



*Court Organization and Effective Caseflow Management*

# **TIME TO REDEFINE**

Hon. William F. Dressel (Ret.)  
President, The National Judicial College



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By: Hon. William F. Dressel (Ret.)  
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# Introduction

This is intended to be a perpetual draft, a work-in-progress, or to borrow a technology concept, an *open source* seeking ongoing input to be shared throughout the justice system. The title encompasses two foundational court areas and poses the questions:

- Is it time to examine how your court is organized?
- Is it time to update the way cases are managed?

These two issues encompass many questions such as:

- What is the appropriate workload for a judge?
- What docket system is appropriate for a specific court – master, hybrid, individual?
- How should a court schedule its calendar - day, week, month, year?
- Has the caseload been analyzed through the differentiated case management lens filter?
- Does the case management process include early and continuous court supervision of case progress using meaningful events?
- What organization/case management resources are available to the court and are they being used appropriately?

At the end of the 20<sup>th</sup> century, when courts accepted the responsibility for the duration of time from the filing of a case to its resolution, the concept of case management was created. Initially, addressing or *defeating delay* was the justification for judicial case management.

In 1985, the National Conference of State Trial Judges (NCSTJ) of the Judicial Division of the American Bar Association published STANDARDS RELATING TO COURT DELAY REDUCTION which became the authority and resource for judicial case management. Within it, NCSTJ defined the general principle of caseflow management as follows:

## **Sec. 2.50—Caseflow Management and Delay Reduction: General Principle:**

From the commencement of litigation to its resolution, whether by trial or settlement, any elapsed time other than reasonably required for pleadings, discovery and court events, is unacceptable and should be eliminated. To enable just and efficient resolution of cases, the court, not the lawyers or litigants, should control the pace of litigation. A strong judicial commitment is essential to reducing delay and, once achieved, maintaining a current docket.<sup>1</sup>

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<sup>1</sup> NAT'L CONFERENCE STATE TRIAL JUDGES, STANDARDS RELATING TO COURT DELAY REDUCTION (American Bar Association, 1985).



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This publication also identified essential elements which a trial court should use to manage its cases. These elements remain appropriate for today's courts. Those essential elements, outlined in Section 2.51, are as follows:

### **Sec. 2.51—Caseflow Management:**

Essential elements which the trial court should use to manage its cases are:

- A. Court supervision and control of the movement of all cases from time of filing of the first document invoking court jurisdiction through final disposition.
- B. Promulgation and monitoring of time standards for the overall disposition of cases
- C. By rules, conferences or other techniques, establishment of time for conclusion of the critical steps in the litigation process, including the discovery phase.
- D. Procedure for early identification of cases that may be protracted, and for giving them special administrative attention where appropriate.
- E. Adoption of a trial setting policy which schedules a sufficient number of cases to ensure efficient use of judge time while minimizing resetting caused by over scheduling.
- F. Commencement of trials on the original date scheduled with adequate advance notice.
- G. A firm, consistent policy for minimizing continuances.<sup>2</sup>

Even though effective caseflow management (ECFM) was recognized as a useful tool for courts, in the 21<sup>st</sup> century, courts began to focus on other challenges and new judges / court administrators were not trained on ECFM. In some jurisdictions ECFM was given “lip service” but not utilized. Courts experienced an increase in their pending caseload, and time from filing to disposition increased. These factors contributed to a lack of confidence in, and respect for, the judicial system. In the past 20 years, courts have changed. The rate and number of jury trials have decreased; courts have taken on new roles; civil case filings have gone down (partially due to a focus on dispute resolution methods); and courts are seeing a dramatic increase in self-represented litigants. While there may not be a direct correlation between some of these occurrences and the decline of ECFM, courts which have revisited how they are organized and implement ECFM procedures have reported a reduction in their pending caseload and a shortened time from filing to resolution. Additionally, with the changes that have occurred in technology, the advent of problem solving dockets, the types of cases being filed, examination of the ‘core’ business of courts and the impact of economic factors, it is time for courts to review how they are organized, use ECFM, and put into place procedures to regularly monitor and evaluate their caseloads.

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<sup>2</sup> *Id.*



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There are many resources that can be consulted before a court undertakes a review of its case management system. The most pertinent resources are as follows:

- NATIONAL JUDICIAL COLLEGE, FAIR, TIMELY, ECONOMICAL JUSTICE: ACHIEVING JUSTICE THROUGH EFFECTIVE CASEFLOW MANAGEMENT (2009).
- DAVID C. STEELMAN, IMPROVING CASEFLOW MANAGEMENT: A BRIEF GUIDE (National Center for State Courts, 2008).
- DAVID C. STEELMAN, ET AL., CASEFLOW MANAGEMENT: THE HEART OF COURT MANAGEMENT IN THE NEW MILLENNIUM (National Center for State Courts, 2004).
- MAUREEN SOLOMON, IMPROVING CRIMINAL CASEFLOW (American University, July 2008).
- MAUREEN SOLOMON, CONDUCTING A FELONY CASEFLOW MANAGEMENT REVIEW: A PRACTICAL GUIDE (American University, May 2010).

While courts are facing financial cutbacks, the use of consultants cannot be emphasized enough. You should determine what resources exist internally or whether access to external expertise is allowed. Grant funds or assistance from entities with whom your state has a relationship such as the National Center for State Courts (NCSC), may also be an option.

Before deciding on a plan of action, gather the following information:

1. Number of cases pending
  - A. By major case type
  - B. By age
2. Age of cases at disposition
  - A. By case type
  - B. By type of disposition
3. System rates
  - A. Filings
  - B. Disposition
  - C. Number of trials scheduled
    - Jury trials
    - Bench trials
  - D. Number of trials started/completed
  - E. Length of trials (Range/Average/Median)
4. Open case report
  - A. Pending cases, oldest first
    - Status: next action
    - Locator information on lawyers and parties

Knowing your caseload will allow you to utilize available resources in a manner that will best serve your court and identify how you may need to change local culture, but also allow you to base your actions premised on procedural fairness and access to justice. This



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information will also allow you to identify trends of judicial activity and guide you in creating categories for each case type (e.g., civil, criminal, domestic, probate, etc.). Last, before you proceed, ensure you have a diagram of how your court is organized. After you evaluate and update how you manage your cases (ECFM), revisit this diagram to evaluate whether your court is appropriately organized, remember that the concepts of ECFM are the backbone of how you conduct the court's work.

What are the subjects on which input should be sought and shared? The following subject areas are defined in more detail in the next sections:

- Caseflow Management: An Historical Overview
- Effective Judging and Judicial Commitment
- Court Organization and High Performance Courts
- Local Legal Culture and Continuances
- Court Management Tools and Technology
- Problem Solving Initiatives
- Technical Assistance and Education



## Caseflow Management: An Historical Overview

The National Judicial College, under a grant from the Bureau of Justice Assistance (BJA), held a summit in January, 2008 to explore the critical elements of effective caseflow management (the Summit). This summit was convened based upon an earlier BJA forum at American University which explored past achievements that contributed to the improvement of the administration of justice. At American University, Caseflow management was identified as “A,” if not “*THE*” most significant achievement in the courts in the second half of the 20<sup>th</sup> century.<sup>3</sup> The American University forum raised concerns that many of the caseflow management programs established in the 80’s and 90’s were no longer in place. Further, the time for a case to go from filing to disposition has been increasing.

There exists a wealth of material, written in the 70’s, 80’s and 90’s, on caseflow management (ECFM). Most of these writings discuss caseflow management from the context of addressing delay. However, ECFM really is integral to how a court is organized, operates, and is the foundation upon which access to justice is built. It is time for the judiciary to revisit ECFM from the perspective that it is a core function and not simply a delay reduction tool. Additionally, the principles and concepts of caseflow management are as applicable today as they were 20 to 30 years ago.

These thoughts were confirmed at the Summit. The Summit participants agreed that while there may be truth in this assertion of applicability, it was time to re-examine the state of knowledge on caseflow management.

David C. Steelman, in his book *CASEFLOW MANAGEMENT: THE HEART OF COURT MANAGEMENT IN THE NEW MILLENNIUM*, describes the emergence of caseflow management principles and techniques as follows:

From the beginning of the 20<sup>th</sup> century court reform movement until the 1970's, efforts to reduce delay focused on court structure, court resources, and rules of procedures - issues that arose from the cognitive framework of judges, law professors, lawyers and legislators. . . . Until the 1970's, the assumptions implicit in discourse on court delay are that court resources and formal rules and procedures determined the case of litigation and that solutions to the problem of delay must be applied in these areas . . . . By the 1970's . . . attention in the search for solutions to problems of delay was shifting from structure, resources and rules to the actual process of how cases progress from filing to disposition. In 1973, the American Bar Association Commission on Standards of Judicial Administration . . . commissioned a monograph by Maureen Solomon *wherein* she emphasized

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<sup>3</sup> American University held the Judicial System Leadership Forum on December 16-17, 2004 and was funded by the Bureau of Justice Assistance. The Executive Summary from that forum is available at <http://www1.spa.american.edu/justice/documents/2034.pdf>.



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a need for commitment by judges to court control of the progress of litigation, using the services of a court administrator to coordinate the process in keeping with case processing time standards and other system performance standards adopted by judges and administrators.

...

The National Center for State Courts conducted one of the first comprehensive and rigorous national studies of delay in state courts. In 1976, Thomas Church and fellow researchers examined civil and criminal cases disposed of in 21 state general jurisdiction trial courts. They concluded:

The speed of disposition of civil and criminal litigation in a court cannot be ascribed in any simple sense to the length of its backlog, any more than court size, caseload, or trial rate can explain it. Rather both quantitative and qualitative data generated in this research strongly suggests that both speed and backlog are determined in large part by established expectations, practices, and informal rules of behavior of judges and attorneys. For want of a better term, we have called these cluster related factors the *local legal culture*. Court systems become adapted to a given pace of civil and criminal litigation. That pace has a court backlog of pending cases associated with it. It also has an accompanying backlog of open files in attorneys' offices. These expectations and practices, together with court and attorney backlog, must be overcome in any successful attempt to increase the pace of litigation. Thus most structural and caseload variables fail to explain interjurisdictional differences in the pace of litigation.

...

[Church and his colleagues] found that attempts to alter the case loads of individual judges by adding judges or decreasing filings, are not likely to increase either productivity or speed. To reduce pretrial delay, they were recommended that courts: *establish management systems by which the court, and not the attorneys, controls the progress of cases; . . .*<sup>4</sup>

In Maureen Solomon and Douglas K Somerlot's introduction to their book CASEFLOW MANAGEMENT IN THE TRIAL COURT, NOW AND FOR THE FUTURE they state:

Extraordinary advances in the field of caseflow management have occurred in the 15 years intervening between publication of the original monograph (on caseflow management and the trial court) and this one. In 1972, the assertion that the court should take responsibility for active supervision of case progress,

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<sup>4</sup> DAVID C. STEELMAN, ET AL., CASEFLOW MANAGEMENT: THE HEART OF COURT MANAGEMENT IN THE NEW MILLENNIUM xiv (National Center for State Courts, 2000).



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while not radical, was far from reality in most trial courts and today a growing number of judges and court administrators not only advocate the original concept, but have implemented it through a variety of innovative techniques. During this period many approaches have been tried and abandoned. Some of the ideas that attracted a substantial following prior to 1972 have been reexamined and rejected. Rather than an indictment of earlier court and case management reforms, this is an evolutionary process by which new developments and refinements build on experience. The effective systems in place today require cultivation in the enriched environment provided by the innovators and experimenters of the past.

...

Although procedural innovations are occurring rapidly, it is suggested that the principles of caseflow management have endured since the original 1972 publication and should continue to serve as a guide for achieving caseflow management excellence, perhaps even to the 21<sup>st</sup> century.<sup>5</sup>

In the National Association of Court Managers' (NACM) Core Competency Project, NACM defined caseflow management as:

Caseflow management is a process by which courts move cases from filing to disposition. This includes all pretrial phases, trials, and increasingly, events which follow disposition to ensure the integrity of court orders and timely completion of post-disposition case activity.

Effective caseflow management makes justice possible both in individual cases and across judicial systems and courts. It helps ensure that every litigant receives procedural due process and equal protection.<sup>6</sup>

Solomon and Somerlot defined caseflow management as follows:

As now generally accepted in the court community, caseflow management denotes supervision or management of the time and events involved in the moving of a case through the court system from the point of initiation to disposition, regardless of the type of disposition.

...

Emphasis is placed on the word management. As a verb "to manage" denotes action, the term "caseflow management" contemplates active oversight by the court of the progress of all cases filed. In a sense, the term

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<sup>5</sup> MAUREEN SOLOMON AND DOUGLAS K. SOMERLOT, CASEFLOW MANAGEMENT IN THE TRIAL COURT: NOW AND FOR THE FUTURE 1 (American Bar Association, 1987).

<sup>6</sup> National Association for Court Managers, Core Competency Caseflow Management, [http://www.nacmnet.org/cccg/cccg\\_3\\_corecompetency\\_cfm.html](http://www.nacmnet.org/cccg/cccg_3_corecompetency_cfm.html) (last visited December 16, 2010).



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"caseflow" may be misleading in connection with the movement of cases through the court. Cases do not flow steadily and smoothly from filing to termination. In terms of court involvement, the life of a case, and reality, may be characterized as a series of events separated by times during which there is no court activity. A goal of active case management is to make the sequence and timing of these events more predictable and timely. While caseflow management programs are constructed around the events themselves - such as status conferences, discovery completion, etc. - the important focus involves time management. Thoughtful management of the intervals between events clearly affects overall case disposition times. If one accepts the premise that just results are achieved by well prepared attorneys, then effective caseflow management must encourage and facilitate attorney preparation.

...

Caseflow management is strictly a management process. While some aspects are performed by court administrators and some by judges, and while the events involve their conferences, hearings and trials, caseflow management should not directly impact the adjudication of substantive or procedural issues in the litigation. The resolution of each case on its legal merits is never compromised by an effective caseflow management system.<sup>7</sup>

The American Bar Association's 1986 publication for lawyers, *DEFEATING DELAY*, discusses caseflow management as:

Although many techniques exist to attack delay, the heart of all programs is active caseflow management.

The term caseflow management as used herein denotes management of the continuum of processes and resources necessary to move a case from filing to disposition; whether that disposition is by settlement, guilty plea, dismissal, trial or other method. It is concerned with active attention by the court to the progress of each case once it has been filed with the court.<sup>8</sup>

Reviewing and revisiting ECFM is integral to how courts organize themselves to provide procedural fairness and justice in the 21<sup>st</sup> century.

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<sup>7</sup> Solomon, *supra* note 5, at 3.

<sup>8</sup> TASK FORCE ON REDUCTION OF LITIGATION COST AND DELAY, *DEFEATING DELAY: DEVELOPING AND IMPLEMENTING A COURT DELAY REDUCTION PROGRAM* 24 (American Bar Association, 1986) (citing SOLOMON, *CASEFLOW MANAGEMENT IN THE TRIAL COURTS* 1 (1973)) [Hereinafter *Defeating Delay*].



## Effective Judging and Judicial Commitment

Much has been written about the judge's important and powerful role in improving the justice system.<sup>9</sup> The judge has a position of respect and authority enabling him or her to call meetings and convene stakeholders, to facilitate collaboration between diverse groups, and to build consensus. On the important issue of caseflow management, the judge is the impartial actor who can ensure that court procedures are not taken advantage of to the detriment of the litigants or defendants.

In addition to the powerful role of the judge, every judge has an ethical obligation to ensure the effective administration of justice. Some of this is found in Rule 2.5 of the ABA Model Code of Judicial Conduct:

- (A) A judge shall perform judicial and administrative duties, competently and diligently.
- (B) A judge shall cooperate with other judges and court officials in the administration of court business.<sup>10</sup>

Comment (3) expands on these proactive duties: "Prompt disposition of the court's business requires a judge to devote adequate time to judicial duties, to be punctual in attending court and expeditious in determining matters under submission, and to take reasonable measures to ensure that court officials, litigants, and their lawyers cooperate with the judge to that end."<sup>11</sup>

As public officials, judges and other court staff have a responsibility to optimize resources (i.e. time, money, staff, and space). The public and the other branches of government have a right to hold the judicial branch accountable. So, efficiency and accountability are additional reasons for judges to actively manage caseflow.

What should judges do to exercise the power of their position and to fulfill their ethical responsibility? Individually, a judge must take control of his or her own docket. They can ensure that they do not contribute to delay by taking a firm position on the granting of continuances, by rendering their own decisions in a timely manner, and by taking control of complex cases at the outset.

Judges have a right to information about their court's efficiency. They can insist on receiving regular updates on the statistics about the cases coming through their

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<sup>9</sup> JUVENILE DELINQUENCY GUIDELINES: IMPROVING COURT PRACTICE IN JUVENILE DELINQUENCY CASES (National Council of Juvenile and Family Court Judges, 2005); A MODEL FOR JUDICIAL LEADERSHIP: COMMUNITY RESPONSES TO JUVENILE SUBSTANCE ABUSE (Reclaiming Futures, 2006); PAUL B. WICE, COURT REFORM AND JUDICIAL LEADERSHIP: JUDGE GEORGE NICOLA AND THE NEW JERSEY JUSTICE SYSTEM (Praeger, 1995); FOSTERING THE FUTURE: SAFETY, PERMANENCE, AND WELL-BEING FOR CHILDREN IN FOSTER CARE, EXECUTIVE SUMMARY (Pew Commission on Children in Foster Care, 2004).

<sup>10</sup> MODEL CODE OF JUDICIAL CONDUCT RULE 2.5 (American Bar Association, 2007).

<sup>11</sup> ABA Model Code of Judicial Conduct, Comment 3 (2007).



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courtroom. The judge can take the lead in developing a process that provides predictability and certainty in scheduling the steps of a case.

The judge has a responsibility to not let the attorneys control the pace of litigation. It may be advantageous for one side or the other to stall, and the judge must keep control of the process. On the other hand, the influx of self-represented litigants can also present a challenge as extra time may be required to explain the process and give the litigant the opportunity to speak. Judges must strike a balance between handling the case expeditiously and the obligation of Rule 2.6(A) which requires a judge to “accord to every person who has a legal interest in a proceeding . . . the right to be heard according to law.”<sup>12</sup>

On a larger scale, judges can lead initiatives in their court to tackle improving caseload management. Working with the cooperation of their presiding or administrative judge, any judge can offer to take up the responsibility to examine the statistics and convene a working group to propose changes.

The judge can have a positive impact on the public’s perception of justice by talking to the community about the efforts of the court to improve caseload management and reduce delay, or by advocating that the court publish their performance record.

After a judge has taken a leadership role in improving caseload management, it is vital that the judge also develop a succession plan so the improvements made do not end when the judge is gone.

Judges can also take a leadership role in ensuring they receive continuing education, through their own state judicial education entities, or through a myriad of national providers,<sup>13</sup> about improving the administration of justice through effective caseload management. In particular, they need education to keep up to date on the technology that can assist with their efforts.

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<sup>12</sup> MODEL CODE OF JUDICIAL CONDUCT RULE 2.6(A) (American Bar Association, 2007).

<sup>13</sup> The National Judicial College offers an annual course, *Effective Caseload Management*. For information about the course and to register visit its website at: [www.judges.org](http://www.judges.org).



## Court Organization and High Performance Courts

Court organization is unique. The court is often managed by a judge who, when taking the bench, may be more focused on procedural due process and justice than management. Presiding judges (also known as administrative judges, chief judges, president judges, etc.) who lead the court often do not have any or little management experience. The management experience comes like snow falling in the field. Slowly the experience builds as time marches on.

Presiding judges are responsible for their docket in addition to the new management responsibilities. How is the presiding judge to track events in the courthouse while handling his or her own docket? Judges are already pressed for time, now the presiding judge must make the court's management decisions without the benefit of experience and/or training. The lack of training, funding issues, personnel problems, and a host of other issues spotlighted the need for someone to assist the presiding judge.

Thus, the field of court administrators was created. The court administrator assists the presiding judge with the management of the court. The court administrator's role includes the management of day-to-day trial court operations. The relationship between the presiding judge and the court administrator is crucial. The key to a well-run court is the partnership between the two. The court management partnership becomes a team that can manage the court and provide procedural due process and justice. Together the court management team creates a vision for the court and builds strategies to realize those visions. Caseflow management is a necessary element within the vision and strategies for the court. Caseflow management is the court's foundation to provide the presiding judge's interest of procedural due process and justice and provide the court administrator's policy interest of effective court management. Successful court operations depend upon consistent caseflow management review to determine the court's long term well-being. The entire court, all its employees, and the court users depend upon that relationship to provide court leadership.

Court leadership changes throughout time as the presiding judge's term ends or through other changes. Caseflow management provides a framework from which the new court management team can examine the court. How is the court addressing its cases? What changes, if any, should the new presiding judge and the court administrator team implement? Is the court performing at the highest level possible?

High performance courts, which grew out of the National Center for State Court's CourTools, are courts that have an effective administration of justice.<sup>14</sup> The high performance courts' design has four administrative principles. Every case receives individual attention; every case is treated proportionally; court procedures demonstrate procedural justice and are fair and understandable; judicial control oversees the whole

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<sup>14</sup> OSTROM AND HANSON, HIGH PERFORMANCE COURT FRAMEWORK: A ROAD MAP FOR IMPROVING COURT MANAGEMENT (National Center for State Courts, 2010).



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process.<sup>15</sup> Caseflow management is at the heart of high performance courts. Individualized attention and proportional case treatment encompasses the caseflow management principle of differentiated caseflow management. Caseflow management's due process and equal protection rights are within the high performance court's court procedures element. Principles of timely disposition of cases, economical court operations, and judicial control are all incorporated within the new high performance court's design.

Caseflow management is the backbone of court organization and court management. The court management team's vision and strategies for the court, successful court leadership, and high performance courts all embrace caseflow management to perform the court's core functions.

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<sup>15</sup> *Id.*



## Local Legal Culture and Continuances

The importance of local legal culture is recognized by all who have done work in this area. Therefore, effective caseflow management may differ from court to court in some respects but should always be guided by adherence to the proven elements of effective caseflow management. The local court culture usually has developed over time so making significant changes to the culture may take some time to implement for a more smoothly running court.

DEFEATING DELAY summarized the importance of local legal culture by stating that a “successful reform effort must be adapted to local situations. What works in one jurisdiction, even in the same state, may not work somewhere else.”<sup>16</sup>

Continuances are recognized as an activity that negatively impacts timeliness and should be tracked as to who requests them. In the event a party to the litigation makes a complaint about not having time to prepare, for example, you can look back in the file to determine who requested continuances at the different stages of the case before you make a decision on the validity of the request. Delay causes increased costs, not only for the parties but for the court staff. Every time court staff handles a file, the workload is increased and costs are incurred.

The presiding judge controls the pace in the court as to caseflow management and one way to quicken the pace without harming justice and fairness is through the enforcement of a policy emphasizing reduction of unnecessary continuances.<sup>17</sup> Of course, a firm continuance policy is only effective if it is enforced; however, it should be noted that continuances may sometimes need to be granted if circumstances warrant.<sup>18</sup> Implementation of a change in policy that some lawyers may rely on is going to require maintaining open communication with the local legal community.<sup>19</sup> Encourage training opportunities through the court and the local bar to explain the intricacies of caseflow management. Explain how delay effects the quality of justice and impedes fairness; in other words, get all stakeholders to buy into the new legal culture by making them part of the process of change.

There is significant support in the field for courts to impose stricter guidelines for continuances as a way to expedite cases.<sup>20</sup> It has been recognized that attitudes towards continuances must be changed and an understanding reached among all legal stakeholders that accelerating the disposition of a case does not occur without regard

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<sup>16</sup> *Defeating Delay*, *supra* note 8, at 23.

<sup>17</sup> *Id.* at 25.

<sup>18</sup> YOUNGER ON CALIFORNIA MOTIONS § 25:6 (2010 ed.). (citing two California cases in which the “fast track rules” were found to be improperly applied; *Hernandez v. Superior Court*, 115 Cal.App.4th 1242, 1246 (2004) and *Polibrid Coatings, Inc. v. Superior Court*, 112 Cal.App.4th 920, 923 (2003)).

<sup>19</sup> *Defeating Delay*, *supra* note 8, at 59.

<sup>20</sup> James Peter Coolsen, *Case Management Innovation in a Large, Urban Trial Court: The critical importance of Legal Stakeholder Attitudes*, 30 JUST. SYS. J. 82-83. (2009).



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for justice received and perceived.<sup>21</sup> Earlier pleas from criminal defendants and settlements of civil matters are a benefit of more rigorous caseflow schedules and fewer continuances in cases overall.<sup>22</sup>

Be an advocate for the court system; banish delay and help change the local legal culture into one of timeliness, certainty, cost-effectiveness, and superior fairness to those who come before each and every judge. Go beyond competence to reach a level of unparalleled excellence as cases are shepherded through the court. Commitment to changing your caseflow management system to a streamlined organization of impartiality, integrity, and fair dealing can be accomplished through communication and teamwork with the local legal community.

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<sup>21</sup> *Id.* at 85.

<sup>22</sup> STATE OF FLORIDA OFFICE OF PROGRAM POLICY ANALYSIS & GOVERNMENT ACCOUNTABILITY, JUDICIAL CASE MANAGEMENT PRACTICES VARY THROUGHOUT STATE; BETTER CASE DATA NEEDED 3 (Report No. 09-06, January 2009).



## Court Management Tools and Technology

To manage a case effectively, a court must have the fundamental elements of effective caseflow management in place. While experts differ concerning the elements, a combined list is as follows: (1) judicial leadership; (2) early and continuous judicial supervision of case progress including meaningful pretrial court events and realistic pretrial schedules; (3) differentiated case management; (4) firm and credible hearing/trial dates with an appropriate continuance policy; (5) observance of time standards and goals; (6) effective trial management; (7) management of court events after initial disposition; (8) ongoing communication and consultation with all necessary court agencies; and (9) an information system to support caseflow management.<sup>23</sup> All of these elements are addressed below except judicial leadership and commitment which was addressed in a previous section.

### **Early and continuous judicial supervision of case progress including meaningful pretrial court events and realistic pretrial schedules**

For caseflow management systems to work, judges must involve themselves early in cases. This involves educating themselves about case issues and actively managing the litigants. This involvement must continue throughout the life of the case. On a broader basis, judges need to pay attention to the age and progress of cases. “The primary purpose of *early judicial involvement* is to focus everyone on the case at the earliest reasonable time and, more particularly, on the time and resources required to assure a timely and just disposition.”<sup>24</sup> In simple terms, judges need to play an active role *early* to all parties evaluate the case and create an agreed upon timetable for future case activities.<sup>25</sup>

*Continuous supervision* by judges or their staffs ensures that the parties (1) meet their deadlines; (2) meet to negotiate disposition earlier (not at the courthouse steps on the day set for trial); and (3) file appropriate motions (with issues appropriately limited). In this way, judges cases can rule on motions earlier, which may help to resolve cases.

### **Differentiated Case Management**

To control case progress, judges should utilize “differentiated case management” (DCM). Under DCM, a court distinguishes between different types of cases (e.g., a “fender-bender” tort versus a products liability case) concerning the amount of time and attention they need from judges and attorneys. Obviously, a fender bender case is going to require less attention from the court and the participating attorneys. Judges need to apply different time standards to the cases. Most court systems focus attention on cases according to when the parties file them. “Typically, courts would give attention to cases

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<sup>23</sup> See Maureen Solomon, *Conducting a Felony Caseflow Management Review: A Practical Guide* (May 2010) located at [http://www.ojp.usdoj.gov/BJA/pdf/AU\\_FelonyCaseflow.pdf](http://www.ojp.usdoj.gov/BJA/pdf/AU_FelonyCaseflow.pdf); see also Steelman, *supra* note 4.

<sup>24</sup> Solomon, *supra* note 23, at 3.

<sup>25</sup> *Id.*



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in the order that they were filed, maintaining that older cases must be disposed before younger cases. Such an approach fails to recognize the differences among individual cases, however.”<sup>26</sup> Failing to use DCM will result in a simple case being unnecessarily delayed and a more complex case being rushed. The more complex case will likely require more court appearances because more complex legal issues will be present. If a system requires judges to treat all cases alike, they will not only have too many appearances for a simple case, they will also add to the cost of the case for the litigants. David C. Steelman provides an example of a simple DCM plan, placing cases into three categories:

- Cases that proceed quickly with only a modest need for court oversight
- Cases that have contested issues calling for conferences with a judge or court hearings but that otherwise do not present great difficulties
- Cases that call for ongoing and extensive involvement of a judge, whether because of the size and complexity of the estate involved, the number of attorneys and other participants involved, or the difficulty or novelty of the legal issues presented<sup>27</sup>

As soon as possible after filing, courts should use an early screening process to identify the type of case that the party has filed. The parties should file case information sheets when they file cases, and the judge or court staff member should review them to determine complexity. The court should establish criteria for determining complexity. On the basis of the case screening assessments, the court would assign cases to different case management tracks. “Each track would have its own specific intermediate event and time standards, as well as management procedures.”<sup>28</sup> The court would then divide the cases into three “tracks” reflecting their respective management requirements. The time in parenthesis reflects the time that a court may designate for civil cases from case initiation to case disposition:

- An *expedited* track for cases that move quickly with little or no involvement of judges (6 months);
- A *standard* track for those that require conferences and hearings but that are otherwise not exceptional (12 or 18 months), and
- A *complex* track for those requiring special attention (24 months).<sup>29</sup>

A court may determine that its cases require even further differentiation than the three-part scheme can accommodate. If this is the case, the court could develop a management

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<sup>26</sup> Steelman, *supra* note 4, at 4.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* at 5.

<sup>29</sup> *Id.* at 4-5.



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system with additional tracks. Experts on DCM have observed, “There is no magic number [of DCM tracks]; the number should reflect realistic distinctions in case-processing requirements.”<sup>30</sup>

One of the larger differences between cases is the amount of discovery needed. Cases within the expedited track would have little or no discovery. Conversely, complex cases require a great deal of discovery and may require custom timelines because of the availability of experts, or the complex nature of the legal issues involved.

### **Firm and Credible Hearing/Trial Dates**

Throughout the process, judges need to ensure firm hearing and trial dates. To do so, they need to ensure the planned dates are realistic and that the parties agree to abide by them. “If case participants doubt that trials or hearings will be held at or near the scheduled time and date, they will not be prepared.”<sup>31</sup> Conversely, if the parties believe that the dates are not firm, they are much less likely to prepare for that firm date. Because the vast majority of cases are disposed of by plea or settlement, reasonably firm trial dates will result in earlier pleas and settlements.<sup>32</sup> Likewise, firm and reasonable dates encourage the litigants to prepare more fully for trial when the case cannot be resolved without trial. “National research shows that a court’s ability to provide firm trial dates is associated with shorter times to disposition in civil and felony cases in urban trial courts.”<sup>33</sup> Another benefit is cost savings especially in jury cases. For example, “[i]f a court sets a high number of cases for trial, it must provide a jury pool sufficiently large to accommodate the trials scheduled or estimate how many cases will actually go to trial. If the court guesses incorrectly, it may have too few or too many jurors at the courthouse, perhaps perturbing jurors.”<sup>34</sup> Predictable trial dates will result in a more certain, smaller number of cases which will save on juror expenses.

Some judges mistakenly believe that firm and credible dates signify that they must deny all continuance requests. Most assuredly, this approach will result in upset litigants because they may have legitimate reasons for a continuance. Consequently, a continuance policy is imperative for a successful caseflow management system. Judges must strike the correct balance between being too lenient, which may result in unprepared attorneys who then seek continuances, and being too strict:

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<sup>30</sup> *Id.* at 5 (quoting CAROLINE COOPER, MAUREEN SOLOMON, AND HOLLY BAKKE, BUREAU OF JUSTICE ASSISTANCE DIFFERENTIATED CASE MANAGEMENT IMPLEMENTATION MANUAL 21 (Washington, D.C.: American University, 1993).

<sup>31</sup> Steelman, *supra* note 4, at 6.

<sup>32</sup> *Id.* at 7.

<sup>33</sup> *Id.* (citation omitted).

<sup>34</sup> *Id.*



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If the court grants too many continuances, the docket for the day collapses, and the judge's time is underutilized. If the court is not aware of its calendar dynamics, it may add even more cases to the next day's docket, making for a very long trial list. Attorneys who are low on the court's trial list do not expect their cases to be reached, and they are unprepared. If they are reached, however, they must request continuances, so that the vicious cycle starts all over again.<sup>35</sup>

### Observance of Time Standards and Goals

Society entrusts courts with ensuring justice for individuals and organizations that seek resolution of their disputes. Untimely court actions can seriously impair the rights or privileges of those individuals and organizations:

A trial court should meet its responsibilities to everyone affected by its actions and activities in a timely and expeditious manner—one that does not cause delay. Unnecessary delay causes injustice and hardship. It is a primary cause of diminished public trust and confidence in the court.<sup>36</sup>

Accordingly, courts need to adopt Trial Court Management Standard 2.1 (Case Processing). The Standard requires the trial court to establish and comply with recognized guidelines for timely case processing, while at the same time, keeping current with its incoming caseload.<sup>37</sup> The American Bar Association, the Conference of Chief Justices, and the Conference of State Court Administrators have urged the adoption of time standards for expeditious caseflow management.<sup>38</sup> "Timely disposition" is the elapsed time a case requires for a court's consideration, including the time reasonably required for pleadings, discovery, and other court events.<sup>39</sup> "Any time beyond that necessary to prepare and conclude a case constitutes delay."<sup>40</sup> Timely case processing applies to trial, pretrial, and post trial events. Maureen Solomon, in discussing time standards for felony cases, states:

In addition to an overall disposition time standard, or "speedy trial" rule, the court's caseflow management system should incorporate (1) intermediate time goals governing the elapsed time between major case events and (2) system management standards concerning such areas as

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<sup>35</sup> *Id.* at 10.

<sup>36</sup> RESEARCH DIVISION, NATIONAL CENTER FOR STATE COURTS, TRIAL COURT PERFORMANCE STANDARDS DESK REFERENCE MANUAL 13(2003) (This 40-page reference book provides an excellent summary of the Trial Court Performance Standards and their requirements).

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*



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continuances and case scheduling efficiency (the ratio of total trial dates set to total trials started). These types of operational goals are helpful in managing case progress and assuring efficiency and effective use of judge, lawyer, and staff time.<sup>41</sup>

In 2009, the National Center for State Courts published a report that identified 41 states and the District of Columbia had established time standards.<sup>42</sup> Courts can use this document to support the importance of time standards. (NCSC is currently leading a review to update the national time standards.) However, it is critical to know what the current standards are in your state.

### Management of Court Events after Initial Disposition

A variety of proceedings in a trial court occur after the court enters a disposition/final judgement. Examples include:

- Post-decree motions in divorce cases to enforce or modify custody, visitation, and support
- Placement review, permanency planning, termination of parental rights, and adoption proceedings after findings of abuse or neglect
- Proceedings in probate, guardianship, and conservatorship cases after contested or uncontested appointment of a fiduciary
- Criminal violations of probation (which often involve arrest for new offenses)
- Criminal petitions for postconviction review
- Violations of probation in juvenile delinquency proceedings (which, like adult criminal matters, often involve arrest for new offenses)
- Child support enforcement proceedings after paternity or divorce decisions
- Proceedings to enforce civil judgments
- Collection of judgments in small claims cases
- Enforcement of fine and fee periodic payment schedules in criminal and traffic cases<sup>43</sup>

Courts should include these types of events in their caseload management systems and ensure timely processing of these events.

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<sup>41</sup> Solomon, *supra* note 1, at 5.

<sup>42</sup> KNOWLEDGE AND INFORMATION SERVICES, THE NATIONAL CENTER FOR STATE COURTS, CASE PROCESSING TIME STANDARDS IN STATE COURTS, 2007 (2009).

<sup>43</sup> *Id.* at 17-18.



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### Ongoing Communication and Consultation with All Necessary Court Agencies

Judges are uniquely positioned to initiate interagency consultation about policies and practices that affect caseload management for a number of reasons. First, while the individual agencies are independent, they are part of a “procedurally interdependent system.”<sup>44</sup> For example, in a caseload management review, it is not uncommon for one agency to have adopted internal procedures that benefit the agency but have unintended negative consequences for other agencies. Second, “no single organization, including the court, can create a successful caseload management system by itself, but the problems of a single agency can negatively affect the entire system.”<sup>45</sup> Third, courts should periodically assess their caseload management systems to keep them on track, even when effective, especially to determine changing needs of other entities. When courts determine that modification is necessary, they should lead the process while ensuring that they encourage “collegial, constructive, and appropriate participation in analysis, design, and implementation.”<sup>46</sup> In doing so, the court should convene a multiagency task force or planning council with all significant agencies involved.

### Measuring Success

Once the caseload management system is in place, court staff should periodically measure the success of the system by utilizing a measurement system like CourTools.<sup>47</sup>

### Technology

Caseload management starts at the courthouse door, the virtual courthouse door. Advances in technology and the application of the Internet have moved the courthouse into every law firm, the home of every defendant, and self-represented litigant. It begins with e-filing (electronic filing) of both criminal and civil cases, and advances through automated docket control, master calendaring, and warrant tracking. Caseload management continues with digital document management systems, image-enabled case documents that can be electronically checked in and out, probation reporting, fee and fine collection, and tracking of the disposition of each case regardless of the complexity of the legal issues involved.

Caseload management is the bedrock of the well managed court. Technology may provide the tools, but technological solutions must be managed strategically. While technology has the ability to make courts more efficient, the judge, court administrator, court technology officer, and other court staff will be faced with a variety of ongoing

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<sup>44</sup> Solomon, *supra* note 1, at 5.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.* at 5-6.

<sup>47</sup> See [http://www.ncsconline.org/D\\_Research/CourTools/tcmp\\_courttools.htm](http://www.ncsconline.org/D_Research/CourTools/tcmp_courttools.htm).



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management concerns including staffing, training, scalability, reliability, security, flexibility, and compliance with legislated standards and inter-governmental communication.

Take a moment to look at technology from the view of the bench. A defendant is charged with his third driving while intoxication violation (DWI.) The citation is electronically processed to the court. The first appearance date is scheduled. The case is automatically assigned to the local drug court. Blood alcohol test results are transmitted to the court and the district attorney's office. The defendant's record of prior arrests, convictions, and past court-mandated drug and alcohol treatment plans are automatically included in the case record prepared for the judge. The caseflow management software program, such as FullCourt Enterprise,<sup>48</sup> will track every aspect of the ongoing case and provide only the *relevant details*, on a need to know basis, to the appropriate probation officer, law enforcement agency, and court officials. The judge will have access to all aspects of the case including evidence, motions, probation and treatment reports, and fee and fine collections. Caseflow management software will automatically issue reminders to probation officials to follow-up with the probationer; the court will automatically issue warrants if any probation or treatment benchmark is not achieved.

Technology is not a magic solution for courts facing budgetary constraints. For technical solutions to work smoothly, courts must train court staff. Training is an ongoing process. The court will need to hire and retain information technology professionals with the appropriate expertise. Additionally, the court will need to decide whether to house the technology solution or to outsource the responsibility to a reliable company that will continue to support the solution at an affordable cost. A sample of technological challenges and requirements include the following:

- Determine if the caseflow management solutions negatively affect access to the courts for self-represented litigants, technologically-challenged lawyers, non-English speaking litigants, or court-users with disabilities. Effective caseflow management technology should enhance due process and timeliness while reducing delay.
- Collaborate with all stakeholders (law enforcement, treatment centers, the state bar association, probation, etc.) to ensure the systems communicate across different governmental entities.
- Ensure adequate security to prevent the illegal tampering, deletion of data, and the accidental release of sealed court records.
- Create a backup plan to continue court operations during technological failures.
- Develop a flexible plan to ensure it can handle specialty courts including juvenile courts, mental health courts, family courts, and new developments in problem solving

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<sup>48</sup> FullCourt Enterprise, a product of Justice Systems, Inc. is used only as an example and is not endorsed. Each court system should review a variety of court vendor in order to select the solution that is best suited to its needs.



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courts. The technology must be scalable to meet the changes and evolution of the judicial branch.

The presiding judge and court administrator do not need to be technology experts, but they do need to be technology detectives. They should apply their expertise about the judicial process to the morass of technological solutions currently available to the judicial branch and determine the best solution for their court system. While technology is only one aspect of effective caseflow management, if the integration process is not management properly, the hopes for cost savings can quickly become cost over-runs. The National Association of Court Management<sup>49</sup> maintains a list of core competencies for caseflow management system and administration.

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<sup>49</sup> National Association for Court Managers, Core Competency Technology Management, [http://www.nacmnet.org/CCCG/cccg\\_4\\_corecompetency\\_itgmt\\_cg4.html](http://www.nacmnet.org/CCCG/cccg_4_corecompetency_itgmt_cg4.html) (last visited December 16, 2010).



## Problem Solving Initiatives

In 1989 the first drug court was established in Miami, Florida, with the purpose of reducing recidivism, reducing substance abuse among participants, and rehabilitating participants in a manner different from the traditional approach. In drug courts justice and treatment professionals actively and collaboratively work with the defendant to break the cycle of substance abuse, addiction, and crime with the goal of rehabilitation, reduction of recidivism, and increasing public safety.

Drug courts quickly identify substance-abusing offenders and place them under ongoing judicial monitoring and community supervision coupled with effective, long-term treatment services. In this blending of systems, the drug court participant undergoes an intensive regimen of substance abuse treatment, case management, drug testing, and probation supervision while reporting to regularly scheduled status hearings before a judge with specialized expertise in the drug court model.<sup>50</sup> As of December 31, 2007, there were 2,147 drug courts nationwide.<sup>51</sup>

Recidivism has been significantly reduced through the drug court model. Researchers estimate that more than 50% of defendants convicted of a drug possession will recidivate within 2 to 3 years. Recidivism among all drug court participants has ranged from 5 to 28% and less than 4% for drug court graduates.<sup>52</sup>

The drug court model has paved the way for other similar models including the following: specialized drug courts, DUI courts, domestic violence courts, mental health courts, re-entry courts, homeless courts, community courts, veteran courts, and others. While each of these models addresses a different problem, they all use the authority of the courts to improve the outcome for victims, communities and defendants by changing the focus of the courts from simply processing cases to achieving tangible results.

Due to all these dynamics, problem-solving courts generally approach case management differently than a traditional court. However, problem-solving courts can be integrated into the overall effective caseload management plan, if the plan is adapted to accommodate the differences of these courts.

It is first important to differentiate the caseload of a traditional felony case from a drug court case. Below is a table that makes broad generalizations of those differences.<sup>53</sup>

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<sup>50</sup> C. WEST HUDDLESTON, III, ET AL., PAINTING THE CURRENT PICTURE: A NATIONAL REPORT CARD ON DRUG COURTS AND OTHER PROBLEM-SOLVING COURT PROGRAMS IN THE UNITED STATES 2 (National Drug Court Institute, May 2008).

<sup>51</sup> *Id.*

<sup>52</sup> Drug Court Clearinghouse and Technical Assistance Project, Looking at a Decade of Drug Courts (1999); GAO, Adult Drug Courts: Evidence Indicates Recidivism Reduction (2005).

<sup>53</sup> This table was adapted from AMERICAN UNIVERSITY, COMPARATIVE CHARACTERISTICS OF THE ADULT DRUG COURT PROCESS AND TRADITIONAL ADULT CRIMINAL CASE DISPOSITION FOR DRUG AND DRUG-RELATED CASES IN THE U.S.: A GENERIC OVERVIEW (JUNE 2006).



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<b>Comparison of Traditional Felony and Problem-Solving Court Case Processing</b>			
	<b>Case Stage</b>	<b>Traditional Felony Case</b>	<b>Problem-Solving Court Case</b>
<b>Pretrial Process</b>	Arrest	Arrest, police report, referral to prosecutor.	Arrest, police report, referral to prosecutor.  Initial discussion about problem-solving court may occur here.
	Pretrial Release/Bail Determination	Offender booked into jail and interviewed for pretrial release eligibility.  Release or bail determination generally needs to occur within 48 hours of arrest.	Offender booked into jail and interviewed for pretrial release eligibility.  Release or bail determination generally needs to occur within 48 hours of arrest.  Information compiled regarding offender's drug use, other public health, housing, and related needs.  Determination made if eligible for problem solving court. It may be condition of release.
	First Appearance	Defendant advised of charge and right of counsel	Defendant advised of charge and right of counsel.  This may be used as the first problem solving court appearance.
	Indictment/Preliminary Hearing	Determine probable cause to support the charge and results in filing of formal charges.	Not applicable.
	Arraignment	Hearing where charges are presented formally in open court; defendant enters a plea.	This may be used as the first problem solving court appearance.
	Discovery and Plea Negotiations	Prosecution and defense engage in discovery and please negotiations.	Not applicable.
	Motions Hearings	Pretrial motions held.	Not applicable.
<b>Trial and Disposition</b>	Adjudication/Trial	If no pleas agreement is reached, trial is held.	Not applicable.
	Pre-Sentence Investigation	If offender is found guilty, probation office gathers information to assist with sentencing determination.	Not applicable.
	Sentencing	Court hearing is held to determine sentence.	Not applicable.
<b>Post-Disposition</b>	Probation Supervision	If under community supervision, defendant will be required to periodically meet with his/her probation officer.	Once entered into the problem solving court, the defendant will be required to attend treatment sessions, submit to drug testing, and comply with release conditions.
	Judicial Review Hearing	Not applicable.	Defendant is expected to appear to regular judicial review hearings. Initially, these occur weekly, but as progress is made can be less frequent. The defendant will attend these hears for the entire 12-15 month program.



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Based on these differences, a differentiated case management (DCM) approach should be used. DCM groups cases for disposition based on their needs. Based on those groupings, cases are managed by what is needed to dispose of them fairly and timely. The most important part of any DCM is determining time standards for all stages of any case. DCM is, in the opinion of many, the heart and soul of caseflow management and is explored in detail in *DIFFERENTIATED CASE MANAGEMENT: IMPLEMENTATION MANUAL*. The Implementation Manual states:

The DCM premise is simple: Because cases differ substantially in the time required for a fair and timely disposition, not all cases make the same demand upon judicial system resources. Thus, they need not be subject to the same processing requirements. Some cases can be disposed of expeditiously, with little or no discovery and few intermediate events. Others require extensive court supervision over pre-trial motions, scheduling of forensic testimony and expert witnesses, and settlement negotiations. The early case screening that a DCM system promotes also enables the court to prioritize cases . . .<sup>54</sup>

Steelman discusses DCM as follows:

One means for ongoing court control of case progress is "differentiated case management" (DCM), under which a court distinguishes among individual cases in terms of the amount of attention they need from judges and lawyers and the pace at which they can reasonably proceed to conclusion.

. . .

In the absence of case differentiation, courts customarily apply the same procedures and time tables to all cases of a given type.... Treatment of all cases in the same way may mean that some cases are rushed and others are unnecessarily delayed. Some cases needing little attention from a judge may be scheduled for more appearance than they require, restricting the judge's ability to give more attention to cases that need it.<sup>55</sup>

Using this model, allows the specialized drug court and other problem-solving court models to maintain their specialized dockets while allowing court administration to ensure that all cases are processed within one system.

Another model for larger courts is to expand a court's caseflow management plan to include assignment of problem-solving court cases. In other words, rather than having a specialized docket assigned to one or two judges, problem-solving cases would be

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<sup>54</sup> CAROLYN COOPER, ET AL., *DIFFERENTIATED CASE MANAGEMENT: IMPLEMENTATION MANUAL 1* (American University, 1993).

<sup>55</sup> Steelman, *supra* note 4, 4.



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assigned similarly to other cases. Obviously, this assignment should be limited to judges (and judges' staff) that have the education and skills to manage the specialized case. This type of model helps to ensure an equal distribution of judicial work, ensures the proper utilization of all judicial resources, and creates one system which assists with management and monitoring. This model also helps to embrace the problem-solving court model as part of the overall system rather than it being or becoming a “boutique,” specialized court. This model helps to ensure proper succession planning for these courts by having several judges who are capable of handling these kinds of dockets. It also provides for easy substitutions when a judge or judges are unavailable due to absence.



## Technical Assistance and Education

Education in a technical assistance situation differs significantly from a formal classroom setting. Often, technical assistance attendees did not volunteer to participate or are there because the court is facing a crisis/mandate/challenge. Each presentation needs to be tailored to the audience and issues facing them, but flexible to address issues that emerge during the program. It is important to engage participants in discussion as soon as practical (which may best start with an introductory exercise) and review with them what will occur during the program. If pre-conference material has been provided a brief overview of that material should be done to ascertain reactions/thoughts/questions. Finally, conclude the initial discussions with a definition of *Effective Caseflow Management*.

How the technical assistance is structured depends upon the needs assessment, requests of the court/state, and identified areas or issues to be addressed. However, the most important aspect of a successful technical assistance program is that it has objectives to achieve which can be measured and evaluated and presenters who can be flexible. Thus, when stakeholders and consultants put together a proposed training, outline learning objectives which can be adapted to what may be encountered during the training. TO assist with this object it is important to have presentation modules available for a variety of topics, including exercises wherein the participants are involved in problem solving on issues relevant to their court system.

Below is a list of topics to consider when preparing for a technical assistance visit. These topics are in no order of important.

- Engage the participants in an exercise about whether judges should manage cases. Use an exercise where a list is developed of the pros and cons of judicial management of cases. You may wish to use a summary of pros and cons that were obtained from previous technical assistance experiences.
- Engage the participants in an exercise about the purposes of courts (Friesen).
- Review the principles and/or essential concepts of caseflow management
- Prepare a generic caseflow diagram that can be used for all case types.
- Follow either a linear model or the Friesen telescope. If the program is going to address only a specific case type such as criminal, display a diagram that has a starting point of arrest and leaving a blank space to where it concludes with post-sentencing issues. If the presentation is going to address multiple case types, then display similar diagrams for civil, family, probate, etc. to be utilized by participants in small groups. Use this caseflow diagram to orient other presentations to their work and set the stage for *walking-the-track* exercise.
- Review existing local/state rules, standards, statutes, supreme court directives, etc.



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- Review what data or case information is available.  
Include examples of case reports, and engage in discussion of how they can be used (use of data beyond case management e.g.: performance appraisal, is often a sensitive topic and one that may be best done separately at the end of the presentation).
- Review *CourTools*.
- Discuss *differentiated case management*.  
Include a handout defining it, give examples relevant to the case type being explored, and engage participants in what differentiated case management means to case types.
- Do a *walking-the-track* exercise.  
Have participants fill-in what is currently done during the handling of each case type. The generic caseflow diagram is intended to set the stage for this exercise.
- Review results of the needs assessment.  
This presentation will wholly depend upon the extent and degree of the needs assessment undertaken. It is optimal to have a trained consultant spend time on site doing interviews, reviewing available data, talking to leadership, and conducting brief focus groups. In lieu of or supplemental to a consultant assessment:
  - ✓ Conduct a survey of judges, court staff, court users, etc. based upon existing models.
  - ✓ Conduct a telephone interview of court leaders.
  - ✓ Assemble a local focus group with whom you discuss issues by telephone conference.
  - ✓ Perform random interviews of judges/staff.
  - ✓ Have the entity (court/state) prepare a statement as to why it is seeking technical assistance.
- Define the types of conferences utilized in caseflow management
- Review the subject of back-log accompanied with an exercise.
- Use the *continuance cycle* diagram to discuss the issues surrounding continuances.
- Review how cases are assigned.
- Review elements of a caseflow management plan.  
Identify the common elements, essential elements, and those of a specific court.
- Explore different options for court organization.  
Include individual assignments, master calendar, or a hybrid (this is often an opportunity to put forth concepts that a court is not an office sharing arrangement of individuals but a collaborative entity).
- Present the trial management principles.
- Address post-trial activities such as revocation of probation, motion for new trial, etc.
- Discuss the concept of case-load versus work-load.



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- Establish procedures to monitor and conduct ongoing evaluation of the caseload management plan. Include how to keep it working for the court, institutionalize it, have core leaders accept ownership, and modification of the plan as appropriate, etc.
- Introduce how to develop caseload management techniques which can be generalized for all case types with specific techniques for criminal, civil, etc., (start with known techniques).
- Review case processing time standards.
- Define the use of time limits.
- Identify complex case challenges and solutions.
- Review the elements of change and how it can be managed.  
See the NJC PowerPoint® presentation and Dan Hall/Gordon Griller presentation on *Kotter*.
- Assist the group in defining the essential members of the team.  
Who will be responsible for (i) development, (ii) monitoring, or (iii) modification of the caseload management plan including support for the change process? (DA, PD, judges, administrators, law enforcement, etc.).
- Present on the concepts of leadership.
- Define the goals of caseload management.



## Conclusion

In conclusion, it is important to recognize the immense amount of work that has been done in the caseflow management area by American University, Justice Management Institute, the National Center for State Courts, and many key consultants in those agencies and others. These entities and consultants have defined this area and used their expertise to study individual courts and apply the caseflow management principles to those individual courts. This work has increased the level of efficiency and justice in those courts touched by their work. One of those key consultants is Barry Mahoney who prepared a list of principle findings based on the work in this area. Although this list was created in 1988, it is still applicable today.<sup>56</sup>

1. Trial court delay is not inevitable. Some urban trial courts handle their entire caseloads very expeditiously.
2. Where delays exist, they can be reduced significantly.
3. The pace of civil and criminal litigation is not clearly correlated with the size of the court, population of jurisdiction, composition of the caseload, per-judge caseloads, or the percentages of cases that proceed to jury trial.
4. The presence of an alternative dispute resolution (ADR) program, whether mandatory or voluntary, is not correlated with speed of civil case processing.
5. The general type of calendaring or case assignment system used in a jurisdiction (i.e. master calendar, individual calendar, or hybrid) does not appear to be a decisive factor determining case processing times.
6. On the civil side, implementation by the court of key concepts of caseflow management is strongly correlated with speedy case processing times.
7. On the criminal side, police and prosecutorial practices have a great impact on overall case processing times. Courts with speedy felony case processing times are generally ones in which both the prosecutor's office and the court have a strong commitment to speedy case processing and have worked cooperatively to develop and maintain efficient procedures.
8. The size of the pending caseload, in relation to annual disposition, is strongly associated with the pace of litigation. Slow courts are generally backlogged courts.
9. The experience to date indicates that caseflow management and delay reduction programs can be institutionalized. Courts that make dramatic improvements will not inevitably slide back into their old ways. However, they must be prepared to resist pressure to retreat from commitments to case management.
10. The degree and nature of involvement of state-level leaders in addressing problems of trial court delay has varied widely. In some states, the leadership of the chief justice, state supreme court, and state court administrator have been important factors in focusing attention on problem of delay. State-level leadership and support have played critical roles in several successful programs.
11. Ultimately, it is essential to have local-level leadership and commitment in order to achieve case processing time goals and institutionalize effective caseflow management practices in trial courts.

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<sup>56</sup> BARRY MAHONEY, CHANGING TIMES IN TRIAL COURTS/CASEFLOW MANAGEMENT AND DELAY REDUCTION IN URBAN TRIAL COURTS 192 (National Center for State Courts, 1988).



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