of the questioning, covering many standard areas of inquiry, while counsel is either granted a certain period of time or allowed to question on certain issues. Many courts at the trial management conference do review with counsel special areas of inquiry, and often counsel will request the court to cover certain subjects, and the court can then decide not only the length but the content of the voir dire. Some judges believe that time limits of 15 to 30 minutes for each side *does* control content and results in "focused" voir dire examinations.

It is the judge's duty to ensure that voir dire does elicit information from the prospective jurors whereby challenges for cause can be identified and ruled upon; and that counsel obtain information to exercise their peremptory challenges. Counsel may have other goals and should be reminded that the purpose of jury selection is to seat the required number of persons to act as fair and impartial jurors. Questioning is appropriate to discover and discuss effects of any bias, prejudice or experience of the proposed jurors. The judge's voir dire should not only develop expectations on the part of jurors but orient them to the trial process and obtain their commitment to follow the instructions of law and court's admonitions.

Judges should also be aware that there are different methods of calling and seating jurors. In a civil case to a jury of six, courts usually call a sufficient number of jurors that after passing for cause each side can exercise its challenges, leaving the appropriate number of jurors (e.g., 14 where each side has 4 challenges). This method has been gaining favor in criminal cases. For example, to pick a 12-person jury for which each side has five pre-emptories, 22 jurors would initially be seated. If any of the jurors are excused for cause, then a replacement juror is brought into the panel. If an alternate is being chosen and additional challenges are granted, then three additional jurors would be seated. At the conclusion of the questioning, the prosecution would exercise the challenge to the first twelve seated, and the thirteenth member would then become a part of the initial twelve, with defense counsel making its challenge. This process would be repeated until the parties either pass twelve or the challenges are exhausted. Following this procedure, one can see how a jury could be picked easily in an hour and a half. It is important that the method, whatever it may be, is discussed prior to trial and a record made, especially if the court agrees or stipulates to a lesser number of jurors or an unusual procedure. A judge should determine what the rules or procedures on this subject are in their particular state or jurisdiction. Some of these rules are mandatory, and others are only suggested. It does appear that unless judges become directly involved and begin controlling the voir dire process that legislatures will legislate control on voir dire, as recently occurred in the state of California. While some judges believe that this is an area of the trial that should be strictly left to counsel's prerogative, it is submitted the Court has a responsibility beyond merely listening to counsel's questions. The court can participate in the voir dire process in a manner that leaves sufficient flexibility and discretion to counsel to pursue relevant areas of questioning.

The use of questionnaires and juror orientation before voir dire have become increasingly popular. Most courts have some form of video or slides to show to prospective jurors before trial. It may also be appropriate for a court to develop a written introduction for the jury panel to read when it arrives at the courtroom to further orient the prospective jurors as well as to occupy the few minutes that pass between a jury being seated and proceedings beginning.

Questionnaires are usually of two types. One seeking basic information can be sent to all jurors along with a summons to report or filled out as they report for service. The second is a special questionnaire related to a specific trial, one usually involving sensitive issues or a serious criminal case. If these questionnaires are going to be used, it is imperative that they be completely reviewed at the trial management conference and decisions made as to the questions to be included, when the jurors will fill out the questionnaires, and when counsel will have access to the responses. Some courts will review the completed questionnaires with counsel and, upon stipulation, excuse certain jurors. The questionnaires may also be used to determine which jurors may need to be questioned out of the presence of the others. If this type of questionnaire is used, counsel should be required to return their copies to the court with the originals appropriately sealed for any required appellate review and the jurors so advised that their answers will not be disseminated for any other use than in the voir dire process. However, there are some states, such as California, that hold that such questionnaires are a matter of public record and available for inspection. In those jurisdictions, court and counsel should consider drafting questions that have prospective jurors identify areas of concern and not require a juror to put in specific information and then conduct appropriate en camera questioning of jurors who have identified concerns. The court will have to determine how to advise the jury about public disclosures of the information provided. Whether or not the questionnaires promote a better voir dire by eliciting more information or even shorten the process is open to debate. It is one method to consider, depending upon the particular case.

It is important that not only each judge but judges within a district and state evaluate how jury selection occurs and whether or not there can be an agreed upon common system or similar approaches to voir dire.

7. The judge's ultimate responsibility to ensure a fair trial shall govern any decision to intervene.

Commentary: This standard has invoked considerable debate and has the potential to be misunderstood. It is *understood* that counsel have discretion in presenting evidence. The court should defer to counsel's belief as to the type of evidence and manner of presenting evidence to the trier of fact. Likewise, it is agreed that the trial judge does have a responsibility to insure a fair trial and should not hesitate to intervene during counsel's presentation when necessary. It is defining "When Necessary" that fosters debate! It may well be a standard that "speaks for itself" and is not subject to further definition other than in the context of a specific fact situation.

If a judge decides to intervene, he or she should do so in a manner that does not indicate any bias for or against any party or issue in the case.

There are some judges and lawyers who believe that judges should not intervene except in response to an objection by a lawyer. While counsel have the responsibility to object, often strategy considerations, lack of ability, etc., may prevent them from objecting or requesting direction from the court. If one accepts the premise that a judge presides over a trial and is not a referee who sits back and waits until a party requests a ruling, there are situations which call for a judge to intervene, and, after appropriate inquiry, limit counsel's presentation or direct counsel to proceed in a certain way. This is not to imply that a judge should be advising counsel how to try their case or present their evidence; but that the judge does have a role in insuring that both parties receive a "fair trial." Thus, there are those who believe that a judge, after careful consideration, should intervene to address inappropriate conduct, repetitive questioning, introduction of unnecessary or unduly repetitive evidence, or other abuses by counsel. It is further submitted that such activity needs to be addressed before the trial judge is faced with a mistrial or several years later receives an appellate decision determining that a party did not receive a fair trial or due process. Of course some appellate courts might find a denial of due process due to the judge's intervention, which makes this is one of the most difficult areas of trial management. However, the responsibility to address inappropriate activity or proceedings is placed squarely on the shoulders of the trial judge and cannot be ignored!

This is an area in which judges could benefit from appropriate "judicial education." Certainly this subject ought to be placed before a bench-bar committee. If a bench-bar committee does under-

take analysis of this area, a good starting point would be the report of the American Bar Association Committee on Professionalism chaired by former ABA President Justin Stanley. Regrettably, this standard may raise more questions than it gives answers or guidance, but it is also an area that a judge must be prepared to address.

8. Judges shall maintain appropriate decorum and formality of trial proceedings.

Commentary: Formality lends credibility to the proceedings and emphasizes to counsel and jurors the important functions they perform. This is not to say that humor does not have its place in the courtroom, but to emphasize that the judge may be called on to exercise authority to control the conduct of spectators, witnesses, parties or counsel. There isn't a judge or attorney who, at some time during court proceedings, has not witnessed inappropriate behavior. The judiciary and bar alike are concerned by the "decline in professionalism," and the A.B.A. and individual states alike continue to seek solutions. It has been noted that the "perception of what occurs during the trial" is as important as what actually occurs. Hence the dignity of the proceedings and appropriate behavior on the part of both court and counsel are of paramount importance. Judges should heed how they are perceived and perhaps discuss this matter with other judges, counsel or other individuals within the legal community. The trial management conference, once again, is an appropriate time to review the court's concern, especially if the court has developed "trial procedures or guidelines" that not only cover trial matters but also discuss behavior of counsel. It is submitted that judges do have a responsibility to address counsel's behavior. One only has to read the decision in *Dondi Properties Corp. v. Commerce Sav. & Loan Asn'n*, 121 F.R.D. 284 (N.D. Tex. 1988), to understand this concern. Individual judges, districts or states may well wish to adopt the "standards of practice" that this court felt should be observed by attorneys. While all of the "standards of practice" are important, the following specifically apply to this discussion:

(A) In fulfilling his or her primary duty to the client, a lawyer must be ever conscious of the broader duty to the judicial system that serves both attorney and client.

(B) A lawyer owes to the judiciary candor, diligence and utmost respect.

(C) A lawyer owes to opposing counsel a duty of courtesy and cooperation, the observance of which is necessary for the efficient administration of our system of justice and the respect of the public it serves.

(D) A lawyer unquestionably owes to the administration of justice the fundamental duties of personal dignity and professional integrity.

(E) Lawyers should treat each other, the opposing party, the court, and the members of the court staff with courtesy and civility and conduct themselves in a professional manner at all times.

(F) A client has no right to demand that counsel abuse the opposite party or indulge in offensive conduct. A lawyer shall always treat adverse witnesses and suitors with fairness and due consideration.

(G) In adversary proceedings, clients are litigants and though ill feelings may exist between clients, such ill feeling should not influence a lawyer's conduct, attitude, or demeanor towards opposing lawyers.

(H) Lawyers should be punctual in scheduled appearances and recognize that tardiness is demeaning to the lawyer and to the judicial system.

(I) Effective advocacy does not require antagonistic or obnoxious behavior, and members of the bar will adhere to the higher standard of conduct which judges, lawyers, clients, and the public may rightfully expect.

9. Judges should be receptive to using technology in managing the trial and the presentation of evidence.

Commentary: There have been numerous technological advances available to assist court and counsel in the effective and expeditious presentation of evidence. Testimony can be presented by video tape, witnesses can testify by telephone or microwave television hookups, and exhibits can likewise be produced in court through electronic means! Future technology will be able to assist in presenting complicated testimony and hopefully solve many problems of witness availability as we know them today. Computer aided transcript displays testimony on a screen which can be read by a "deaf" party, juror, or witness. Similar equipment can be used to translate testimony into a foreign language or allow a handicapped individual to present testimony. Translators perform "simultaneous translation," which is transmitted to many individuals. The court can often delegate to counsel in advance of trial the responsibility of obtaining the necessary equipment.

There is no doubt the The method or manner of recording trial proceedings will change. Judges should insist that any changes or advances enhance their ability to conduct trial proceedings and give them appropriate flexibility in being able to conduct trial proceedings.

There are judges who are computer literate and use computers in the courtroom to take notes, obtain legal research, and access jury instructions from other courts. In the future more and more judges will be able to use computers and other equipment to advance the purpose of a trial and the role of a judge as a trial manager in ways not imagined at this time.

It is difficult to describe particular equipment, uses or even predict advances that may occur in the future. It is important, however, that as such developments occur, the technology serve the purpose of conducting an effective trial. Evolving technology will require continuous review and exchange of information among judges; and may become one of the most important areas of judicial education.

Another area of concern is "evidence" that is being artificially produced through the use of technology. Judges will have to become informed in order to make decisions as to the reliability or admissibility of this evidence. Thus, while technology may provide some options to solve court problems, there is no doubt it will also create new and different issues for the court to address in the future.

PART IV

BEST PRACTICES RECOMMENDED BY THE NATIONAL CENTER FOR STATE COURTS

Source: http://www.ncsconline.org/Projects_Initiatives/BPI/CaseflowManagement.htm

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Successful Caseflow Management Techniques

Introduction and Overview

"Caseflow management" can be defined as the entire set of actions that a court takes to monitor and control the progress of cases, from initiation through trial or other initial disposition to the completion of all postdisposition court work, in order to make sure that justice is done promptly.[1] According to the National Association for Court Management (NACM) in its Core Competency Curriculum Guidelines, "Properly understood, caseflow management is the absolute heart of court management."[2]

Years of research and experience in courts across the country confirm that for caseflow management to work effectively in a court, it is essential that there be a solid management foundation: there must be (a) leadership; (b) commitment among judges and court staff to managing the pace of litigation; (c) communications within the court and with lawyers and other institutional participants connected with the case; and (d) a learning environment enabling a court to be flexible in the face of changing events. Moreover, there must be active attention to features that caseflow management shares with day-to-day management of any activity: (1) establishing appropriate expectations; (2) monitoring actual performance; and (3) holding participants accountable and taking responsibility to bring actual performance more in line with expectations.[3]

General and Specific Caseflow Management Techniques

With a strong foundation and active attention to day-to-day management, a court is in a position to make effective use of standard caseflow management techniques. The following general techniques have consistently been found to yield positive results for trial courts seeking to improve their management of the pace of litigation:[4]

- Early court intervention and continuous court control of case progress
- Differentiated case management (DCM)
- Meaningful pretrial court events and realistic pretrial schedules
- Firm and credible trial dates
- Trial management
- Management of court events after initial disposition

Within this general framework, there are more specific techniques that have been identified for successful caseflow management for particular kinds of cases. These include the following:[5]

1. *Proven Techniques in Civil Cases:*

- Early court involvement
- Case screening and DCM track assignment
- Coordination and management of alternative dispute resolution (ADR)
- Effective trial scheduling
- Managing complex litigation

2. *Proven Techniques in Criminal Cases:*

- Early assembly of key case participants and critical case information
- Early and continuing court attention to the management of case progress
- DCM case screening by court with prosecution and defense counsel
- Management of plea negotiations
- Early decisions on motions and realistic trial scheduling
- Postdisposition management of probation violations that involve new offenses
- Effective use of drug court programs

3. *Techniques for Management of Routine Traffic Cases:*

- Make it easy for motorists to dispose of uncontested cases
- To achieve economies of scale, consider centralized traffic ticket processing at statewide or regional level
- Work closely with law enforcement officials to coordinate officer appearances and maintain manageable court calendars
- To remove incentives for motorists to delay contested cases, promote early opportunities for plea discussions with prosecutor
- Actively manage postdisposition fine and fee collection
- Make payment of traffic fines and fees a condition of license renewal for scofflaws and those who fail to appear

4. *Techniques for Effective Management of Juvenile Delinquency Cases:*

- Increase commitment to achieving timely case processing

- Take early control of case progress
- Improve the quality and timeliness of case investigations
- Designate specific court staff members who have the primary responsibility of monitoring caseflow
- Develop guidelines to limit continuances and apply them consistently
- Manage postdisposition probation violations that are new offenses

5. *Caseflow Management Techniques for Child Protection Cases:*

- Establish comprehensive time standards linking abuse and neglect case progress to that in postdisposition proceedings to terminate parental rights
- Exercise early and continuous court control over case progress
- Implement a "family file" and consider a one judge/one family policy
- Routinely make full "reasonable efforts" determinations
- Consider assigning cases to DCM tracks (as when the court makes a "no reasonable efforts required" finding)
- Provide early and firm dates for adjudication hearings and hearings on petitions to terminate parental rights
- Hold timely permanency hearings
- Exercise active control over termination proceedings to assure prompt dispositions

6. *Caseflow Management Techniques for Divorce Cases:*

- Recognize emotional issues
- Adopt and follow time standards
- Adopt appropriate measures for *pro se* litigants
- Exercise control over the scheduling of case events
- Develop simplified procedures to expedite uncontested cases
- Screen cases early for assignment to DCM tracks
- Give careful attention in divorce decree to property, custody, visitation and

support questions

- Allocate sufficient judge resources to hearings on contested postdisposition matters

7. *Techniques for Management of Probate Cases:*

- Establish overall timetables for contested cases to govern time from initiation to trial or nontrial disposition
- Monitor and control contested case progress from initiation
- Establish time expectations for completion of discovery in contested cases and progress toward initial disposition
- Make an early appointment of counsel for a respondent when appropriate
- use pretrial conferences and ADR in contested cases to promote early nontrial resolution; and set an early date for trial or hearing
- Manage trials effectively, avoiding discontinuous-day trials
- Actively monitor compliance with requirements that guardians or conservators give periodic accountings to the court and the filing of reports on the performance by fiduciaries of their responsibilities to those for whom they are responsible[6]
- Use court monitoring of fiduciary filings to remind executors, guardians and conservators that the court is overseeing their performance and to ascertain whether there have been abuses by fiduciaries.[7]
- Be prepared to enforce court orders by means including sanctions, and take immediate action to ensure the safety and welfare of a respondent if the court learns of abuse or neglect.[8]

Finally, it is also important that *appellate cases* be actively managed from notice of appeal through final appellate disposition. Techniques for effective management of cases on appeal include the following:[9]

- Active coordination between appellate court and trial court to assure timely assembly of the trial court record, including completion of the trial transcript
- Use of settlement conferences to resolve civil appeals
- Placing limitations on oral argument in civil and criminal appeals
- Requiring a reasoned opinion in every case decided on the merits
- Assuring timely completion by the court of its activities after submission of cases, including case conferencing, completion of opinions, and posting of decision to court below

Resources

For citations to some of the literature on caseflow management, see the works cited in the endnotes. Of particular interest may be the following recent publications by the National Center, which can be ordered through the National Center website:

- Brian Ostrom and Roger Hanson, *Efficiency, Timeliness, and Quality: A New Perspective from Nine State Criminal Trial Courts* (1999).
- David C. Steelman, John Goerdt, and James McMillan, *Caseflow Management: The Heart of Court Management in the New Millennium* (2000).
- Ann Keith and Carol Flango, *Expediting Dependency Appeals: Strategies to Reduce Delay* (2002).

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[1] David C. Steelman, John Goerdt, and James McMillan, *Caseflow Management: The Heart of Court Management in the New Millennium* (2000), xi.

[2] NACM, Professional Development Advisory Committee, "Core Competency Curriculum Guidelines: History, Overview and Future Uses," *Court Manager* (Vol. 13, No. 1, Winter 1998) 6.

[3] The central tenets of caseflow management have been developed, tested and confirmed over a period of over 25 years since the early 1970's. For a general overview, see David Steelman, "What Have We Learned About Court Delay, 'Local Legal Culture,' and Caseflow Management Since the Late 1970s?" *Justice System Journal* (Vol. 19, No. 2, 1997) 145. For more details, see Maureen Solomon, *Caseflow Management in the Trial Court* (1973); Steven Flanders, *Case Management and Court Management in United States District Courts* (1977); Thomas Church, et al., *Justice Delayed: The Pace of Litigation in Urban Trial Courts* (1978); Ernest Friesen, et al., *Justice in Felony Courts: A Prescription to Control Delay* (1979); Larry Sipes, et al., *Managing to Reduce Delay* (1980); Maureen Solomon and Douglas Somerlot, *Caseflow Management in the Trial Court: Now and For the Future* (1987); Barry Mahoney, et al., *Changing Times in Trial Courts: Caseflow Management and Delay Reduction in Urban Trial Courts* (1988); John Goerdt, Chris Lomvardias, Geoff Gallas and Barry Mahoney, *Examining Court Delay: The Pace of Litigation in 26 Urban Trial Courts* (1989); William Hewitt, Geoff Gallas and Barry Mahoney, *Courts That Succeed: Six Profiles of Successful*

Courts (1990); Goerdt, Lomvardias, and Gallas, *Reexamining the Pace of Litigation in 39 Urban Trial Courts* (1991); American Bar Association, *Standards Relating to Trial Courts, 1992 Edition* (1992); Roger Hanson, *Time on Appeal* (1996); Brian Ostrom and Roger Hanson, *Efficiency, Timeliness, and Quality: A New Perspective from Nine State Criminal Trial Courts* (1999); and Ann Keith and Carol Flango, *Expediting Dependency Appeals: Strategies to Reduce Delay* (2002).

[4] See Steelman, Goerdt, and McMillan, *Caseflow Management: The Heart of Court Management in the New Millennium,* Chapter I.

[5] Ibid., see Chapters II and III.

[6] See *National Probate Court Standards* (1993), Standards 3.3.15 (guardians), 3.4.15 and 3.4.16 (conservators).

[7] See David Steelman, *Service to Citizens by the Probate/Mental Health Department of the Superior Court of Arizona in Maricopa County: A Technical Assistance Report* (1997), p. 8.

[8] See *National Probate Court Standards* (1993), Standards 3.3.17 (guardians) and 3.4.18 (conservators).

[9] See, for example, Roger Hanson, *Time on Appeal,* p. 32, as well as Ann Keith and Carol Flango, *Expediting Dependency Appeals: Strategies to Reduce Delay,* pp. 10-17.

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PART V

DELAY REDUCTION
PLANNING AND PROGRAMMING

A.

DEVELOPING AND IMPLEMENTING A COURT DELAY REDUCTION PROGRAM

Source: American Bar Association, Defeating Delay, Developing and Implementing a Court Delay Reduction Program (Chicago, IL: American Bar Association, 1986) and The National Center for State Courts, How to Conduct a Caseflow Management Review. A Guide for Practitioners (Williamsburg, VA: NCSC, 1994).

DEVELOPING AND IMPLEMENTING A COURT DELAY REDUCTION PROGRAM

1. Introduction: Important Attitudes

For a court delay reduction program to be successful, those planning and implementing the program must begin by securing agreement from all stakeholders regarding the following important attitudinal adjustments:

- The first important attitudinal adjustment is an agreement among the stakeholders that the court must, in some fashion, control the pace of litigation. The support and encouragement of the bar is helpful to judges making this adjustment.

- Delay is most often perpetrated because the judges and lawyers accept it as the norm. Changing this acceptance of delay as normal requires everyone to agree that delay is unsatisfactory.

- Delay can be remedied if everyone accepts that delay is a problem, that the problem is solvable, and that a well-planned program can solve the problem.

2. Creating the Design Team

The first step in creating a delay reduction program is to establish a design team to plan the program. In establishing the design team, the following guidelines should be observed:

- The key to an effective delay reduction program is committed judicial leadership assisted by the bar. The design team should be led by judges and should involve leaders of the state and local bar.

- The ownership of the program should be broadly based. All key players need to be represented on the design team.

- The selection of a design team must consider the practical political realities the court system. Political and financial realities must also be taken into account in establishing the design team.

3. Agenda of the Design Team

The design team is responsible for planning all aspects of the delay reduction program. The design team's agenda should include:

- The adoption of time standards, which are the goals of a delay reduction program.

- The planning and completion of a caseflow management review to examine how the court manages its cases and its overall caseload by:

    - describing the current situation with respect to caseloads and case processing in the court;
    - assessing the effectiveness of the court's structure and operational procedures in relation to key areas of caseflow management;
    - analyzing the causes and sources of delay in the system;
    - laying the foundation for an action plan by identifying the strengths, weaknesses, and key problems of the court's case processing.

- The development and implementation of an action plan to create an effective system for managing caseflow in the court based on the analysis of the causes and sources of delay and the following principles of implementation:

    - The court should take early control of the case.
    - The court should maintain continuous control of the case.
    - Events should be scheduled within short time limits.
    - Attorneys' schedules should be reasonably accommodated.
    - Events should occur when they are scheduled to occur.
    - System performance should be continuously monitored against the adopted time standards.
    - The monitoring system should be as simple as possible while still providing the information needed for the management of caseflow.
    - The court should exercise control over discovery to ensure that the time spent on discovery is proportionate to the value and complexity of the case.
    - Cases should be scheduled so as to maximize the productivity of the court without over scheduling.
    - An important part of high productivity is date certain scheduling. The participants in the case must believe that the cases will be heard when scheduled.
    - A firm continuance policy is required for high productivity, date-certain scheduling.
    - Alternative Dispute Resolution (ADR) techniques should be part of the delay reduction plan.
    - The use of pre-trial scheduling and settlement conferences should be part of the plan.

- Lawyers should be required to file a date certain certificate of readiness.
- The court should institute readiness calls to ensure readiness for trial.
- The court should develop and implement an automated case management information system.

Adapted from: American Bar Association, Defeating Delay. Developing and Implementing a Court Delay Reduction Program (Chicago, IL: American Bar Association, 1986) and The National Center for State Courts, How to Conduct a Caseflow Management Review. A Guide for Practitioners (Williamsburg, VA: NCSC, 1994).

B.

MODEL POLICY STATEMENT ON CASE MANAGEMENT

Model Policy Statement on Case Management

The judges of the _____ recognize that the residents of _____ require a system of justice that can efficiently, effectively, and economically handle the many cases filed each year in the court. All parties appearing in court and using its services require a system that recognizes the different and conflicting needs of attorneys, litigants, and witnesses. Such a system needs to be predicable, protective of due process, protective of the public interest, accessible, convenient and timely.

To establish or sustain such a system, the judges of this court are implementing the following changes:

1. _____

2. _____

3. _____

4. _____

5. _____

C.

MANAGING CASES EFFECTIVELY

Source: Case Management, American Academy of Judicial Education, Court Improvement Through Education.

MANAGING CASES EFFECTIVELY

I. MANAGEMENT GOALS

A. Reducing backing and/or pending inventory

B. Controlling cost of justice

C. Minimizing waste of court time (continuance policy)

D. Maintaining equality, fairness, and integrity

II. JURISDICTIONAL FACTORS

A. Number of judges or judicial officers available for hearings

B. Unique cases filed in a particular jurisdiction (complex, toxic tort, high volume traffic, etc)

C. Resources available to track and supervise cases (staff, computers, administrative procedures, etc.)

D. Statutory restrictions (i.e. divorce waiting periods, grand jury schedules)

III. WHO SHOULD CONTROL THE MANAGEMENT OF CASES?

A. Attorneys

"It is the lawyers' case!"

B. Judge

"The court is responsible for supervising case progress."

IV. PRINCIPLES OF EFFECTIVE CASE MANAGEMENT

A. More effective use can be made of the limited time available for trials in most courts. Sound trial management by judges results in trials that are more expeditious and more effective, without compromising fairness.

B. There is broad support – by judges and lawyers – for effective management of trials by judges. Effective trial management results in more easily comprehended trials, avoidance of unnecessary delay,

elimination of unnecessary costs to litigants and to the court system, and a more positive public perception of the courts.

C. Trial management is in large part as aspect of the sound exercise of judicial discretion. Many judges already employ some techniques of effective trial management.

D. The most appropriate disposition of a case is most likely to occur when lawyers are prepared and have opportunity and incentive to discuss disposition prior to trial.

E. Courts can encourage lawyer preparation, which in turn will facilitate non-trial disposition or allow more effective trials.

V. BASIC CONCEPTS OF EFFECTIVE CASE MANAGEMENT

A. Early judicial control

B. Continuous judicial control

C. Short scheduling

D. Reasonable accommodation of attorneys

E. Establishment of expectations that events will occur as scheduled

VI. FUNDAMENTAL ELEMENTS OF SUCCESSFUL PROGRAMS

A. Judicial commitment and leadership

B. Court consultation with the bar

C. Court supervision of case progress

D. Standards and goals

E. Monitoring and information systems

F. Case assignment systems

G. Early court intervention and early dispositions

H. Setting firm trial dates

I. Controlling continuances and avoiding backlogs

J. Systems approach and vision

K. Attention to detail

VII. HOW TO MANAGE CASES EFFECTIVELY

A. Set firm deadlines for all phases of the pre-trial process.

B. Set firm trial dates as early in the process as possible.

C. Conduct regular case management conferences, particularly in complex cases.

1. Scheduling conference

2. Status conference

3. Settlement conference

4. Trial management conference

D. Limit or control discovery as much as possible, and require parties to develop plans to complete the discovery process quickly.

E. Control motion practice.

F. Encourage cases to be resolved by summary judgment motions where appropriate.

G. Create and support alternative dispute resolution mechanisms, including judicial settlement conferences.

H. Develop a specific plan to resolve discovery disputes.

I. Impose sanctions and fees where appropriate for misuse of court time and resources.

J. Allow exceptions to the rules where appropriate, but do not let the exceptions swallow the rule.

K. Develop strategies for addressing lawyer noncompliance.

1. Learn the reason why the deadline was not met

2. Learn how much time is required to comply

3. Reinforce the importance of the rule/policy

4. Develop a new timetable for compliance

5. Inform the attorneys of the reason for the rule/policy

6. Impose appropriate sanctions

L. Develop form orders for scheduling and conferences.

M. Develop a process for regular view and dismissal of state/inactive cases.

PART VI

NEW DISTRICT COURT ASPIRATIONAL TIME STANDARDS

Source: Task Force on Delay Reduction and Case Management Proposed Time Standards.

TASK FORCE ON DELAY REDUCTION AND CASE MANGEMENT
PROPOSED TIME STANDARDS

Criminal Cases

Introduction. Judges have the authority and responsibility to insure that criminal cases are not unnecessarily delayed, that they do not drift and that they are resolved in a timely and orderly manner. Once criminal cases have been filed and allotted to a judge, the judge should manage the cases assigned to that Court effectively and efficiently. As a means of assisting the attorneys and the parties in meeting their respective obligations, the Task Force on Delay Reduction and Case Management does hereby recommend the following for criminal cases:

Capital Cases	-- Disposition within 12 - 24 months of the date of the filing of the bill or indictment.
Non-Capital Felony Cases	-- Disposition within 9 - 18 months of the date of the filing of the bill or indictment.
Misdemeanor and Traffic Cases	-- Disposition within 6 - 9 months of the date of the filing of the bill, indictment, or affidavit.

Civil Cases

Introduction. Prior to the setting of a trial date, the timing of civil cases in Louisiana is driven by the actions of the opposing attorneys, particularly in terms of the time to complete discovery. After the setting of a trial date, however, judges have a general responsibility to ensure that cases are not delayed by unnecessary continuances or by other dilatory tactics of the opposing attorneys. The Task Force on Delay Reduction recommends the following aspirational time standards as tools for reducing delay and managing cases more efficiently.

Regular Civil Jury Cases	--	Trial and disposition within 12 months of the date of request to set for trial.
Regular Civil Non-Jury Cases	--	Trial and disposition within 9 months of the date of request to set for trial.
Summary Issues	--	Covered by statutory provisions or court rules.
Contested Domestic Relations Cases	--	Hearing on partition and contested divorces and disposition within 9 months of the date of request to set the hearing date.
Uncontested Domestic Relations Cases	--	Hearing and disposition within 6 weeks of the date of request to set the hearing date.

PART VII

ALTERNATIVE DISPUTE RESOLUTION TECHNIQUES

A. Alternative Dispute Resolution (ADR).

The term "alternative dispute resolution (ADR)" refers to any method other than litigation for the resolution of disputes. In many states, ADR techniques are "annexed" to courts, meaning that courts "mandate" the use of one or another ADR technique as a necessary pre-condition before formal adjudication. In Louisiana, ADR is completely voluntary but, as provided in Rule 11.0 of the District Court Rules, the district courts of Louisiana encourage and support the use of alternative dispute resolution to promote the resolution of disputes and refer all counsel to the Louisiana Mediation Act, La. R.S. 9:4101, et seq. Additionally, the district courts of Louisiana, through the same rule, also encourage and support the use of special masters in appropriate circumstances.

ADR can save time and money for the litigants. It certainly saves time and costs for the courts and can be an effective strategy in a court's overall delay reduction program. For these reasons, courts should work with the bar to publicize the variety of ADR techniques that are available. They should also encourage lawyers generally to use such techniques, but should especially encourage the use of these techniques when the courts are first engaged in the case. Listed below are a variety of ADR techniques that courts may wish to publicize:

> **Arbitration.** The term "arbitration" refers to a process in which a neutral third person or a panel, called an arbitrator or an arbitration panel, considers the facts and arguments which are presented by the parties and renders a decision. The decision may be binding or nonbonding as provided in the rules.
>
> **Case Evaluation.** See **"**early neutral evaluation**."**
>
> **Early Neutral Evaluation.** The term "early neutral evaluation," sometimes called "case evaluation," refers to a process in which a lawyer with expertise in the subject matter of litigation acts as a neutral evaluator of the case. Each side presents a summary of its legal theories and evidence. The evaluator assesses the strength of each side's case and assists the parties in narrowing the legal and factual issues in the case. This conference occurs early in the discovery process and is designed to "streamline" discovery and other pretrial aspects of the case. The early neutral evaluation of the case may also provide a basis for settlement discussions.
>
> **Mediation.** The term "mediation" refers to a process in which a neutral third party, called a mediator, acts to encourage and assist in the resolution of a dispute between two or more parties. The process is informal and non-adversarial. The objective is to assist the disputing parties in reaching a mutually acceptable agreement between or among themselves on all or any part of the issues in dispute. Decision-making authority rests with the parties, not the mediator. The mediator assists the parties in identifying issues, fostering joint problem-solving, exploring settlement alternatives, and in other ways consistent with these activities. Although in court-annexed or court-referred mediation programs the

parties may be ordered to attend a mediation session, any settlement is entirely voluntary. In the absence of settlement, the parties lose none of their rights to a jury trial.

Mini-Trials. The term "mini-trial" refers to a settlement process in which each side presents a highly abbreviated summary of its case to representatives of the parties who are authorized to settle the case. A neutral advisor presides over the proceeding to give advisory opinions or rulings if invited to do so. Following the presentation, the representatives of the party seek a negotiated settlement of the dispute, sometimes with the assistance of the neutral presiding officer.

Settlement Week. The term "settlement week" refers to a dispute resolution process in which litigation in a court is suspended for a week while all available judges and volunteer mediators attempt to settle cases through mediation.

Summary Jury Trial. The term "summary jury trial" refers to a process of resolution involving a non-binding abbreviated trial with mock jurors drawn from the jury pool or selected through agreed-upon jurimetrics selection. A judge or magistrate presides. Principals representing the parties have authority to settle the case. The advisory jury verdict which results is intended to provide the starting point for settlement negotiations among the principals.

B. Informal Pre-Trial Hearings

Courts may facilitate delay reduction by allowing specially trained hearing officers, law clerks, social workers, or other appropriate court personnel to conduct informal pre-trial hearings. In a pre-trial order, the court may set a date, time, and place for an informal pre-trial conference to be held before a qualified officer appointed by the court.

At the informal pre-trial hearing, the officer shall indicate the nature of the formal court process – its steps, procedures, and general timeframe. The officer shall also seek to identify the issues in dispute in the case and may also seek to advise and assist the parties in arriving at a voluntary adjustment of differences at the pre-trial hearing. However, the officer should not, at any stage of the proceedings, force any compromise upon reluctant counsel or parties. The officer can also use the pre-trial hearing to determine indigency and, in criminal and juvenile cases, to introduce an indigent defendant to a public defender.

At such informal pre-trial hearings, the court does not assess or collect any costs. The costs are borne solely by the court.

C. Collaborative Divorce Process

The Collaborative Divorce Process starts from the assumption that formal judicial adjudication of divorce cases may not be the best dispute resolution option in such an emotionally entangled situation. The ultimate objective of the process is a judicial recognition of the dissolution/reconciliation agreement. However, the process is designed to empower the parties to make a joint decision in an informal manner that controls the emotional aspect of divorce.

The Collaborative Divorce Process is interdisciplinary. The lawyer represents a client, protects the client's interests, and addresses all the needs. Emotional concerns are referred to mental health coaches trained in the dynamics of divorce. Parents agree on a one child specialist to report back to them what the child needs. All the financial information goes to a trained financial specialist who gives a report not favoring either side but presenting the realities of the choices available and their consequences. There are no competing experts. There is no public record. There is no need to parade all the dirt accumulated through the marriage before the judge, none of the wasted money and time sitting and waiting on repeated rule dockets, none of the hallmarks of today's divorce procedures. In the long-run, the process is ultimately cheaper and less time consuming than the present system because it often leads to reconciliation, facilitates decision-making, and uses less expensive professionals than lawyers to discover and present information, even when the outcome is to proceed to a formal divorce judgment.

Through the process, lawyers, mental health professional and experts agree that they will not proceed to court as the first step. All efforts are spent in defusing the emotional tensions and collaborating on what the best resolution should be. If the process fails parties can become litigants, but with other counsel. The emphasis, at the start of the process, is on zealous collaboration, not adversarial pursuits.

There are two different emerging models of the Collaborative Divorce Process. One is simply having the lawyers agree to do everything and to only call in other specialists as they deem necessary. The other starts as an interdisciplinary process with mental health and financial professionals being involved from the beginning and each discipline making the decision if they are needed.

The court's role in the process is: (1) to understand the process and publicly support it; (2) to develop procedures and court rules to allow and support those using the process; and (3) to actively promote such collaborative efforts.

PART VIII

CALENDARING/DOCKETING

A.

CALENDARING

CALENDARING

Calendaring is the process of determining how to plan and organize adjudicative activities within a week or month of a judicial year. Generally there are three types of calendaring systems – direct or individual calendaring; master calendaring; and several hybrid systems.

Direct Calendaring. Direct calendaring is a system of assigning cases, used in the federal courts and in many state courts, whereby a case initially assigned to a judge stays with that judge from the time of assignment to the end of the case. Proponents of direct calendaring argue that this system of assignment provides a quick and accurate way to measure judicial efficiency. If cases move efficiently through a judge's courtroom, it generally means the judge is managing his docket effectively. If cases stack up on the judge's docket, the judge cannot blame anyone else for the problem.

Master Calendaring. Master calendaring is a system whereby each proceeding of a case is assigned to a judge scheduled to hear that type of proceeding on a particular day. Proponents of master calendaring argue that this system of assignment is more efficient in that cases are not dependent on one judge's schedule and availability, settlement is reached earlier, and greater impartiality is achieved.

Hybrid Calendaring. Hybrid calendaring is a name applied to various calendaring systems that combine features of direct and master calendaring.

Importance of Calendaring. The method of calendaring is very important to delay reduction and effective case management. Some case types, for example, juvenile and domestic, appear to lend themselves best to direct calendaring because of the need for expedition due to the mandatory time lines imposed by the Children's Code but also by the philosophy of the efficacy of one-family/one-judge policies. Ultimately, each court must decide the form of calendaring that works best for it. However, the calendaring decision should be based on more than simply tradition and judicial convenience. Considerations of delay reduction, improved access to justice, and effective case management should also be part of the calculus of decision-making.

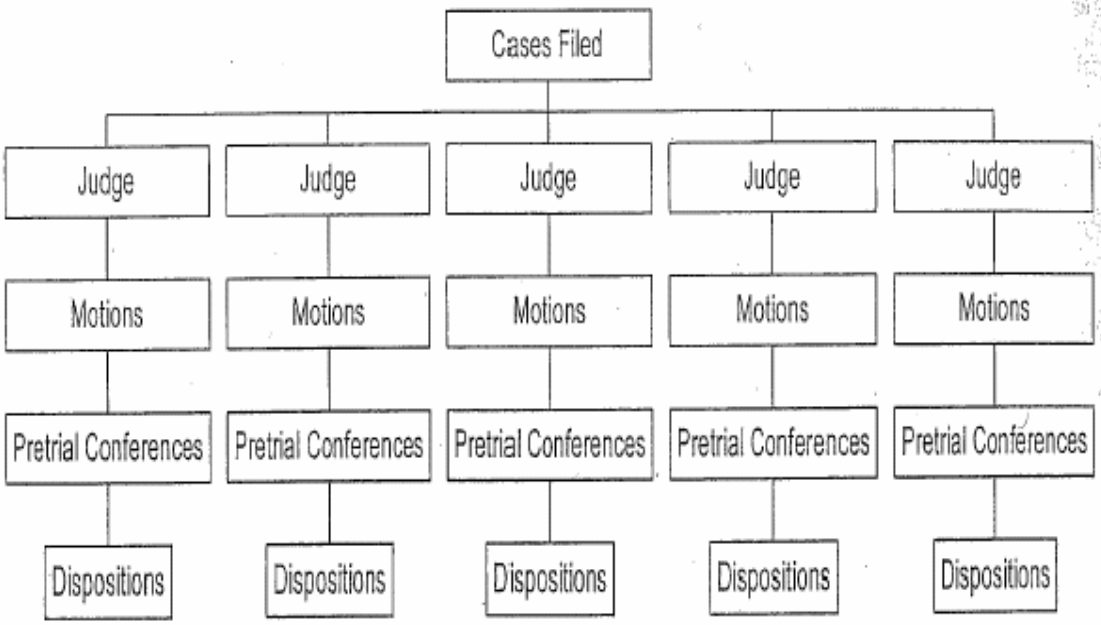
Illustrations of the Various Forms of Calendaring. The various forms of calendaring are illustrated in the charts at the end of this section which have been reprinted from the following publication with the permission of the American Academy of Judicial Education: American Academy of Judicial Education (AAJE), Case Management: The Litigants' Bill of Rights, Booklet for a Conference Held on August 23-28, 2003.

The alternative system of assignment is master calendaring whereby each proceeding of a case is assigned to a judge scheduled to hear that type of proceeding on a particular day. Proponents of master calendaring argue that this system of assignment is more efficient in that cases are not dependent on one judge's schedule and availability, settlement is reached earlier, and greater impartiality is achieved.

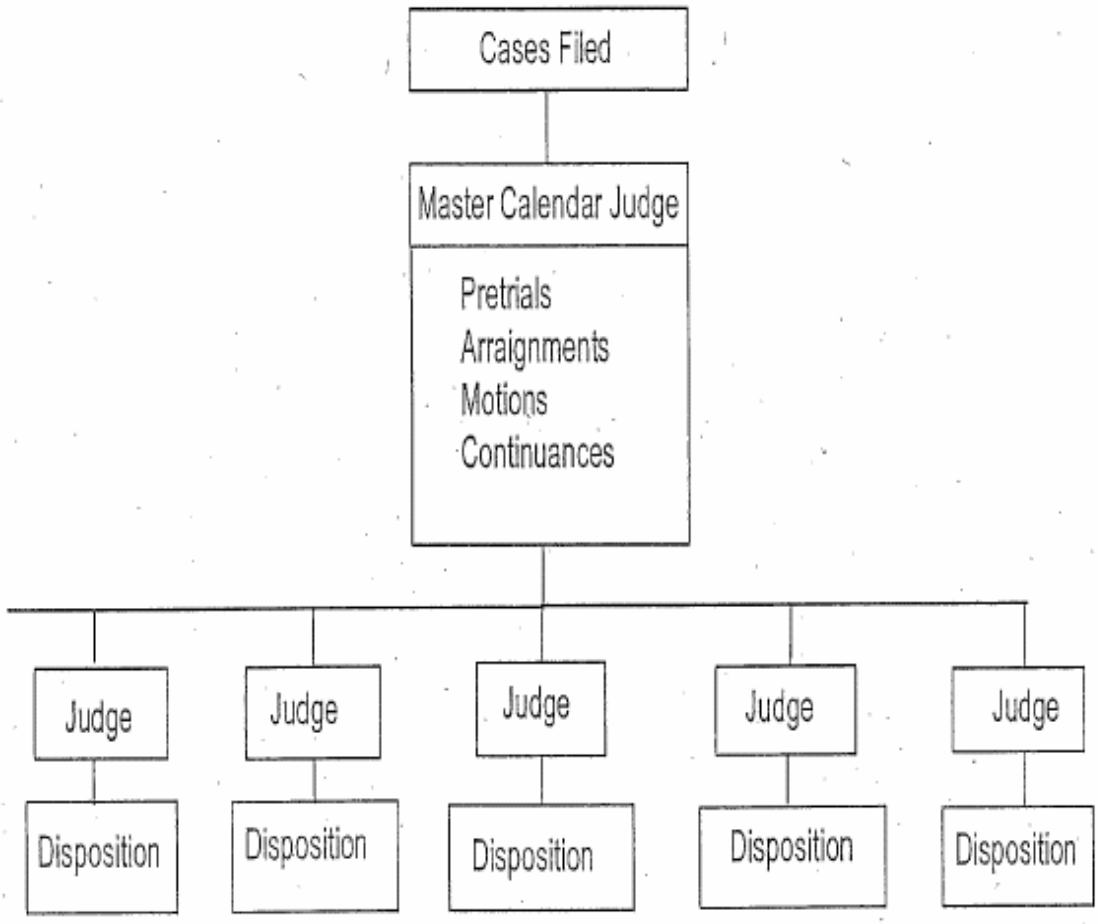
B.

OUTLINES OF VARIOUS CALENDARING SYSTEMS

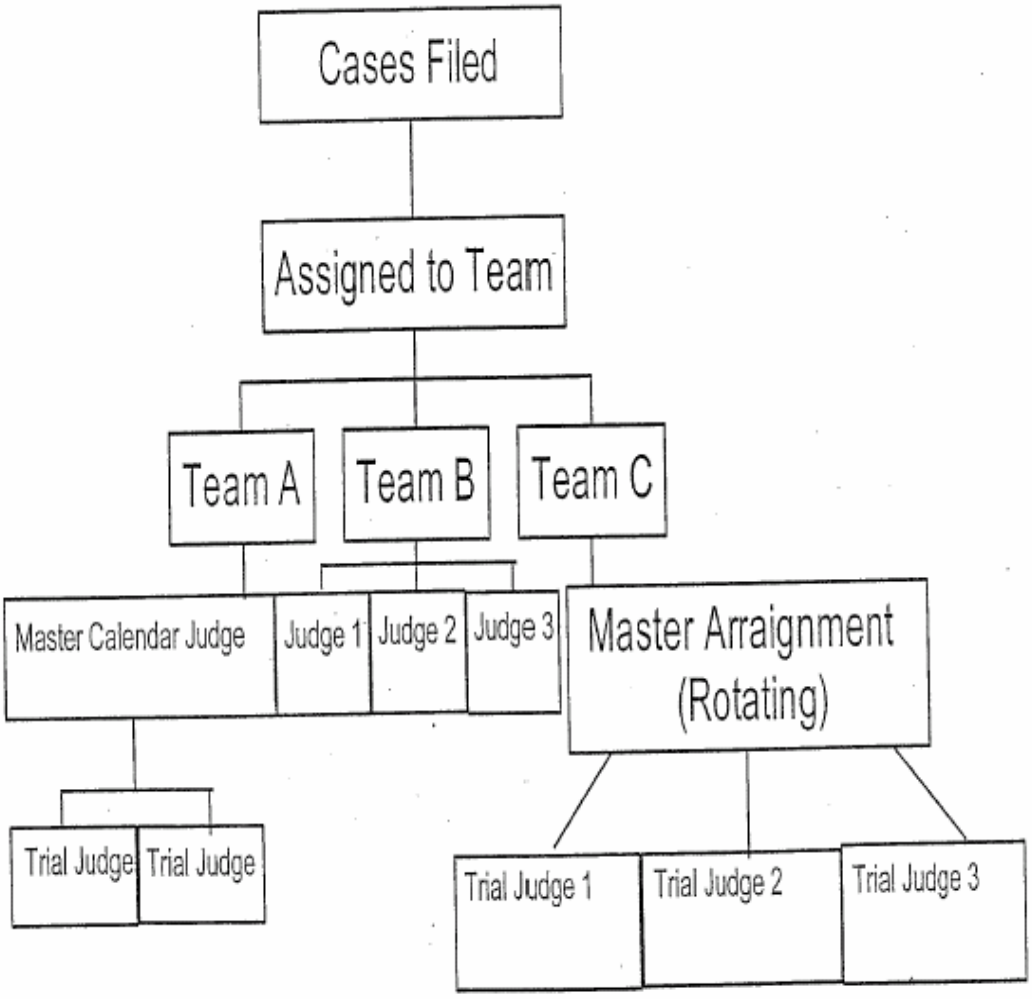
Individual Calendar System



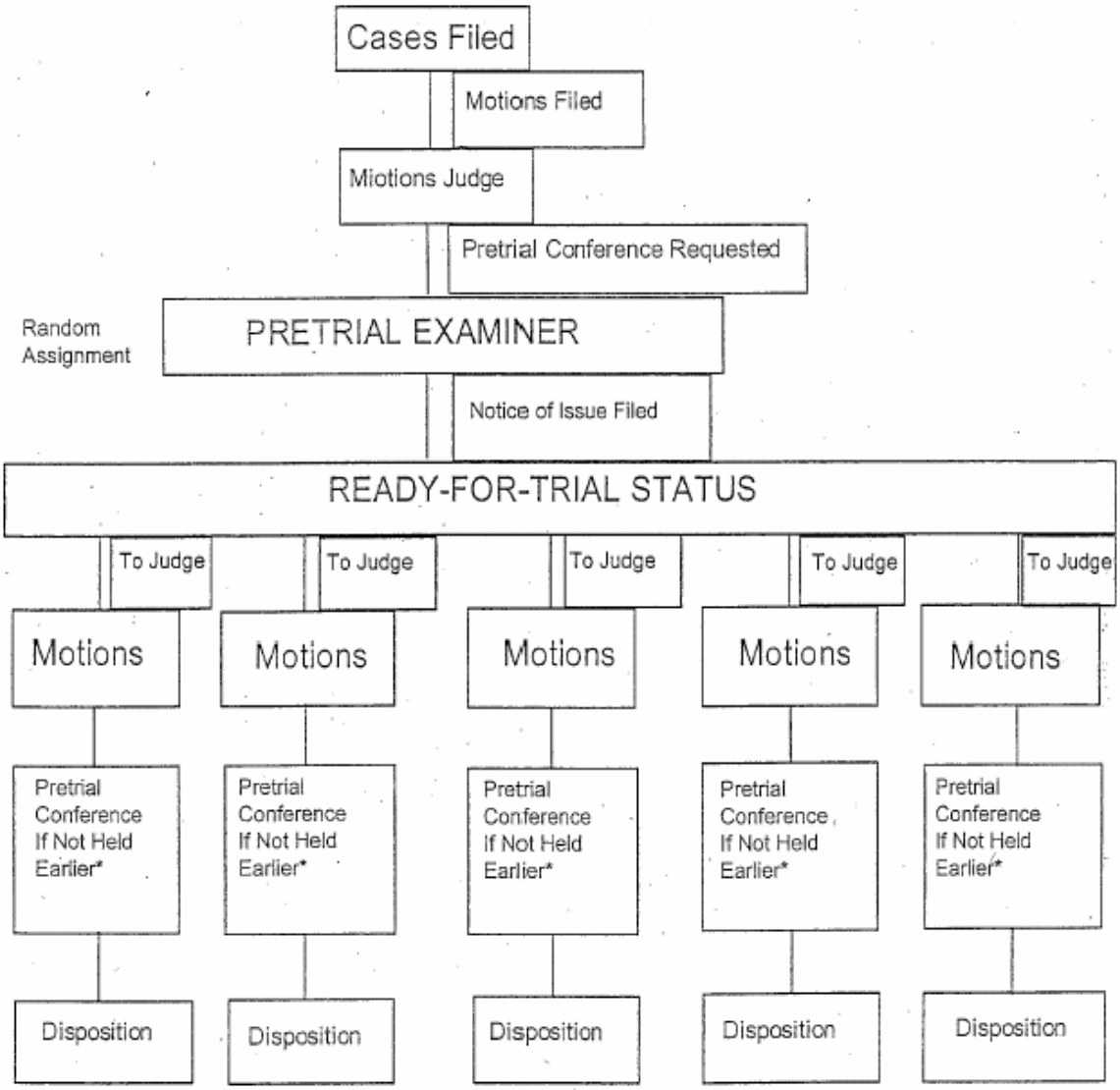
Master Calendar System



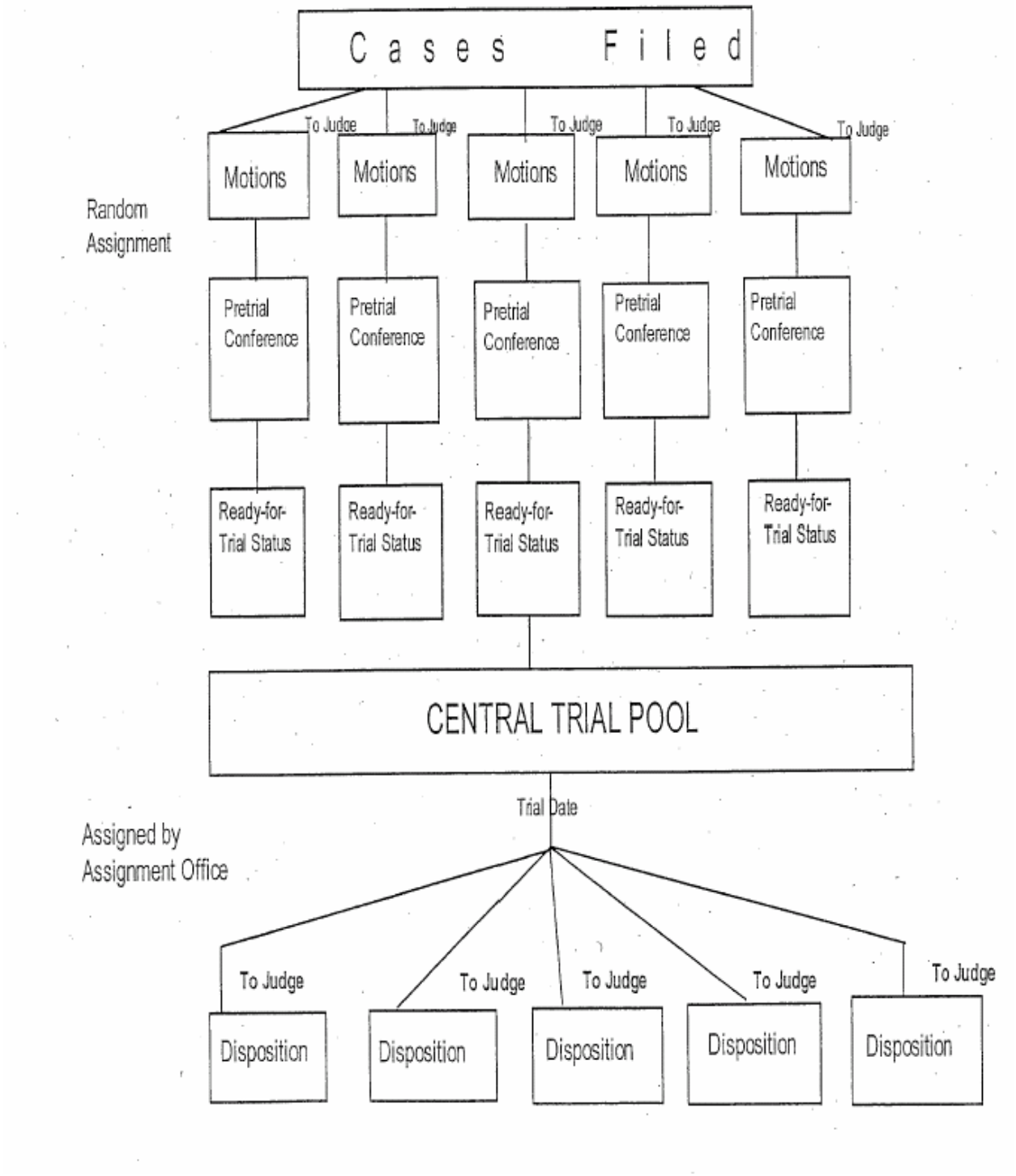
Team Calendar System



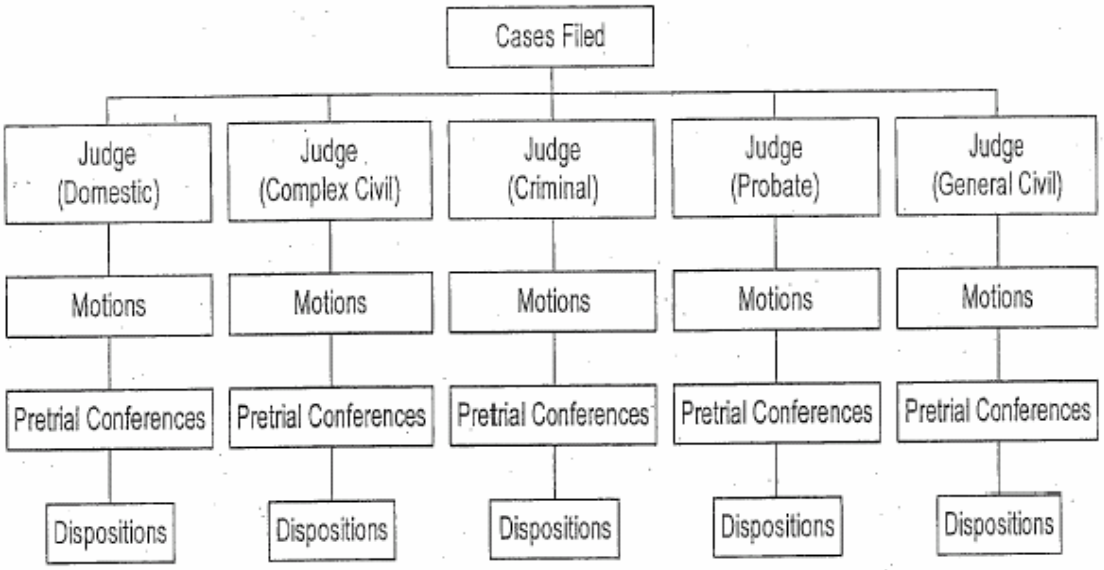
Hybrid Calendar System - 1



Hybrid Calendar System -2



Specialized Courts Calendar System



PART IX

PRE-TRIAL
MANAGEMENT TECHNIQUES

A.

PRE-TRIAL CONFERENCES

Pre-Trial Conferences – Civil Cases

Rule 9.14 of the District Court Rules provides that any party may request in writing, or the court on its own motion may order, a La. CCP Article 1551 scheduling conference between counsel and the court to whom the case has been allotted. A party requesting such a conference must deliver the original and one copy of the request to the clerk of court. The clerk of court shall file in the original in the suit record, stamp "filed" on the copy, and route the copy to the assigned judge. Within 30 days after receiving a request for a scheduling conference, the court shall schedule a conference for addressing the matters set forth in La. CCP Art. 1551. The scheduling conference may be held by any appropriate means, including in person, by telephone or teleconference.

B.

PRE-TRIAL PREPAREDNESS

Source: Case Management, American Academy of Judicial Education. Court Improvement Through Education.

PRE-TRIAL PREPAREDNESS

Courts use "pre-trial conferences" for a wide range of purposes. Effective judges learn to sharpen the definitions of such conferences, and to utilize different strategies depending on the goals for each conference.

I. SCHEDULING CONFERENCE

A. Typically held early in the life of the case

B. Establish schedule for completion of discovery

C. Fix dates for pre-trial filings, future conferences and trial

D. Explore possibilities for early settlement

E. Explore possible use of alternative dispute resolution mechanisms

II. STATUS CONFERENCE – CAN BE HELD AT ANY TIME ON INITIATIVE OF PARTIES OR JUDGE

A. Confirm or revise schedule for discovery or pre-trial events

B. Resolve open issues

III. SETTLEMENT CONFERENCE – CAN BE HELD AT ANY TIME; MOST OFTEN CONDUCTED WHEN DISCOVERY IS COMPLETE OR NEARLY COMPLETE

A. Evaluate the case

B. Emphasize possibilities for non-trial resolution

C. Narrow areas of dispute

IV. TRIAL MANAGEMENT CONFERENCE – HELD ONE TO THREE WEEKS BEFORE TRIAL DATE. FOCUSES ON PREPARATION OF CASE FOR TRIAL, NOT SETTLEMENT. CONDUCT IS CRUCIAL TO SUCCESSFUL MANAGEMENT OF THE TRIAL.

A. Insure that discovery is complete and/pr resolve remaining discovery issues.

B. Require counsel to focus on their legal theories and objectives.

C. Resolve pending motions and potential evidentiary disputes, narrow issues where possible.

D. Make "final" determination about possibility of settlement.

E. Finalize agreements for exchange of exhibits and witness lists.

F. Establish ground rules and protocols for trial.

1. Limits on communications and courtroom movement

2. Use of leading questions

3. Method for making objections

4. Jury selection

5. Handling dangerous exhibits/firearms

6. Marking or pre-marking exhibits

7. Limits on opening/closing statements

8. Conduct of bench conferences

9. Eliminate trial surprises.

10. Timing is important

a. Conferences more than three weeks before trial date are not likely to be effective because counsel is not prepared.

b. Conferences held on the morning of trial are not effective because not enough time is allowed to address issues that may arise.

G. Reduce conference outcomes to writing.

V. PRELIMINARY MOTIONS

Motions should be encouraged when they seek to narrow issues, discouraged when used merely for delay or tactical advantage.

A. Injunctive Motion (Temporary Injunctions, TROs) – seek extraordinary relief, so standard is high

1. Immediate irreparable injury

2. Substantial likelihood of success in litigation

3. Order's scope must be limited and specific

4. Statute may allow court to grant without notice; the party against whom taken must ultimately be allowed a hearing

5. Denial of TRO not a bar to relief being granted at full evidentiary hearing

6. Most states require security (bond or cash)

7. Court may decline to grant TRO but still permit hearing on preliminary injunction

B. Discovery Motions

These are the bane of judges' existence. Strategies to limit them, or address disputes immediately are critical.

1. Often filed to gain tactical advantage over an opposing party

2. Depositions

3. Interrogatories

4. Compelling examination

5. Compelling disclosure of experts

C. Dispositive Motions

If used wisely, such motions can save substantial court time by elimination or narrowing of cases/issues not properly before the court.

1. Examples

a. Lack of personal jurisdiction

b. Lack of subject matter jurisdiction

c. Statute of limitations

d. Improper or incomplete joinder

e. Wrong party in interest

2. Summary Judgment

a. Federal Rule 56 (emulated in most states) sets the standard

b. Should be encouraged to limit or dispose of issues

D. Motions in Limine

1. Should be addressed before the morning of trial.

2. Should be in writing.

3. Motions seeking to exclude deposition testimony should contain specific page/line citations.

E. Management of Pre-Trial Motion Practice

1. Limit the right to bring motions

2. Restrict the types of motions where oral argument is allowed

3. Consider using telecommunications where feasible

C.

JUDGE'S PRE-TRIAL MANAGEMENT CONFERENCE CHECKLIST

Source: Case Management, American Academy of Judicial Education. Court Improvement Through Education.

JUDGE'S PRE-TRIAL MANAGEMENT CONFERENCE CHECKLIST

(1) Has the Joint Pre-Trial Statement been filed? Review and note any deficiencies before the conference.

(2) Settlement:

a. Can case be settled? Explore.

b. How far apart are the parties?

c. Have there been any offers of judgment?

(3) Determine and discuss whether the jury can be waived. If not, decide with counsel:

a. Whether a jury of less than the full number can be utilized.

b. The number of jurors needed, including alternates.

c. The method by which the alternate jurors will be chosen (either the last juror(s) chosen (statutory in civil cases) or by lot (preferable in civil cases and mandated in criminal cases).

d. The number of peremptory strikes per side.

e. Your method of placing jurors in box and substitution of stricken jurors.

f. If trial is lengthy, should Jury Commissioner pre-screen? See p.6.

(4) Inform counsel regarding hours of your division, i.e., when trial will begin and end each day; when recesses will probably be taken; their length, etc. Notify counsel not to suggest recesses in open court but rather, if they need to take an unscheduled recess, to approach the bench with a request for it.

(5) Obtain the correct names for the parties for voir dire. Leave off any names of parties who were dismissed or settled out.

(6) Prepare list of witnesses for voir dire. Require lawyers to delete names of witnesses who will not be called but leave some latitude for "maybes". Determine the actual length of trial and advise lawyers of any potential interruptions because of your calendar and their calendars. Remind counsel that witnesses who have not previously been disclosed will not be permitted to testify.

(7) Discuss what case is about so as to be able to characterize case in voir dire. Prepare short summary of facts before the conference and determine from the lawyers whether they agree to the statement. Modify it with them in an effort to keep it brief, objective and without dispute. Alternatively, instruct lawyers to prepare it and present it at commencement of trial.

(8) Review method of voir dire and establish, with counsel's assent, time limits for attorney participation.

a. If court conducts entire or most of the voir dire discuss:

- Questions court will ask.

- Questions proposed by counsel. At the very least, advise counsel to present their requested questions before the morning of the trial.

b. If court permits voir dire by counsel, admonish against:

- Brainwashing.

- Argument.

- Exacting of promises.

- Scheduling on jury instructions.

- Repeating questions previously asked by court.

c. How much time counsel will need to exercise peremptory challenges and how will it be accomplished?

d. How will challenges for cause be handled? In front of or in absence of jury? How long a recess will be taken to accomplish this?

(9) Determine who will present the opening statements and the length of time needed. Remind counsel of the purpose of opening statement and the prohibition against argument. Determine if counsel want to make a brief opening statement before voir dire. If so, a stipulation is required on the record.

(10) Determine nature and number of motions in limine. Require the filing of motions in limine 5 judicial days before trial and responses by noon the day before trial. Remind counsel of the reason for motions in limine (prohibiting against disclosing prejudicial matters to the jury to prevent a mistrial).

(11) Ascertain who will be at counsels' tables and determine seating arrangements if there are multiple parties and counsel cannot agree.

(12) Remind counsel of deadline for submitting instructions, verdict forms, proposed findings of fact and conclusions of law (day before trial). Request copy of instructions on IBM-compatible double-sided, high-density 3.5 inch diskette, in Word Perfect 5.0 or 5.1, if instructions are complex and non-standard.

(13) Discuss your preference regarding the following and determine counsels' objections, if any:

a. All proposed exhibits shall be pre-marked and exchanged between the parties. Each party shall file with the court at least the day prior to trial a jointly prepared statement listing the exhibits and indicating any objections to exhibits of the opposing parties with a brief statement of reasons. Failure to object to an exhibit shall be deemed a waiver of all objections, and the exhibit may be entered into evidence without further argument. Exhibits which are not pre-marked and exchanged shall not be admitted in evidence except on a showing of good cause.

b. Making objections. Short, simple, legal basis with no response unless requested by the court.

c. Examining witnesses. Only direct, cross and re-direct permitted. Counsel should not approach witness without permission, etc.

d. Drawing of diagrams and introduction in evidence even though not disclosed before trial.

e. Motions during trial and offers of proof should be done out of presence of jury with as little interruption of trial as possible.

f. Bench conferences should be discouraged.

g. Method of displaying exhibits to jurors. Passing exhibits distracts from testimony and delays trial.

h. Judicial notice. Counsel shall submit a written request for any items which the court should judicially notice at least 5 days before trial. Any objection shall be made in writing the day before trial.

i. Remind counsel to be on time for each session.

j. Remind counsel not to argue with one another during trial.

k. If you permit jurors to ask questions, advise counsel of written requests by jurors and how it will be handled.

l. Will any witnesses need to be called out of order?

m. After recesses, witness should be on the witness stand.

n. Advise lawyers when you instruct the jury – before or after final summation.

(14) Determine whether and when counsel will need special equipment and whose responsibility it will be to provide it (i.e., slide or overhead projector, shadow box, video or audio equipment). Remind counsel that they should test equipment so that there will not be delays. If you believe a transcript of the video is necessary, establish deadlines for submission.

(15) Establish order of trial, if multiple parties, and if you will allow more than one party to cross-examine.

(16) Ascertain if there are any special problems, particularly evidentiary. Require, if depositions and discovery responses are to be used in lieu of live testimony, a page and line menu 5 days before trial (if not already submitted) with written objections, if any.

(17) Determine if rule as to the exclusion of witnesses is to be invoked.

(18) Based on all of the above, dictate a pre-trial order conveying all of the above discussed and agreed to by court and counsel and give counsel a copy of the guidelines.

D.

SCHEDULING ORDER

PLAINTIFF	*	NUMBER: #
VERSUS	*	_____JUDICIAL DISTRICT COURT
DEFENDANT	*	_____ PARISH, LOUISIANA
	*	ASSIGNED TO: SECTION "__"

SCHEDULING ORDER

A conference was scheduled in the above matter on MTGDATE, 2004, at MTGTIME A.M. Present by telephone were PLCOUNSEL, counsel for plaintiff; and DFCOUNSEL, counsel for defendant. As a result of the conference, the following scheduling/pre-trial order was entered in this matter:

1. within fifteen (15) days from receipt of this order, the parties shall meet by telephone to discuss the selection of a mediator to resolve this matter. Any efforts to mediate this dispute shall not affect the remaining deadlines and trial date set in this order;

2. all parties shall exchange lists of witnesses to be called at trial, including impeachment and rebuttal witnesses, and lists of all exhibits to be introduced at trial, on or before WITNESSLIST, 2004;

3. all parties shall exchange lists of expert witnesses to be called at trial, including the field of expertise in which the witness is to be tendered, and shall deliver to opposing counsel any reports prepared by those experts, on or before EXPWITNESS, 2004;

4. all discovery shall be completed on or before DISC, 2004;

5. pursuant to C.C.P. 1734.1 and L.R.S. 13:3049, the party requesting the trial by jury shall post a cash deposit of $_____ on or before DEPDATE, 2004;

6. all parties shall file proposed special jury charges, special jury

verdict forms and any motions in limine to preclude the testimony of any witness (other than expert witnesses), on or before JRYCHG, 2004;

7. all parties shall submit their pre-trial inserts on or before INSRTS, 2004, to INSERTATTY, who shall prepare the pre-trial order;

8. a proposed pre-trial order is to be signed by all counsel and filed in the record of these proceedings on or before PTORD, 2004;

9. each exhibit listed in the pre-trial order shall be deemed admissible without further proof, unless a motion in limine is filed to preclude the introduction of that exhibit on or before EXHIBITLIM, 2004;

10. each expert witness listed in the pre-trial order shall be accepted by the court in the field tendered unless a motion in limine is filed to preclude the witness from testifying as tendered on or before WITNESSLIM, 2004;

11. the parties shall jointly prepare juror notebooks which shall include each exhibit marked for identification, and the resume' of each witness to be tendered as an expert. The original of the juror notebooks shall be delivered to the Clerk of Court and filed as evidence at the beginning of the trial in these proceedings. One copy of the notebook shall be provided to the trial judge, and one copy to each of the jurors;

12. a pre-trial conference is scheduled for PTC, 2004, at PTCTIME A.M.;

13. the case is set for trial on the jury docket beginning TRL, 2004, at 9:00 A.M.

All parties shall adhere to the deadlines set forth in this scheduling order.

Any party who needs the use of a foreign language interpreter, an interpreter for the hearing impaired, the use of real time court

reporting, or any consideration because of physical impairment, immobility or handicap, is requested to contact the court prior to any hearing or the trial so that an appropriate accommodation may be arranged.

Dated in chambers on this DAYSIGNED day of MONTHSIGNED, 2004.

_____
District Judge

E.

MODEL PRE-TRIAL ORDER

PLAINTIFF	*	NUMBER: #
VERSUS	*	_____JUDICIAL DISTRICT COURT
DEFENDANT	*	_____ PARISH, LOUISIANA
	*	ASSIGNED TO: SECTION "__"

PRE-TRIAL ORDER

This matter is currently set for trial by jury beginning_____, at _____,___.m., as a _____ setting, the parties having submitted the following to the court:

1.

The Parties and Their Counsel

The parties and their trial counsel are as follows:

2.

Witnesses

The plaintiff may call the following persons as witnesses at the trial:

The defendants may call the following persons as witnesses at the trial:

3.

Exhibits

The plaintiff may introduce the following as exhibits at trial:

The defendants may introduce the following as exhibits at trial:

4.

Expert Witnesses

The plaintiff may call the following expert witnesses at trial:

The defendants may call the following expert witnesses at trial:

5.

Requested Jury Charges and Verdict Forms

The plaintiff submitted requested jury charges and proposed jury verdict forms to the court on _____.

The defendants submitted requested jury charges and proposed jury verdict forms to the court on _____.

6.

Contested Facts and Legal Issues

The plaintiff submits that the following are the contested facts of this case:

The plaintiff submits that the following are the legal issues presented by the facts of this case:

The defendants submit that the following are the contested facts of this case:

The defendants submit that the following are the legal issues presented by the facts of this case:

7.

Stipulations

The parties have stipulated to the following without the necessity of further proof or authentication:

8.

Trial Time Estimates

The plaintiff estimates that it will take _____ to present his witnesses.

The defendant estimates that it will take ____ to present his witnesses.

9.

Jury Costs/Security/Bond

The costs/security/bond required by this court for the jury trial was posted/filed on _____.

10.

Pending Motions/Exceptions

The following motions/exceptions have been submitted for decision and remain under advisement/are pending have not been heard by the court.

11.

Depositions to be Read/Videos to be Shown at Trial

The following is a list depositions/video depositions to be read/shown during the trial, and the estimated time required to read/show these depositions/videos:

_____ _____

Counsel for Plaintiff Counsel for Defendant

Approved and Ordered Filed on this _____ day of _____, 2004.

_____

District Judge

PART X

GENERAL TRIAL MANAGEMENT TECHNIQUES

A.

GENERAL TRIAL MANAGEMENT

Source: Case Management, American Academy of Judicial Education. Court Improvement Through Education.

TRIAL MANAGEMENT

I. OBJECTIVES

A. Plan and control the management of trials, with or without juries;

B. Examine issues that should be resolved or narrowed prior to trial;

C. Recognize and develop strategies to avoid interruptions and delays that lengthen trials; and

D. Develop techniques to overcome impediments to effective trial management.

II. MOTIVATION FOR MANAGEMENT

Why "manage" a trial? Because shortening (or avoiding) a trial will increase court capacity for other waiting matters! Fewer than 5% of cases filed result in trials, but more than 40% of the working time of an average general jurisdiction trial judge is spent in trials. A well-managed trial:

A. Enhances the appearance of justice

B. Facilities a fair and efficient hearing of the evidence

C. Costs less

D. Achieves sound results

E. Eliminates backlog and delay

III. COURT SCHEDULING AND TRIAL MOMENTUM

A. Establishing and maintaining trial momentum is critically important to effective trial management.

1. Interruptions are distracting; participants have to refocus on what they were doing prior to the interruption.

2. Repeated stops and starts use energy.

3. Some interruptions – lunch, breaks, and emergencies – may be unavoidable.

B. Time management issues.

Planning for a trial must be done in the context of a judge's overall years, month, and week, taking into account the resources and limitations of the court.

1. Weeks involving trials should be organized to "protect" trial time and minimize other interruptions.

2. Effective use of trial time result in shorter trials.

3. Other business, if it must be conducted, should be set at the beginning or end of a day, so that a jury does not have to wait while the business is conducted.

4. Evidentiary issues should always be resolved before trial.

5. Scheduled lunches and breaks should be taken at optimum interruption points where possible – i.e., the end of direct testimony rather than the middle – instead of a predetermined arbitrary time.

6. Attorneys should have a clear understanding about witness attendance in response to a subpoena, getting clients back to court on time after lunch, etc.

IV. TRIAL PROCEDURE CHECKLIST

Remember: The judge is the gatekeeper, timekeeper, referee, and hall monitor in a trial. You must keep an ear open at all times for evidentiary lapses, and an eye open at all times for sleeping jurors, or those who need a bathroom break! Organization and management remain critical.

A. Opening Statements

1. Limit time when appropriate.

2. Prohibit argument.

B. Presentation of Evidence

1. Interpreter/aids to witnesses or parties

Consistent with concepts of due process and the Americans with Disabilities Act, courts may be required to assist parties or witnesses through signers, interpreters, or otherwise.

2. Witnesses

Though the judge does not control witness management directly, the court's attitude and direction are critical to ensuring that trials are enhanced, not diminished, through the presentation of witnesses.

a. Management issues

(1) Use of subpoenas

(2) Scheduling and time management

(3) Adequate waiting areas

(4) Rule of sequestration

(5) Expert issues

(6) Attorney preparation for questioning

b. Substantive issues

(1) Exclusionary rule

(2) Defendant may be called by plaintiff in civil case.

(3) Right to compulsory process.

(4) Defendant in criminal case need not testify.

(i) Jury-out hearing re: convictions

(ii) Understanding of decision to/not to testify

(5) Statements of criminal defendants may be introduced if determined to be voluntary.

3. Judicial Supervision of Evidence/Case Presentation

Federal Rule of Evidence 611 (adopted in most states) allows a judge some discretion in controlling presentation of evidence. EXERCISE IT!

a. Permit leading questions on background.

b. Allow cross-examination beyond the scope of direct testimony.

c. Require that deposition testimony be summarized.

d. Consider note taking and questions by jurors.

e. Try dispositive issues first and separately,

(1) Liability before damages

(2) Actual damages before punitive damages

C. Disposition prior to verdict or finding

1. Motions for Directed Verdict/Judgment of Acquittal or Mistrial

2. Motion for Mistrial in Criminal Case – consider double jeopardy consequences

D. Discussion of jury instructions

1. Require counsel to make written requests.

2. Conduct discussions on the record.

3. Provide standard and proposed instructions in writing to attorneys.

4. Court must ensure instructions are clear, simple and balanced.

5. Court has duty to instruct on all matters of law; failure may be plain error, even without request.

E. Closing argument

1. Limit length when appropriate.

2. Prohibit prejudicial comments – plain error may require court intervention.

F. Jury instructions

1. General requirements

a. Court is responsible to insure that instructions are clear, simple balanced statements of applicable law or principles.

b. Court has duty to instruct on all matters of law; even without request, may be plain error to omit.

c. Counsel should be required to submit requested instructions with citations of authority.

d. Discussion of instructions and objections should always be placed on the record.

e. Court should determine how special verdicts are to be received, especially concerning alternative interrogatories or sequential issues.

f. Court should maintain file of standard instructions, and distribute proposed instructions to counsel as soon as possible during trial process.

g. Court should instruct jury about function and selection of presiding juror.

2. Manner of Submission to Jury

a. In writing, perhaps with jurors receiving individual copies as the court reads aloud.

b. Most states require jury instructions to be read aloud.

c. Judge should avoid commentary on evidence or intimation as to weight of evidence or credibility of witnesses.

d. Be mindful of demeanor, body language, and tone of voice.

e. Before jury retires, court should instruct on requirement of unanimous verdict, and should give housekeeping instructions.

G. Final instructions re: jury deliberations

1. Unanimity required

2. Duty to consult

3. Duty to hold to honest conviction

4. Method of selection of presiding juror

5. Housekeeping/comfort issues

V. POST DISPOSITION MANAGEMENT

A. Proceedings requiring post disposition action

1. Divorce/paternity cases: motions to enforce or modify custody, visitation, support

2. Abuse and neglect: placement review, permanency planning, termination of parental rights, adoption

3. Appointment of fiduciary: probate, guardianship, conservatorship

4. Criminal: probation violations, post conviction review

5. Traffic/criminal: collection/enforcement of fines and fees

6. Juvenile: violation of probation in delinquency proceedings

7. Enforcement/collection of civil judgments

B. Management strategies

1. Periodic review

2. Scheduling of hearings

3. Link to other cases

4. Determine when all work done

B.

CHARACTERISTICS OF JUDGES WHO MANAGE TRIALS EFFECTIVELY

Source: Case Management, American Academy of Judicial Education, Court Improvement Through Education.

CHARACTERISTICS OF JUDGES WHO MANAGE TRIALS EFFECTIVELY

- Decisiveness
- Exercise control over trial
  -- esp. voir dire
- Punctuality
- Minimize trial recesses
- Avoid interruptions
- Knowledge of the Law

C.

JUDICIAL LEADERSHIP AND VISION

Source: American Academy of Judicial Education and the Aequitas Corporation.

Court Supervision of Case Progress

FOUR PRINCIPLES

1. Early court control
2. Continuous court control
3. On a short schedule
4. Create the expectation and the reality that events will happen when scheduled

Create Meaningful Events

- Manage Time Between Events:
  - Long Enough to Allow Preparation
  - Short Enough to Encourage Preparation
- Create a Predictable System That:
  - Sets Expectations
  - Ensures That Actions Occur When They Need to Occur

Guidelines for Achieving Firm Trial Dates

- Schedule as few trials as possible
- Schedule trials late in the process
- Have backup systems
- Gather and review monitoring information

Backup Planning to Protect the Certainty of Trial Dates

- **Essential for success**
  - Communication and cooperation among judges
  - Assistance of clerk, court administrator, or judge's secretary
- **Special cases**
  - If use individual assignment system, need specific plans
  - For single-judge courts, need special arrangements

Proven Techniques for both Civil and Criminal Cases

- Court attention to cases at earliest possible moment
- Early and continuous case control
- Event deadlines
- Restriction of continuances
- Smaller trial calendars
- Firm trial dates
- Trial management

Proven Techniques for Criminal Cases

- Realistic charging
- More felony dispositions at or before arraignment in general jurisdiction
- DA, PD, Court consultation on appropriate processing track (DCM)
- Every event meaningful
- Early disposition of motions
- Plea cut-off dates
- Trial dates scheduled only if needed, after all settlement options explored

Proven Techniques for Civil Cases

- Monitor receipt of answer or responsive pleading
- Case differentiation for track assignment and management
- Early case scheduling conferences
- Trial date selected after all settlement options explored

D.

ELEMENTS OF EFFECTIVE TRIAL MANAGEMENT

Source: Case Management, American Academy of Judicial Education, Court Improvement Through Education.

ELEMENTS OF EFFECTIVE TRIAL MANAGEMENT

1. Leadership by the judge
2. Communication – listening to the lawyers, facilitating their communications with each other and with the court
3. Advance notice to lawyers about court procedures, expectations, deadlines
4. Opportunity for lawyers/parties to be heard when a problem arises
5. Predictable processes – events take place on schedule
6. Decisiveness
7. Limiting time for voir dire and other trial segments, in consultation with lawyers
8. Not arbitrary
9. Fair, balanced approach
10. Not "over-managing"
11. Avoiding/minimizing interruptions and delays
12. Efficient use of court and juror time
13. Ability to establish/maintain expectations about schedules and procedures
14. Punctuality
15. Minimize unfair trial surprises
16. Familiarity with relevant legal principles

E.

DIFFERENTIATED CASE MANAGEMENT

DIFFERENTIATED CASE MANAGEMENT

1. The Concept

Differentiated case management (DCM) is a procedure providing for the different management of cases based on case characteristics. DCM involves: (1) the identification, grouping, and assignment of cases to designated processing "tracks" each of which provide an appropriate level of judicial, staff, and attorney attention; (2) the employment of a case management plan in each track that is tailored to the general requirements of similarly situated cases with time standards appropriate to each track; and (3) the provision for the adjustment of initial track assignments based on the special needs of any particular case.

The DCM concept is premised on the assumption that all cases are not alike and, therefore, should not be subject to the same processing and standard timetables. Some cases, can be disposed of promptly with little or no time needed for discovery and few intermediate events. Others require extensive court supervision over pre-trial motions, the scheduling of expert witnesses, and settlement negotiations. Moreover, some cases may need to be given scheduling priority for a variety of other reasons, including the imminent threat of harm to a party, the age or physical condition of a witness, the need for speedy criminal justice, the need to move a child to permanency as rapidly as possible, or some other valid concern.

Inherent in the DCM concept is the recognition that some cases can – and should – proceed through a court system at a faster pace than others.

2. Types of Tracks

Depending on case type, various types of case tracks may be developed and used as part of the DCM procedure. Listed below by case type are some of these tracks.

Civil Cases:
- Expedited or Fast Track
- Alternative Dispute Resolution Tracks
  - Mediation Track
  - Arbitration Track
  - Other ADR Track
- Standard or Routine Track
- Complex Track

Child Dependency Cases
- Expedited or Fast Track
- Alternative Dispute Resolution Tracks
  - Mediation Track
  - Other ADR
- Concurrent Planning Track
- Standard or Routine Track

Delinquency Cases
- Expedited or Fast Track
- Alternative Dispute Resolution Tracks
  - Mediation Track
  - Other ADR
- Standard or Routine Track

Criminal Cases
- Expedited or Fast Track
- Alternative Dispute Resolution Tracks
  - Mediation Track
  - Arbitration Track
  - Other ADR Track
- Standard or Routine Track
- Pro Se Prisoner Track
- Capital Post-Conviction Track

3. Examples of Assignment Procedures to DCM Tracks

Each judge will conduct an ADR evaluation conference during the early stages of case development to determine suitability for ADR. The court may order use of either a mediation track, an arbitration track, or another ADR track. Parties may choose one of the tracks by agreement.

The counsel for both parties shall discuss and attempt to resolve the assignment of the case to one of the DCM tracks prior to the pre-trial or scheduling conference. At the pre-trial hearing, the judge shall attempt to get the parties to agree on the scheduling of the case to one of the DCM tracks. If the parties cannot agree on the DCM track, the judge shall make the final decision. The assignment can be changed at any time prior to the scheduling of the case.

Initial track assignment is made by a judicial officer at the case management (pre-trial conference). The assignment may be changed later at the discretion of the court.

In assigning cases to DCM tracks, the court will consider legal issues, the amount of discovery, and the number off act/expert witnesses.

All parties in civil actions will complete a DCM Information Statement that will be used by the court to make initial track assignments. The court may later alter track assignments.

Track assignment is determined in consultation with the parties and their counsel at the pre-trial conference.

At the pre-trial conference, a judicial officer will assign the case to one of the DCM tracks. If the nature of the case or other pertinent factors subsequently change, the judicial officer may reassign the case to another appropriate track.

Cases are assigned to tracks by the magistrate judge at the initial scheduling hearing.

The court will use these criteria to assign cases to a particular track:

Expedited or Fast Track:

- legal issues are few and clear
- limited discovery is required
- few real parties of interest
- five or fewer fact witnesses
- no expert witnesses
- less than five likely trial days
- the case is usually for a fixed amount of damage claims
- administrative cases that are likely to result in default of consent judgments can be resolved by pleadings or by motion

Standard or Routine Track:

- more than a few legal issues, some of which are unsettled
- routine discovery required
- five or fewer real parties of interest
- ten or fewer fact witnesses
- three or fewer expert witnesses
- ten or fewer trial days
- damage claims are mounting

Complex Track

- numerous, complicated, and possibly unique legal issues
- extensive discovery involved
- more than ten fact witnesses
- more than three expert witnesses
- less than ten likely trial days
- damage claims usually require expert testimony

4. Example of Reassignment Procedure

A. **Reassignment Request Procedure.** A case may be reassigned from one DCM plan to another by the presiding judge or the designee of the presiding judge in accordance with the following procedures: Within 60 days of a party's first appearance in the action, such party desiring reassignment to a different DCM plan shall file and serve a request establishing good cause for reassignment. Requests submitted after the 60-day period, in addition to establishing good cause for reassignment must also establish good cause for the delay in the submission of the request for reassignment. All requests shall be accompanied by a proposed order and proof of service and shall be filed with the clerk of court.

B. **Reassignment Factors.** All written requests for reassignment shall include discussion of the relevant factors set forth in the Rule on DCM Assignment. In addition, the request shall indicate the length of time the requesting party believes will be needed for prompt disposition of the case.

C. **Opposing Reassignment.** Any party may, within ten (10) days of the receipt of service of the request for reassignment, file and serve joinder in, or opposition to, such request and shall provide proof of service to the requesting party.

D. **Reassignment Ruling.** No hearing will be conducted on a reassignment request unless the presiding judge or the presiding judge's designee otherwise directs. The presiding judge or the presiding judge's designee shall notify the requesting party of the Court's ruling. The requesting party shall notify all other parties of the Court's ruling within 5 days.

E. **Exception of Cases with Trial Dates.** No request for reassignment or exemption will be considered after a trial date has been set. Where a trial date has been set, the presiding judge will consider grounds for reassignment or exemption only in conjunction with a noticed motion to continue the trial date.

F.

OTHER TRIAL MANAGEMENT TECHNIQUES

1. Tag Team Judging

The concept of Tag Team Judging involves optimally the consent of each party and the voluntary agreement of two or more judges to assist one another in clearing each judge's docket on a particular day. For example, assume a situation in which two judges – a judge from Section A and a judge from Section B – agree that if one or the other is able to complete his/her docket earlier than expected, the judge with the completed docket would move over to the other section and assist the judge with the uncompleted docket until all cases scheduled for that day in the two sections were heard.

The concept of Tag Team Judging does not appear to violate the civil code provisions regarding random allotment in that the cases are not reassigned to other sections. Rather, the judges are reassigned to hear cases in another section when needed.

The technique offers several advantages. It allows judges, by voluntary agreement, to clear most, if not all, cases scheduled for a particular day and, thereby reduce delay. The technique also enables judges to work a full day, thus making an adjudication day much more productive.

Some argue that the concept has two disadvantages. First, it may open a door for judicial manipulation to avoid random allotment. Second, it may encourage a judge not to expedite his/her caseload, as he or she should, because the judge could always rely on the backup judge to help clear the docket.

2. May Call Docket

The "May Call Docket" is a technique allowing attorneys with small cases to voluntarily agree to be scheduled on this special docket. If a judge is available on the day scheduled for the "May Call Docket," the attorneys are notified and the case goes to trial in the order established on the special docket. The attorneys may be able to achieve speedier justice through the process; and the judge is kept busy, when his regular docket has been completed earlier than expected.

3. Briefs on Motions, Exceptions and Rules to Show Cause

Motions, exceptions, and rules to show cause in civil and domestic cases should be submitted on briefs, without oral arguments.

4. Use of Verified Pleadings and Affidavits in Preliminary Injunctions

The Court should hear all applications for preliminary injunction or for the dissolution or modification of a temporary restraining order or a preliminary injunction upon the verified pleadings or supporting affidavits, or may take proof as in ordinary cases. If the application is to be heard upon affidavits, the courts should so order in writing, and a copy of the order should be served upon the defendant at the time the notice of hearing is served.

At least twenty-four hours before the hearing, or such shorter time as the court may order, require the applicant to deliver copies of his supporting affidavits to the adverse party, who shall deliver to the applicant prior to the hearing copies of affidavits intended to be used by such adverse party. The court, in its discretion and upon such conditions as it may prescribe, may permit additional affidavits to be filed at or after the hearing, and further regulate the proceeding as justice may require. (Source: L.C.C.P 3609)

5. Waiver of Formal Arraignment

The court may permit the defendant in a non-capital felony case to waive formal arraignment by written motion filed with the clerk or court and to enter a plea of not guilty without pleading in person. The motion shall substantially comply with the format and language of the form listed below. (Source Criminal Rule XIII, 19th JDC)

6. 72-Hour Appearance in Criminal Cases

Under the provisions of La C.Cr.P. Art. 230.1, the appearance of arrested persons may be made in person, by telephone, or by audio video electronic equipment at the discretion of the presiding judge. Judges should make themselves available to have such telephone or video conferencing appearance hearings.

7. Docketing of Scheduling Conferences by Telephone or Teleconference

Any party may request in writing, or the court on its own motion, may order a scheduling conference for the purpose of addressing those matters set forth in La. CCP Art. 1551 between counsel and the court to whom the case has been allotted. A party requesting such a conference must deliver the original in the suit record, stamp "filed" on the copy, and route the copy to the assigned judge. Within 30 days after receiving such a request, the court should schedule a conference for the purpose of addressing those matters set forth in La. Code Civ. Proc. Art 1551, allow the scheduling conference to be held by any appropriate means, including in person, by telephone, or teleconference. (Source: General District Court Rule 9.14(b))

8. Controlling Appearances of Law Enforcement Personnel

Controlling the appearances of law enforcement personnel may be carried out when dates and times for events are selected. Scheduling as many of a police officer's cases as possible for one court session can minimize the number of his or her appearances and eliminate conflicts over appearances in other courts.

This approach is most useful in courts of lower jurisdiction, such as traffic courts, which have a large volume of cases of short hearing duration. However, high-volume criminal courts and civil courts could also benefit from such systems of control.

One way a court can control the appearances of law enforcement personnel is to assign each police officer to one specific day out of every week or other period of time.

Another way of handling police officer scheduling is to require each officer to inform the court about periods when he or she will not be available. This would allow the court to pick a time when the officer is free, and to fill its calendar.

Controlling the appearances of law enforcement personnel can also be coordinated with the duty shifts of police personnel.

9. Controlling Hearings on Probation Matters

Currently, many judges hold hearings to determine whether the terms of probation are being met in cases previously adjudicated. These judges are concerned either that probation fees are not being properly collected or that probation officers are not meeting regularly with their clients or that other conditions of probation are being ignored. Such hearings often consume a good portion of a judge's day and therefore, may contribute to the delay of other cases.

To reduce or eliminate the need for probation hearings, some judges have advocated the development of a questionnaire that probation officers would be required to complete at regular intervals in the course of a probationary term. Hearings would only have to be called if the questionnaire revealed problems that could not otherwise be addressed.

PART XI

MANAGEMENT OF CONTINUANCES

A.

CONTROLLING CONTINUANCES

Source: American Academy of Judicial Education and the Aequitas Corporation.

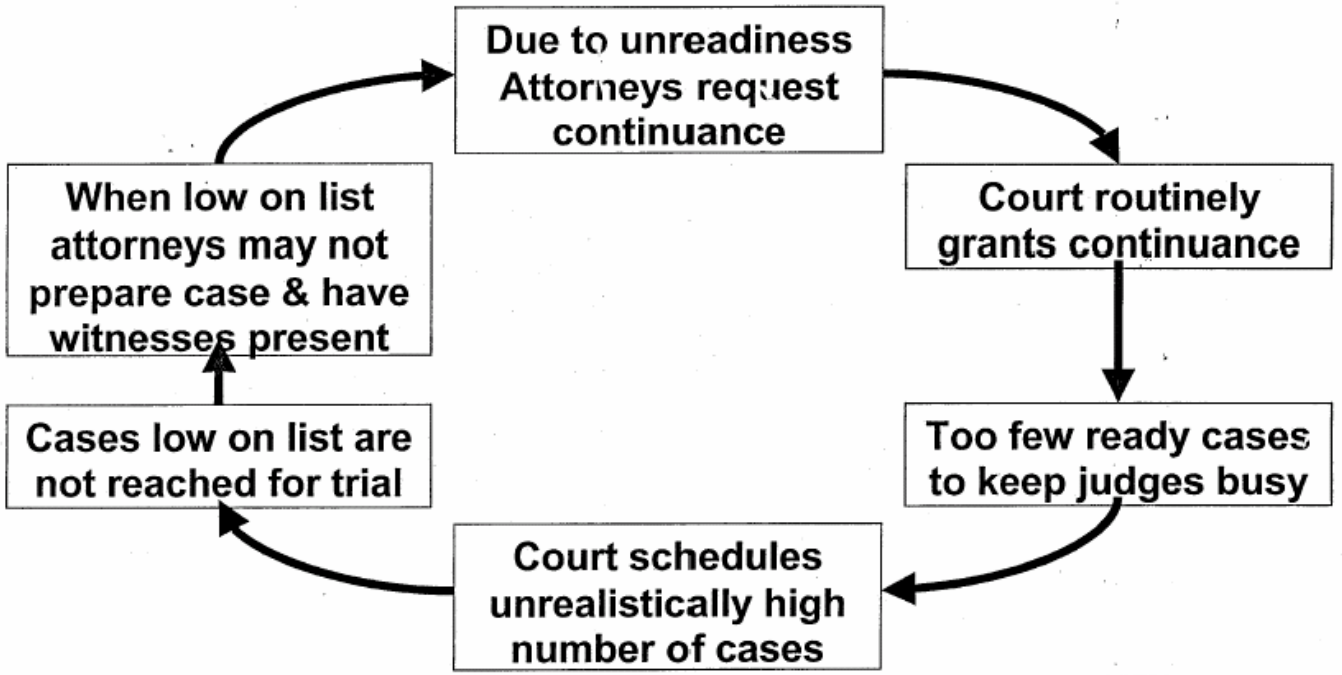
Standards and Goals

4

Control Continuances
Which in turn…

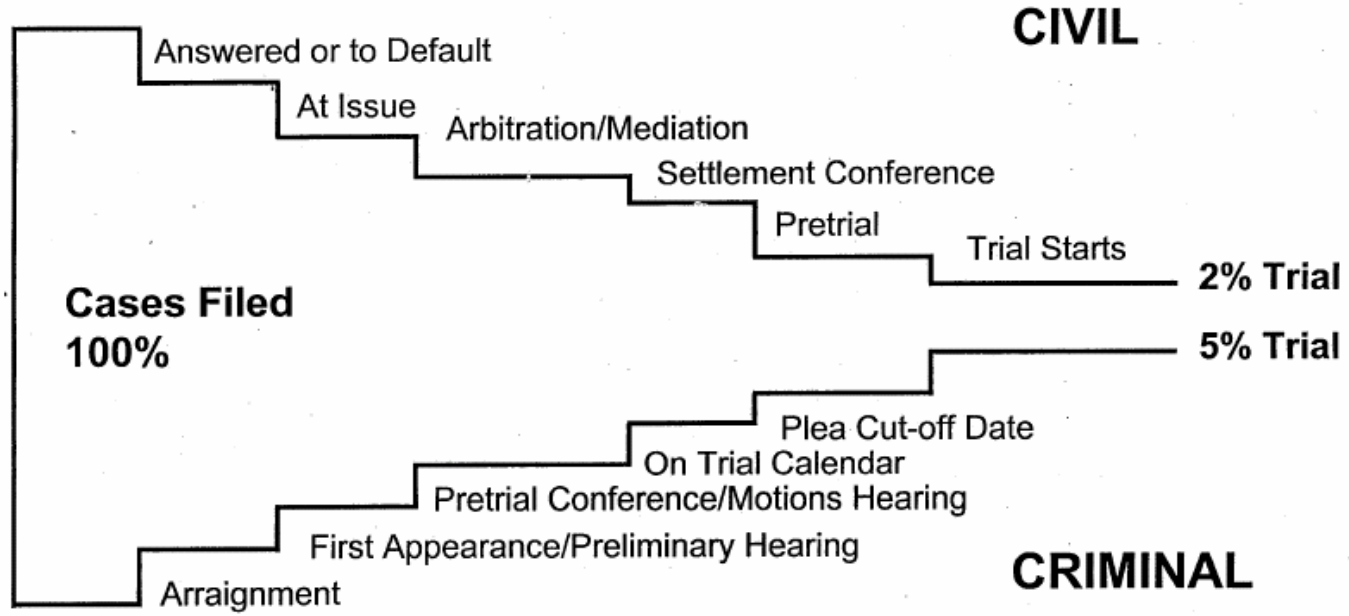
- Ensures Predictability
- Promotes Firm Event Dates
- Reinforces commitment to fulfilling expectations

The Continuance Conundrum



Standards and Goals

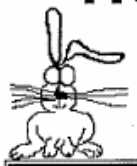
Reverse Telescope



Standards and Goals

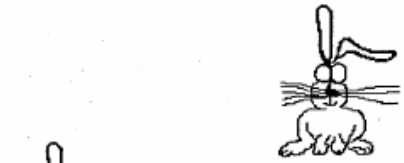
4

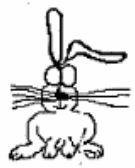
How to Multiply Your Workload



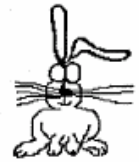
CONTINUANCES AFFECT...

- Files
- Computer Entries
- Forms
- Scheduling
- Defense
- Prisoner Transportation
- Jail Population
- Prosecutor
- Judge
- Staff

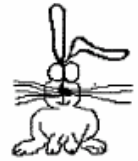


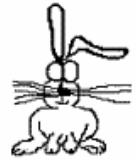


1st TRIAL DATE

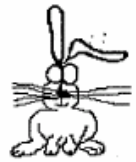


2nd TRIAL DATE



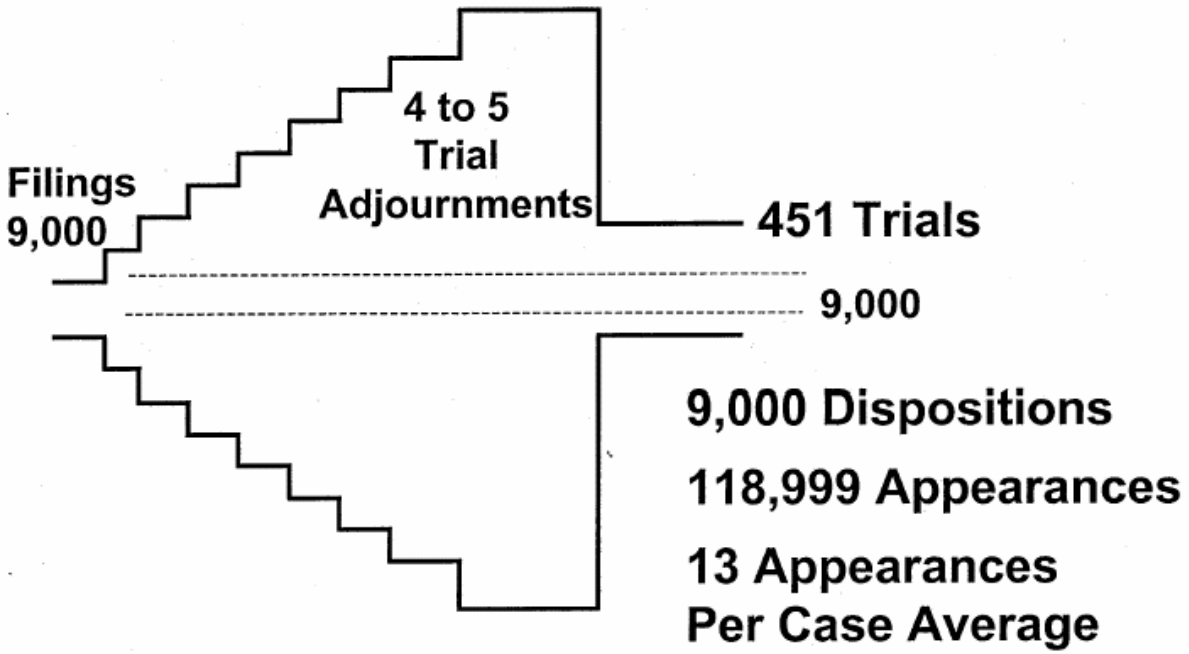


3rd TRIAL DATE



AEQUITAS

Workload Expansion Due to Continuances



If Continuances Were Controlled and Early Dispositions Obtained

Arraignment - Plea, Diversion, Sentence Alternatives, Discovery
Pre-Trial - Motion Deadline, Insanity Defense, Plea Cutoffs
Trial 5% (no change) Firm Trial Dates - No Adjournments

The SAME 9,000 Filings

48,000 APPEARANCES

5 Appearances Per Case (Avg)
Early Dispositions
Enforced Rules
Monitor System Performance
Small Continuous Improvements

B.

ILLUSTRATION OF THE IMPACT OF CONTINUANCES

Source: Case Management, American Academy of Judicial Education, Court Improvement Through Education.

ILLUSTRATION OF THE IMPACT OF CONTINUANCES

- Sample jurisdiction misdemeanors – 1999
  - 36,612 arraignments
  - 111 trials
- 36,612 x 3 people = 109,836 people
  - Continue once – 109,836 x 2 = 219,622
  - Continue twice – 109,836 x 3 = 329,508
  - Continue 3 times – 109,386 x 4 = 439,344
- Trial – average appearances per case = 5

C.

POLICY REGARDING CONTINUANCES

POLICY REGARDING CONTINUANCES

To ensure the prompt disposition of civil cases, each superior court should adopt a firm policy regarding continuances, emphasizing that the dates assigned for a trial setting or pretrial conference, a settlement conference and for trial must be regarded by counsel as definite court appointments. Any continuance, whether contested or uncontested or stipulated to by the parties, should be applied for by noticed motion, with supporting declarations, to be heard only by the presiding judge or by a judge designated by him. No continuance otherwise requested should be granted except in emergencies. A continuance should be granted only upon an affirmative showing of good cause requiring the continuance. In general, the necessity for the continuance should have resulted from an emergency occurring after the trial setting conference that could not have been anticipated or avoided with reasonable diligence and cannot now be properly provided for other than by the granting of a continuance. In ruling on a motion for continuance, the court should consider all matters relevant to a proper determination of the motion, including the court's file in the case and any supporting declarations concerning the motion; the diligence of counsel, particularly in bringing the emergency to the court's attention and to the attention of opposing counsel at the first available opportunity and in attempting to otherwise meet the emergency; the nature of any previous continuances, extensions of time or other delay attributable to any party; the proximity of the trial or hearing date; the condition of the court's calendar and the availability of an earlier trial or hearing date if the matter is ready for trial or hearing; whether the continuance may properly be avoided by the substitution of attorneys or witnesses, by the use of depositions in lieu of oral testimony, or by the trailing of the matter for trial or hearing; whether the interests of justice are best served by a continuance, by the trial or hearing of the matter, or by imposing conditions on its continuance; and any other fact or circumstance relevant to a fair determination of the motion. The following matters should, under normal circumstances, be considered good cause for granting the continuance of a trial date:

(1) Death.

(2) Illness of an attorney, party or witness which will seriously affect justice at the time of trial.

(3) Unavailability of the trial attorney or witness due to a conflict in schedule that can be shown.

D.

ATTORNEY AVAILABILITY FORM

STATE OF LOUISIANA, PARISH OF OUACHITA
FOURTH JUDICIAL DISTRICT COURT

RETURN DATE/HEARING COVER SHEET

_____

VERSUS DOCKET NUMBER _____

_____

1. Estimate of time for hearing:_____

2. Available dates for the next 90 days:_____
   _____
   _____
   _____
   _____
   _____

3. Custody – contested/uncontested: _____

4. Rule or trial date previously set: _____

5. Any special circumstances: _____
   _____
   _____
   _____
   _____

PART XII

MANAGEMENT OF CASES UNDER ADVISEMENT

AVOIDING CASES UNDER ADVISEMENT

A case under advisement is a case that has been heard and decided but awaiting a final judgment from a district, city, or parish court. There are many reasons for cases being held under advisement. A related case may be on appeal awaiting an appellate decision and the judge may wish to hold the case until the appellate judgment is rendered. A case may be awaiting the preparation and distribution of the trial's transcript, or, perhaps, materials from the attorneys – depositions, further medical information, or a draft of the judgment itself. The case may also be under advisement because the judge has not prepared "written reasons" as required in some cases to be inserted into the judgment or has not rendered the judgment, if the judge is responsible for its preparation. The case may also be held under advisement because the judge and perhaps even the attorneys have inadvertently lost track of the issue.

Section 2 of Part G. The General Administrative Rules for all Louisiana Courts provides that a case or other matter shall be considered as fully submitted for decision to the trial judge, and should be decided immediately upon the conclusion of a trial or hearing, and judgment signed expeditiously thereafter. The Rules also provide deadlines for the filing of testimony by deposition and/or documents, as well as deadlines for dealing with post-trial or post-hearing briefs and the preparation of timely transcripts. The Rules further provide that each judge of a district, juvenile, family, parish, city, municipal or traffic court shall report to the Supreme Court, through the Office of the Judicial Administrator, all cases which have been fully submitted and under advisement for longer than thirty days, together with an explanation of the reasons for any delay and an expected date of decision.

Cases held under advisement should be avoided for two primary reasons. First, they cause delay and add cost to litigation. Second, they can be the cause of Judiciary Commission investigative action and disciplinary action by the Supreme Court against judges.

To avoid cases under advisement, a number of techniques are suggested in these "Best Practice" guidelines. Among these are:

(1) Hold the case open, within the time period allowed by the Supreme Court Rule, until all depositions, documents, briefs, transcripts, and the final judgment are filed into the court record.

(2) Give firm deadlines to all parties to have depositions, briefs, transcripts, and the final judgment filed into the court record by a date or dates certain, and have the attorneys sign off on these deadlines.

(3) Develop a tickler system, perhaps maintained by a law clerk or a secretary, to alert the judge to deadlines and to the number of days the case is being held under advisement.

(4) At the hearing, assign the responsibility of writing the judgment to the winning attorney and require the attorney to submit the draft judgment by a date certain to the opposing attorney for review and agreement, and ultimately to the court for final action.

(5) Have judges write the judgments instead of the attorneys so that the judges can develop over time a judgment bank that will facilitate the process of rendering timely and consistent judgments.

(6) Adopt a court rule requiring each judge regularly to publish and post in the courthouse or to publish no less than quarterly in a prominent local or statewide legal publication a list of all cases held by that judge under advisement from all previous weeks. Each such list should include: the case name, the case number, the date of the last proceeding, and the expected date of completion of the case.

PART XIII

JURY TECHNIQUES

A.

JURY SELECTION AND MANAGEMENT

Source: Case Management, American Academy of Judicial Education, Court Improvement Through Education.

JURY SELECTION AND MANAGEMENT

I. OBJECTIVES

A. Improve the jury panel selection system by enhancing the cross section of the community from which jurors are drawn;

B. Enhance the attitude of citizens in general, and jurors in particular, toward courts, judges, and jury service;

C. Assist attorneys in performing their duty to select a fair and impartial jury;

D. Assist jurors in performing their responsibilities intelligently, efficiently, and reliably;

E. Evaluating your jury procedures to insure they maximize juror performance; and

F. Managing jurors in all cases with greater efficiency and confidence.

II. INTRODUCTORY DISCUSSION

A. Primary functions of jury trial

1. Public forum for dispute resolution

2. Due process

3. Peer participation

B. Benefits of jury trial

1. Judges can demonstrate value and effectiveness of jury system.

2. Jurors have opportunity for participation in government through public service.

3. Parties have enhanced confidence that citizens “like them” will understand their issues and resolve them fairly.

4. Public is educated through participation and recommended improvement.

5. Distrust in system can be minimized through participation.

C. Entitlement to jury trial

1. Common law

2. Federal and state constitutions

a. Criminal – 6th Amendment

b. Size of jury

c. Requirements for verdict

d. Waiver

e. Juvenile

f. Termination of parental rights

III. COMPOSITION OF JURY

A. Opportunity for jury service – should not be denied or limited on the basis of race, national origin, gender, age, religious belief, income, occupation, disability, or any other factor that discriminates against a cognizable group in the jurisdiction. *See Duren v. Missouri,* 439 U.S. 357, 364, 99 S.Ct. 664, 58 L.Ed.2d 579 (1979).

B. Master Jury List

1. Must be representative cross-section of one's peers.

2. Source list should be compiled from one or more regularly-maintained lists of persons residing in the court's jurisdiction: voter registration, taxpayer, driver licensing.

3. List should be as inclusive of the adult population as is feasible.

4. List should be reviewed periodically to insure inclusiveness and representativeness.

5. Random selection procedure must be used.

C. Juror Qualifications

1. Must be 18 years of age.

2. Must be a United States citizen.

3. Must be a resident of the jurisdiction of the court for which they are summoned.

4. Must be able to communicate in the English language.

5. Must not have been convicted of a felony (unless rights have been restored).

D. Exemption, Excuse or Deferral of Service

1. Individual states determine statutory exemptions, which should be kept to a minimum.

2. Prior jury service within a short period of time.

3. Only permanent disability affecting the capacity to serve. (Note: Title II, Americans with Disabilities Act, 42 U.S.C. §12101 *et. seq.* (1990) covers state court programs and services, including jury service. The court must provide "reasonable accommodation" to a disabled juror who wishes to serve.)

4. Vulnerability to embarrassment in voir dire examination.

5. Temporary deferral of service may be permitted in cases of public necessity, undue hardship, temporary disability, or extreme inconvenience.

IV. SCHEDULING AND JUROR USE

A. Goal: optimum use of juror time with minimum inconvenience.

B. Techniques for efficiency

1. Do not call panels prematurely.

2. Use minimize panel size needed to insure sufficient jurors.

3. Make special arrangements for large panels.

4. Stagger trial starts throughout the day and week.

5. Reassign jurors who are not selected

6. Use telephone standby system if feasible.

7. Use phone answering machines to receive and disseminate messages.

8. Maximize communication between judge and jury commissioner, if one exists.

9. Limit peremptory challenges where possible to exercise discretion.

V. JURY FACILITIES

A. Provide adequate and suitable environment for jurors.

B. Assure safety and security.

C. Attend to the comfort of jurors.

D. To the extent feasible, arrange juror facilities to minimize contact between jurors, parties, counsel, and the public.

VI. JUROR ORIENTATION

A. Use the juror summons to provide information and allay fears and concerns.

B. Provide juror orientation and instruction designed to increase jurors' understanding of the judicial system and prepare them confidently to serve as jurors. Present the orientation in a uniform and efficient manner using a combination of written, oral and audio-visual materials.

C. Prepare remarks for jury selection that will begin to orient jurors to a particular case.

D. Provide preliminary instructions to allow jurors in a particular case to know what their job will entail.

VII. JUROR COMPENSATION/EMPLOYMENT SECURITY

A. Process fee payments promptly and efficiently.

B. Be familiar with state law that should protect jurors from discharge or disciplinary measures when called to serve on juries.

C. Exercise discretion where necessary to order private employers to comply with the law.

VII. JUROR EVALUATION

A. Collect information periodically to insure that the process is working:

1. Inclusiveness of the jury source list(s).

2. Effectiveness of the summoning procedures.

3. Responsiveness of individual citizens to jury duty summons.

4. Efficient use of jurors.

5. Cost-effectiveness of the system.

B. Conduct jury surveys on a regular basis.

IX. PROBLEM AREAS

A. ADA Concerns

1. "Readily-accessible" standard.

2. Physical accessibility.

3. Need for interpreter/signers.

4. Specific disabilities which must be accommodated

B. The difficult juror

1. The sleeping juror.

2. Replacement of juror in order to avoid mistrial.

3. Improper contacts.

4. Communicate with attorneys and solicit their comments before making substitution. Make an adequate record.

C. "Anonymous" juries

1. No first amendment right of public access to identity of jurors' names

2. Court must balance public's right to know against legitimate safety concerns in appropriate cases.

X. SELECTION OF TRIAL JURORS – VOIR DIRE

A. Should be held on the record.

B. Judge's role in voir dire.

1. Set the tone.

2. Provide an introductory statement familiarizing jurors with the process.

3. Conduct general voir dire.

4. Encourage responses

5. Control scope of counsel's questions (state courts).

6. Adjudicate challenges for cause.

7. Prevent abuse.

C. Purposes of Voir Dire

1. Proper – obtain necessary information to exercise challenges for cause and peremptory challenges.

2. Improper

a. Educate the jury panel about the facts of the particular case.

b. Prejudice the jury panel.

c. Argue the case.

d. Indoctrinate the jury panel.

e. Solicit promises based on hypothetical facts.

f. Instruct in matters of law.

g. Repeat questions posed by the court or covered by questionnaires.

h. Violate jurors' equal protection rights.

D. Information Concerning Prospective Jurors

1. Juror Questionnaires – if distributed in advance, can save trial time

2. Availability of Jury List(s) – to attorneys in advance of trial

3. Anonymous Jury

4. Juror Expectations of Privacy

5. Appropriate Lines of Inquiry

a. Whether jurors will apply the instructions of law

b. Racial/ethnic prejudice

c. Juror's religious or political views that may affect ability to reach judgment

d. Similar events in juror's life that may cause discomfort or bias

e. Inclination of juror to give greater or lesser weight to testimony of particular types of witness

f. Relationship/acquaintance with witnesses, parties, or counsel

g. Prior grand jury or jury service which may affect service in current case

h. Personal experience as crime victim, witness, or party

E. Defendant in Criminal Case Always Has Right to be Present.

F. Methods of Conducting Voir Dire

1. Judge conducts entire voir dire examination in most federal courts and some state courts.

2. Judge has responsibility for the voir dire examination but allows participation by counsel. This is the recommended method.

3. Counsel controls the voir dire process in approximately 18 states.

4. Judge is merely present to supervise the process.

G. Techniques for Control of Voir Dire – this is a key area of typical trial delay.

1. Time limits.

2. Questions submitted by counsel prior to trial.

3. Prohibition of improper questions.

4. Court conduct of initial voir dire to relax jurors and set tone for attorney questions.

5. Questions directed to panel as a whole except for individual issues in high profile cases.

6. Use of "straight jury" system instead of "strike and replace" system of selection.

H. Method of Excusal

1. Procedure should be predetermined and lawyers advised.

2. Jurors excused with court's thanks.

3. Jurors directed as to procedure to follow upon excuse.

I. Requests for Individual Voir Dire

1. Media exposure

2. Relationship/knowledge of parties/case

3. Juror's own background (abuse, rape0

XI. CHALLENGES TO THE JURY

A. Challenge to the array/venire.

1. Should be made, if possible, before the day of trial.

2. Make a written record.

B. Challenge for cause.

1. Grounds – if the substance of a juror's response convinces trial judge that the juror is unable to unwilling to fairly and impartially hear and decide a case.

2. Physical disability of a juror that cannot be "reasonably accommodated".

3. Attorneys should be permitted to make challenge at bench or sidebar.

4. Determination may be by court's initiative or motion of counsel.

C. Peremptory Challenges

1. Number of challenges set by court rule or statute.

2. No constitutional right to such challenges – *Swain v. Alabama*, 380 U.S. 202, 85 S.Ct. 824, 13 L.Ed.2d 759 (1965). Allows each side to seek most sympathetic jurors.

XII. DISCRIMINATORY USE OF PEREMPTORY CHALLENGES

Peremptory strikes, by definition, may be exercised for any reason and without explanation, unless a reason is specifically prohibited.

A. *Batson v. Kentucky*, 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed2d 69 (1986). (Prosecutor's use of peremptory challenges to exclude all members of defendant's race solely on racial grounds violated defendant's right to equal protection under the laws).

B. *Batson* process for challenge

1. Opponent of peremptory challenge must show:

a. Membership of cognizable racial group.

b. Proponent used strike to remove juror of that particular race.

c. Any other factor that raises an inference that strike is racially motivated.

2. Proponent of peremptory challenge must show:

a. Neutral explanation for the strike which is clear, specific, and legitimate.

b. Explanation need not rise to same level as challenge for cause.

c. Explanation must go beyond instinct and be in good faith.

3. Court determines validity of strike

a. To deny strike, court must find discrimination purposeful.

b. Court's reason should be stated on the record, including subjective observations.

c. Court must insure that record reflects racial composition of jury panels, stricken jury, and final jury seated.

e. Ultimate burden of persuasion always rests with opponent of the challenge. *Purkett v. Elem,* 514 U.S. 765, 115 S.Ct. 1769, 131 L.Ed.2d 834 (1995).

4. Establish procedure for challenges before jury selection begins.

a. Advise counsel and parties before voir dire begins concerning court's procedure.

b. Consider all challenges at bench/sidebar/out of presence of jury.

c. Raise issues *sua sponte* if necessary.

d. Require counsel to object timely before challenged juror is dismissed.

e. *Batson* hearing must be held whenever one is requested.

C. Waiver

1. Objection must be raised before jury is sworn. *Ford v Georgia*, 498 U.S. 411, 423, 111 S.Ct. 850, 857, 112 L.Ed.2d 935 (1991).

2. Must be raised at trial or I waived on appeal.

3. Plain error claim may still exist.

D. *Batson* Progeny

1. Defendant need not be of same race as challenged juror to assert juror's right to equal protection. *Powers v Ohio*, 499 U.S. 400, 111 S.Ct. 1364, 1373, 113 L.Ed.2d 411 (1991).

2. Racially motivated peremptory challenges by the defense also subject to review. *Georgia v. McCullum*, 505 U.S. 42, 112 S.Ct. 2348, 112 L.Ed.2d 33 (1992).

3. Applies to private parties in civil cases. *Edmondson v. Leesville Concrete Company, Inc*., 500 U.S. 614, 111 S.Ct. 2077, 114 L.Ed.2d 660 (1991).

4. Gender motivated peremptory challenges also are prohibited. *J.E.B. v Alabama ex rel T.B.*, 511 U.S. 127, 114 S.Ct. 1419, 128 L.Ed.2d 89 (1994).

XIII. ALTERNATE JURORS

A. Number determined by court rule, statute, or agreement between court and counsel.

B. Alternates may be designated in advance or determined at conclusion of trial.

C. Same functions, powers, facilities, and privileges as regular jurors during course of trial.

XIV. JURY SWORN/UNSELECTED JURORS ARE EXCUSED

A. Dismiss unchosen panel members.

B. Administer oath to jurors.

1. Criminal case – be sure both sides ready; jeopardy attaches

2. If sequestered – oath of baliffs

XV. JURORS PROVIDED WITH PRELIMINARY INSTRUCTIONS

A. Trial to be fair in fact and fair in appearance.

B. Advise of general trial precepts and procedure.

C. Inform jurors of their required conduct.

D. Emphasize that jurors are judges of facts.

E. Explain why delays/recesses may occur.

F. Explain courtroom/courthouse procedures, schedules, meal arrangements, etc.

XVI. SEQUESTRATION

A. Often determined by court rule or statute.

B. National trend is to discourage sequestration except in capital or high profile cases.

C. Be sure jurors have adequate notice and preparation time.

XVII. JURY DELIBERATIONS

A. Sequestration discretionary.

B. Ex parte communication disallowed. Court must notify counsel of any jury communication.

C. Seating alternate juror.

D. Court generally may not inquire about verdict.

E. Inability of jury to decide.

F. Jury requests to rehear evidence.

G. Jury requests for additional instruction.

XVIII. INABILITY TO RETURN VERDICT

A. Make the record.

B. Allow parties, counsel to consult.

C. Recharging a jury.

XIX. RETURN OF THE VERDICT

A. Polling the jury upon request of any party or on court's own motion.

B. Each juror should be asked individually whether the verdict announced is his or her verdict.

C. If there is no unanimous concurrence, the jury may be directed to retire for further deliberations or discharged.

D. Inconsistent Verdicts

1. Civil cases – trial judge ordinarily refuses to accept verdicts, advises jury of inconsistency, and returns it to jury room for further deliberation. Use care not to indicate how inconsistency is to be resolved.

2. Criminal cases – consistency between counts is unnecessary.

F. Judicial Comment on Verdict – thanking jurors is appropriate, but praising or criticizing verdict is not.

E. Jury Nullification

1. FIJA (Fully Informed Jury Association)

2. Request for instructions

a. *United States v. Doughtery*, 473 F.2d 1113 (D.C. Cir. 1972).

b. No abuse of discretion if judge refuses to acknowledge doctrine of jury nullification. *E.g., United States v. Krzyske*, 836 F.2d 1013, 1021 (6th Cir. 1988).

XX. JURY INNOVATIONS

A. General Trends

Numerous studies have been undertaken, including American Bar Association, National Center for State Courts, and the States of Arizona, New York, California, Colorado, and the District of Columbia. Many other states now conducting projects or tests.

B. Results, recommendations, and identified issues are surprisingly similar:

1. Public education

2. Juror selection

3. Compensation and treatment

4. Trial practices

5. Deliberations

6. Post-verdict activities

C. Trial Innovations

1. Videotaped trials.

2. Projection of real-time transcription.

3. Dual juries.

4. Juror note-taking.

5. Juror submission of questions to witnesses.

6. Use of mini-summaries throughout evidence.

7. Juror notebooks for complicated trials.

8. Discussion about evidence during trial.

9. Alternates to observe jury deliberations.

10. Jury instructions before closing arguments.

11. Plain English jury instructions.

12. Allowing re-closing arguments if jury is deadlocked.

D. Regarding Instructions

1. Give preliminary instructions and additional instructions when needed.

2. Provide final instructions before attorney closing arguments.

3. Have instructions available to jury individually in writing or by tape recorder or videotape.

4. Have a preferred method to handle questions during deliberations.

5. Carefully work special verdicts and interrogatories.

6. Take special care with stalemated jury.

E. Post Verdict Matters

1. Provide advice on how to handle media questions.

2. Carefully schedule verdict announcements in high profile cases.

3. Provide debriefing and/or professional guidance after highly emotional cases.

4. Provide post verdict inquiries.

5. Provide exit interviews or questionnaires.

B.

JURY MANAGEMENT TECHNIQUES

ONE-DAY/ONE-TRIAL TERMS OF JURY SERVICE

Technique

In those jurisdictions having large enough populations, a large use of jury trials, and sufficient courtroom spaces, a person's term of jury service may be feasibly limited to the completion of one trial. If not selected for a jury on the first day, he or she fulfills the jury service term by having been available on that day. Persons may be on call for several days, but once they report, their service is completed by serving one day or one trial.

Advantages

1. Jury service that is limited to the longer of one day or one trial reduces the hardship associated with service, thus reducing the need for exemptions or excuses from jury service.

2. The reduced number of persons excused with one-day/one-trial jury service terms increases the representativeness and inclusiveness of the jury pool.

3. One-day/one-trial jury service terms encourage courts to make more efficient use of juror time (since they have only one day to use the prospective juror's services), thus increasing juror satisfaction with jury service.

4. Because one-day/one-trial jury service terms require courts to summon greater numbers of prospective jurors, more persons have the educational experience of serving on a jury, which is generally a positive experience.

Disadvantages

1. Compared with courts that have longer terms for jury service, courts that use a one-day/one-trial system have to summon greater numbers of persons for jury service.

2. Compared with longer jury service terms, one-day/one-trial systems have increased administrative costs for postage, forms, and court staff.

3. One-day/one-trial systems necessarily preclude the development of "seasoned jurors" or the ability to track juror performance on prior trials.

4. One-day/one-trial systems require courts to conduct juror orientation more frequently.

5. Inefficient use of juror time by courts using one-day/one-trial systems can result in a wasted day and a poor jury experience for the person summoned for jury service.

ONE JUROR/ONE WEEK JURY SERVICE

Technique

In most jurisdictions, it is feasible to limit a prospective juror's service generally to one week, the primary exception being if a trial is extended for more than one week. One way in which this may be done is to operate a central jury pool for both civil and criminal jury trials. Approximately two months before a jury term is to begin, the clerk of court mails a pre-qualifying questionnaire to approximately 1,000 to 1,500 potential jurors depending on need. From this list, which, ideally, should be drawn from voter registration rolls and other sources, a pool of approximately 750 jurors are usually pre-qualified to be available for three jury terms (three weeks). From the pool, the computer then randomly selects about 250 persons per week to serve each term. 250 persons or so are then subpoenaed to be available for the first term. Allowances are then made for excuses or postponement; and their names are removed from the short-list. On the morning of the first day of the term, the potential jurors are again advised and screened in terms of qualifications. A video on jury service is then shown. Meanwhile, the computer randomly selects 30-40 persons for a 12-juror trial and 18-20 for a 6-juror trial from the initial 250 persons in the venire minus those who were excused from duty. If there are two 12-juror trials and one 6-juror trial held that day, a total of approximately 100 persons are then selected for voir dire examination by each of the three judges having a trial that day. Those selected and those not selected for service are kept in the pool for the week until all trials are concluded. Generally, this means that each juror serves no more than one week.

Advantages

1. Jury service is generally limited to one week which reduces the hardship associated with service, thus reducing the need for exemptions or postponements from jury service.

2. Jury service is made available to more persons for a brief period of time.

Disadvantages

1. The effectiveness of the system does require some sophistication and resources to obtain and maintain the computer operation.

2. A large jury room is generally needed to support this type of system.

HANDLING OF JURIES IN ORLEANS PARISH CRIMINAL DISTRICT COURT

Jurors in Orleans Parish Criminal District Court receive a notice summoning them to the courthouse one month prior to the month they are expected to serve. The notice includes a short questionnaire asking for a date of birth, occupation, if there is a legal reason to be excused, etc. On the appointed date, the potential jurors appear in the jury lounge for a briefing about parking and building security. They also choose a two-week period of the given month for their service; they also elect which two days of the week (either Monday and Wednesday or Tuesday and Thursday) they would like to serve. There is no jury pool on Fridays. Therefore, any individual juror could conceivably serve on four juries if that juror is chosen on each day he is called to serve.

Two hundred twenty-five potential jurors are scheduled to appear on any jury day. (There are always some who do not show up because of illness, etc.) The jury commissioner is notified as soon as a section of court determines a case will be going to trial. If the matter to be tried is a felony 50 potential jurors, who are picked randomly by a computer, are sent into court for voir dire; 25 potential jurors are sent if the matter is a misdemeanor. If a juror sits for more than one day, many of the district court judges will then excuse the juror from a future day of service. On any given day, once the jury commissioner is satisfied no more jurors will be needed, the remaining pool is discharged until the next day of scheduled service.

MULTIPLE VOIR DIRE

The *multiple voir dire* approach consists of a judge selecting several juries on one day with the trial set to start some days in the future. The judge may start one trial immediately following the completion of the voir dires if time permits.

Certain problems should be considered before the adoption of multiple voir dire. One is long voir dires. Long voir dires make multiple voir dire less desirable. However, it should be recognized that this procedure allows flexibility to jury selection and need not be adopted court wide or as a continuous practice. It may be used only on certain days or for certain types of cases.

Another problem in the use of multiple voir dire is that some cases may plea or settle on the day the jury is told to report. However, this has not usually been the situation and a telephone call-in system has provided an effective solution. In Element 7, Court B is presented as an example of a small court utilizing this procedure in its low trial activity schedule for more efficient use of jurors. The variations are as follows:

- ***Courts Consisting of One to Three Judges*** – On the first day of the jury term, all summoned jurors report to one courtroom. Following check-in and orientation, a sufficient number of jurors are randomly drawn, and the first jury is selected. Usually, voir dire takes place in one courtroom with one judge conducting all the voir dires through the day, but the panel can be moved to the next judge's courtroom for subsequent selections. Juror selection is random without replacement so that every person is given a first chance before anyone is selected again. Trial dates are determined prior to jury selection to avoid conflicting trial dates and to inform selected jurors when to report back.

- ***Courts Consisting of Four or More Judges*** – All jury trials for each week are set for one day (usually Monday). When selecting juries for the coming week, the number set is determined so that four or five cases will actually go to trial. Jurors are instructed to report to the juror assembly room or to a courtroom where they are checked in and informed of the selection procedures. To avoid depleting the pool early in the morning and to eliminate unnecessary judge waits, trial starts are staggered so that the full efficiency of the pool can be realized.

Single-Day Impanelment

Under single-day impanelment (e.g., Court C discussed in Element 7), all trials scheduled for the coming week or jury term for all judges in a court are set for jury selection on a single day when enough jurors to supply the demand are brought in. On this day, those in the pool are reused frequently, with prospective jurors participating in as many voir dires as necessary. Jurors are called in only on impanelment day and then for trials in which

Source: Case Management, American Academy of Judicial Education, Court Improvement Through Education.

they have been selected. However, if juries need to be selected on other days, due to scheduling, witness, or speedy trial consideration, then a panel is randomly selected from the pool and brought in, or a standby panel is on call.

Procedural Safeguards

Under multiple voir dire, several juries are selected from a single panel and one trial begins immediately, and the juries for the other cases report back at a later time for the beginning of another trial. Prospective jurors who served in one case may have experience that might prejudice them as jurors for another case on which they had also been selected through the use of multiple voir dire. Recent case law supports reopening the voir dire when the trial jury returns to determine if anything, including service on another jury, would change any of their original answers given in the voir dire. Some time to explore this might be required.

Another factor recognized by the courts is the effect of a "significant delay" between the time the juror is selected versus the time when the trial actually begins. Intervals of greater than thirty-nine days have been found to be significant.

Voir Dire Methods

Multiple voir dires and single-day impanelments are methods of organizing voir dires. The procedures used in the selection process itself are as varied as the judges involved. There appear to be three basic variations:

- ***Individual Method***. Prospective jurors are examined for bias out of the hearing of other prospective jurors. They may be examined en masse for general cause challenges or may have completed a case-specific questionnaire on this case at home or in the court. Typical voir dire questions concerning the case, parties, witnesses, or experience under similar situations are asked. Individual voir dire is usually used only for very sensitive, notorious, or high-visibility cases.

- ***Panel or Box Method***. A number of prospective jurors equal to the jury size are randomly selected and take their place in the jury box. Persons struck for cause are replaced, as are persons peremptorily challenged. Thos challenged step down, and a replacement is selected from the panel for the position. The parties may not know who the next prospective juror will be. That person is then examined for cause and is then subject to a peremptory challenge. When all peremptory challenges are exercised, or both parties pass their remaining challenges, the voir dire is completed.

- ***Struck Jury***. A number (or panel) of prospective jurors equal to the jury size plus the total number of peremptories permitted is chosen. After examination, any persons challenged for cause are replaced. When the panel is "cause free," the parties alternately strike names from the list of

> the panel. All peremptories need not be used. If all are not used, the jury is considered to consist of the first names selected that were not challenged.
>
> If all peremptories are not used, the panel method may require fewer prospective jurors. However, the struck jury is preferred by many, because all prospective jurors to be considered are known when the peremptory challenges are exercised. The struck jury also has less movement of persons and less stigma attached to the challenging process.

No case law on general voir dire methods existed until 1986 when the Fourth Circuit addressed the struck jury method. In that case, the court discussed the "box" and "struck" methods and held that when the panel of "cause free" prospective jurors exceeds the strikes plus the jury, the parties should be made aware of the order the court will use in selecting the jury. The struck jury method is recommended in ABA Standard 9H.

CALENDAR COORDINATION

Levels of Calendar Coordination

Court use three levels of calendar coordination: no coordination, some coordination or communication, and communication with feedback (i.e., full coordination).

No Coordination

In this level of calendar coordination, the jury system operates independently from the rest of the court. This level is exemplified by a small county, which summons a group of prospective jurors every Monday morning, even though the record shows that only three or four trials are held each year. Another example is a metropolitan court that had 200 to 300 jurors brought in during the Thursday and Friday after Christmas, even though no judges were on the bench. In both courts, the jury clerks were performing as they had been instructed, and no one in authority had modified those instructions.

The situation of "no coordination" is so patently ridiculous that it should be avoided regardless of the size of court or any condition of jury service, for it not only costs the court of money but also gives the jurors and the people of the community an impression of ineffective court activity and management.

Some Coordination

This condition varies from the avoidance of "zero day" extremes to fairly elaborate procedures for predicting the number of trials expected the next day or later on the same day. For instance, late each day the jury clerk in Prince George's County, Maryland, checks by telephone with each of the judges' clerks to determine the expected number of trial starts on the following day and uses that estimate as the basis for the number of jurors to call in via a transcribed telephone message. In Dallas, a less-selective coordination is practicable because only enough jurors to meet minimum needs of the day are summoned in the morning. During the morning, the clerk checks with each of the judges or their clerks to determine the additional number that will be needed that afternoon. The estimate provides the basis for the 11:30 a.m. telephone message that instructs standby jurors to come in at 1:00 p.m. These are basically one-way communications between the calendaring source, whether it's the judge (individual calendars) or the clerk (master calendars) and the jury clerk.

Full Coordination

This level of coordination involves not only an accurate prediction of the number of jurors to bring in but also some flexibility in the calendaring process to improve juror utilization. For instance, in Shawnee County (Topeka, Kansas), before a trial date is given the date is checked with the jury coordinator. Usually, the purpose of this coordination is to intensify trial activity at the times when jurors are available. In small

Source: Source: Case Management, American Academy of Judicial Education, Court Improvement Through Education.

courts, multiple voir dire is used to pick several juries from a group of jurors called in for that day, with the trials being set to start on subsequent days. Small courts in many states, as well as most of the small federal district courts, achieve a rather close coordination between the jurors needed and the calendar.

Larger courts can use an impanelment day to force calendar coordination by scheduling all voir dires to a common day. The concern then becomes how large a venire to bring in.

Consolidation of Trial Starts

Many jurisdictions have been independently exploring the value of intensive jury operation. For instance, St. Louis County (Clayton, Missouri) starts all its trials on Mondays and Wednesdays unless prior arrangements are made. Others – like Ann Arbor, Michigan; Madison; and Jacksonville, Florida – bring in pools on Mondays only, setting up juries for the week at that time regardless of the days on which each actual trial will begin. Some judges may even pick juries for other judges.

Selecting juries on Wednesday for all trials for Wednesday, Thursday, and Friday would intensify activity and improve juror usage. Trials could be started on Thursday or Friday if desired, so long as the jury (or at least the panel) was selected from the Wednesday pool. Successful operation of the Monday/Tuesday/Wednesday pool might naturally lead to consideration of whether a Monday/Wednesday pool might be even better.

Evaluating Trial Prediction

Trial prediction may be achieved in many ways, depending upon the calendaring method used and the recognition of the reliance of cooperation to prevent unnecessary waiting by jurors in the court.

Knowledge of this prediction rate is useful to the jury administrators, for without it, they would always be calling in too many jurors. With it, they can estimate much more closely the probable needs for the next day on the basis of the judges requesting panels.

The jury staff in one large court is helped in this estimate by having a record of the prediction rate of each of the court's twenty-six judges, for when some judges order panels, they always go to trial, whereas when others order panels, the chances that a trial will start are slim.

Implementation

The object of calendar coordination is to establish an effective level of communication between those managing the jury system and those managing the court calendar. This can be achieved by the following:

1. Establish procedures whereby each court or calendar office orders panels from the jury administrator for the next day of jury sessions, or otherwise informs the jury

administrator of the court's needs. An ongoing record listing the orders by day should be kept by the jury staff.

2. Develop the prediction rate for the court and, after approval by the chief judge, use that prediction rate in estimating the number of jurors to call in. Use a call-in system to bring in that number and have a provision whereby last-minute needs can be met.

3. Measure the number of daily panel requesting for a period of time. If there tends to be less than three panels per day, then a method of intensifying trial start activity should be sought, presumably

    - Multiple voir dire in a small court
    - Single-day impanelment in a midsize court
    - Intensification of trial starts on other days in a large court

4. Determine the number of zero days occurring and the reasons associated with such zero days as shown in Element 7. The jury administrator would then report these to the chief judge.

5. Prepare a weekly prediction rate and include it in the monitoring and control function of Element 12.

PART XIV

MONITORING AND INFORMATION MANAGEMENT

A.

GENERAL MONITORING AND INFORMATION

Definition of Backlog

The backlog is the number of cases in the inventory that are older than the time standard set by the court.

Attacking an Existing Backlog

1. **Determine the active pending caseload**
   - Administratively review all cases
   - Formally close "dead" cases
   - Announce the results
2. **Determine status of remaining cases**
   - Send notices and determine if still active
   - Case review by highly efficient judge

Attacking an Existing Backlog

3. **Formulate plan for remaining cases**
   - Settlement conference and early disposition
   - Deadlines and short schedules for intensive judicial attention
   - Mediation and arbitration
   - Extra resources to try old cases
   - Other staff requirements
   - System for monitoring progress
4. **Implement a calendaring plan**

Monitoring and Information

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What gets measured gets done.
Stupak

You can't manage what you can't measure.
Stupak

Effective management information can have a profound positive impact on managing change

Monitoring and Information

Systems: Monitoring Levels

LEVEL I **BASIC INFORMATION**	**Cases filed, disposed, pending and their age**
LEVEL II **FOR EFFICIENT OPERATION**	**When do dispos occur, how many on trial calendar settle, how many are continued?**
LEVEL III **FOR TOP MANAGEMENT EFFICIENCY**	**Short / long term trends, trial predictability, problem diagnostics**

Critical Management Information

- **Number of Filings and Dispositions**
  - By case type
- **Number and Age of Pending Inventory**
  - By case type
  - By processing stage
- **Time to Disposition of Disposed Cases**
  - By case type
  - By type of disposition
  - By percentages

Baseline Indicators

Pending Goal = Annual Filings x Time Standard / 2

Time Standard expressed as a fraction of 1 year

Time to Disposition = Pending Cases x 2 / Annual Filings

Time to Disposition expressed as a fraction of 1 year

Time to Disposition for the 98-100% case

Key Questions For Judge Leaders and Court Administrators to Ask

Overall Status of Calendar

- How many cases are there?
- What is the backlog?
- What is our overall performance compared to time standards?
- What types of dispositions are occurring and when do they occur?

Key Questions For Judge Leaders and Court Administrators to Ask

Troubleshooting Questions

- Are there problems with particular kinds of cases?
- Are there procedural bottlenecks?
- Are particular judges experiencing problems?

Monitoring and Information

5

What Information Do We Already Have?

- Internal Monthly Statistics
- State Administrative Office
- Prosecutor, Public Defender, Law Enforcement
- *Other information?*

Caseflow Management Information

- Who is in charge of your Management Information?
- How to effectively manage IT Professionals

Organizing Data into Usable Easy-to-Read Reports

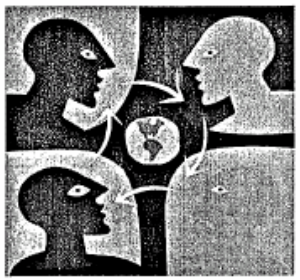
Good Reports Should Enable You To ...

- See Vital Pulse and blood pressure information at a glance
- Identify "lost" cases, i.e., cases missing, next action or next action date

Implementing a New Program

- **Break action into tasks, and identify**
  - Person responsible
  - People directly involved
  - People to be informed
  - Target completion date
- **Prepare flow chart for new system and for each task**

Group Exercise #2



B.

AUTOMATED CASE MANAGEMENT INFORMATION SYSTEMS

COURT CASE MANAGEMENT INFORMATION SYSTEMS

COMPUTER SOFTWARE THAT COLLECTS, ORGANIZES, PROCESSES, STORES, RETRIEVES INFORMATION IN WAYS THAT:

- **REDUCE REDUNDANT DATA ENTRY**
- **REDUCE DELAYS**
- **IMPROVE HEARINGS AND TRIALS**
- **IMPROVE SENTENCING**
- **IMPROVE THE COORDINATION AND INTEGRATION OF COURT AND JUSTICE SYSTEM FUNCTIONS**

HARDWARE REQUIREMENTS

- **MAINFRAME**
- **SERVERS**
- **STAND-ALONE DESKTOPS**
- **LAPTOPS**

SOFTWARE REQUIREMENTS FOR SERVER SYSTEMS

WINDOWS

WEB-BASED

DATABASE

- **ACCESS**
- **SQL**
- **ORACLE**

LEVELS OF INTEGRATION

FUNCTIONAL INTEGRATION

CASE INTEGRATION

DATA SHARING

LOCAL

STATEWIDE

FUNCTIONAL INTEGRATION

- **DOCKETING**

  CASE INTAKE AND INITIATION

  PROPER VENUE DETERMINATION

  INDEXATION

    PARTICIPANT IDENTIFICATION

    CASE IDENTIFICATION

  ASSESSMENT INFORMATION

  CASE ALLOTMENT

  CALENDARING

  SCHEDULING

  TICKLERS

  CASE TRANSFER CAPABILITIES

MANUAL FILE MAINTENANCE

BAR CODING

DOCUMENT NUMBERING

RECORDS MANAGEMENT

VIRTUAL FILE MAINTENANCE

E-FILING

- **DOCUMENT AND FORM GENERATION**

    FORMS

    DOCUMENTS

        SUBPOENAS

        SUMMONS

        WARRANTS

        NOTICES

        ORDERS/JUDGMENTS

- **MANAGEMENT OF HEARINGS/ PROCEEDINGS**

CHECKLISTS

AUTOMATED MINUTE ENTRIES

ORDERS/JUDGMENTS

AUTOMATIC TRIGGERING

- **TRACKING**

    LOCATIONS

    PARTICIPANTS

    CASE SCHEDULE

    CASE STATUS

    SERVICE OF PROCESS

    CONDITIONAL RELEASE

    WARRANTS

    TRANSFERS

        PROPER VENUE

        IMPROPER VENUE

        CHANGE IN VENUE

        APPEALS

HEARINGS AN PROCEEDINGS

TYPES OF HEARINGS

CONTINUANCES

ACTIONS

ADJUDICATIONS

DISPOSITIONS

COMPLIANCE

WARRANTS

TRANSFERS

- **REPORTING (INDIVIDUAL CASES, GROUPS OF CASES, STATISTICS)**

    PARTICIPANT REPORTS

    CASE REPORTS

    SERVICE OF PROCESS

    CONDITIONAL RELEASE

    HEARINGS AND PROCEEDINGS

        TYPES

        CONTINUANCES

    ACTIONS

    ADJUDICATIONS

    DISPOSITIONS

    COMPLIANCE

    WARRANTS

    TRANSFERS