



CASEFLOW MANAGEMENT SUMMIT REPORT

THE CASEFLOW MANAGEMENT CONSORTIUM A 21ST CENTURY IDEA TO ACHIEVE SUSTAINABILITY



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INTRODUCTION

Judges, court executives, caseflow management (CFM) experts, and justice system consultants from across the United States participated in a summit held at The National Judicial College to address the current body of knowledge, barriers to implementation, why prior successful programs did not become a permanent part of courts operations, and explore what the future may hold for CFM. The participants initially focused on CFM's past and present role in managing the business of courts. It was unanimously agreed that CFM principles were responsible for the reduction in time from filing to disposition and the perceived improvement in the adjudication process in those courts which adopted CFM principles. However, it was acknowledged that in some courts which had incorporated these principles, the CFM initiatives no longer existed. There were numerous reasons or beliefs expressed for the failure to sustain CFM as an element of operations including: (a) turnover in Presiding Judges or Court Executives who supported or initiated CFM projects, (b) retirement or change in assignment of judges trained in CFM, (c) failure to engage new generation of judges/administrators in meaningful CFM initiatives, (d) new priorities emerging within the justice system, or (e) lack of dedicated CFM education/training programs to name a few. In spite of the failures that occurred in these courts, it was the consensus that CFM principles remain relevant and extremely critical to the effective operation of courts today and in the future.

The discussion then shifted to the critical issue of sustainability or how CFM's proven principles could be woven into the fabric of justice system operations. The participants' decided that the summit time would best be spent in determining how best to promote and sustain CFM as a core justice system function. While there were numerous options discussed, the concept of creating a national CFM Consortium ("the Consortium") became the unanimous overriding recommendation. Thus, while this report will touch on issues identified as impacting CFM, it will focus on the creation of the Consortium and potential issues that the Consortium could address.



TODAY'S JUDGES AND COURTS

The typical new 21st Century Judge is projected to be in their 30's/40's but definitely younger than when her/his predecessor came to the bench. While intelligent and motivated to do well in their new profession, these new judges will bring less life and legal experience to the bench. Most will have minimal courtroom or management experience and if current trends continue, many will come from government service. If social scientists are to be believed, these judges will generally not see themselves as aligned with the values or goals of organizations. It is believed that CFM by virtue of its addressing managing a courts entire caseload as well as individual cases will encourage these judges to become part of the court institution, the larger justice structure, service-focused, and embrace the justice principles of procedural fairness, due process, public access, etc.

The work of courts has and will continue to evolve both as to the nature and number of cases. In some courts, the focus of CFM was to get cases ready for a trial. Yet the reality is that only a small percentage of cases actually go to trial and there exists numerous approaches to resolving disputes. Judges need to understand how cases are or could be resolved with CFM procedures adapted to support the court's role in addressing its particular caseload. In some courts, the application of differential case management (DCM) concepts has not evolved to provide judges with the options needed to effectively conduct early intake and evaluation facilitating giving individual cases the attention each deserves. Further with a decrease in resources, the time is now to revisit or make CFM an integral part of delivering justice or court improvement initiatives.



CASEFLOW MANAGEMENT IN TODAY'S COURTS

CFM provides the process essential for courts to be open, transparent, efficient, cost effective and timely (See NJC's 2009 publication: FAIR, TIMELY, ECONOMICAL JUSTICE –Achieving Justice Through Effective CFM for definition and discussion of key CFM concepts). CFM gives judges/court administrators the structural foundation to positively impact “workload” which has been simply defined as the number of times the court “touches” a case before it is resolved. All cases filed with the court should be evaluated as soon as practicable, using a DCM approach designed for the courts caseload and resources. Once assigned to an appropriate track/process/docket, each case should be subject to continuous control through meaningful events at proper intervals until resolved with the fewest touches at the right/earliest time.

It is important that a court regularly evaluates how its caseload is being addressed. “We have always done it this way” is not a valid reason to keep the current caseload system. Courts should monitor its filings and analyze changes in number of cases filed, types of cases, the parties seeking relief (e.g. is there an increase in self represented litigants?), the duties/skills required of court staff, commitment of court staff and skills/knowledge required of the judge and court administrator to effectively implement CFM concepts.



THE PRESIDING JUDGE TERM AND CASEFLOW MANAGEMENT

Generally, the term for a presiding judge is relatively short (two to five years depending upon the state) usually without formal authority to manage the court's caseload. While the PJ and Court Administrator can provide a vision for managing the caseload, the leadership challenge is having the other judges embrace the plan. CFM can address the courts core operations demands providing the PJ and other judges the opportunity to address evolving needs. However, a court can quickly lose its ability to maintain timely disposition of its caseload or experience an increase in its workload if it doesn't monitor and adapt its CFM system as discussed.

Once lost, it can take a number of years to revive previous CFM success including achieving the appropriate court culture and support of court users. The frequent rotation of the presiding judge position or loss of a court administrator without advance planning or collaboration can create difficulty in keeping the momentum needed to maintain a successful CFM system. It is also accepted that not all presiding judges have the ability, desire, or commitment to implement or maintain an effective CFM system. In such a situation, another judge designated by the presiding judge working with the Court administrator should be empowered to implement or maintain the CFM system allowing the presiding judge to concentrate on other court policies/initiatives. Without endorsement by the presiding judge, CFM achievements and the culture to manage its cases can be lost including the ability to provide the accessible and timely justice desired by both the court and the citizens it serves. No one wants a court that is less effective, less efficient, and backlogged.



ACHIEVING SUSTAINABILITY THE CONSORTIUM

The participants believed that sustainability can be addressed by creating a national consortium of those entities/ individuals which have been working on and are committed to advancing CFM. The Consortium once convened should define its mission or purpose which could be to provide the leadership essential to:

- Promote and keep CFM concepts before judges, court administrators and other justice system leaders;
- Train and support CFM representatives in each state and territory;
- Be the source for or encourage others to experiment with new approaches, propose solutions to dynamic issues encountered, support outreach to those seeking assistance, and conduct new research;
- Convene meeting of entities or individuals available to provide technical assistance to ensure availability of quality TA, the sharing of achievements/accomplishments, and promote evolution of the theory and practice of CFM;
- Demonstrate why CFM promotes the goals and elements of Procedural Fairness, access and service to courts customers;
- Establish the importance of time from filing to disposition and role of Time Standards to delivery of timely justice including: i) demonstrating commitment of court to do its business in a timely manner, ii) sets expectations for all court users, and iii) fosters internal and external court accountability;
- Be a resource for elements of model CFM plans including what information is required to create, execute or maintain a quality plan;
- Develop materials, presenters, exercises, etc. to support quality CFM education programs whether to introduce the theory and concepts of CFM to judges, court administrators or justice system personnel; provide advanced programming for judicial branch leaders; or recommend appropriate elements of a impactful technical assistance initiative; and
- Promote multi discipline support for CFM.

By virtue of its diverse membership and mission, the Consortium should be able to build trust and ties with Supreme courts, Administrative Offices of Courts, individual courts, presiding judges, future presiding judges, new judges, existing judges, court administrators, court clerks, and court staff throughout the United States.

There was no recommendation as to where the Consortium should be ultimately located but simply that in its development and initial years of existence it should be free standing so as to be viewed as neutral and not promoting any particular entity. Funding logically should be sought from State Justice Institute, Department of Justice/OJP/BJA or private endowments/foundations which support justice improvement. Once its viability and value is established, it is envisioned that permanent funding would be sought from and provided by the States/Territories which it serves.

The Consortium's members should include representatives from the entities currently involved in CFM's advancement. Potential members might include representatives from The National Association of Court Managers, American University, National Center for State Courts, the American Bar Association, Justice Management Institute, Conference of State Court Administrators, Conference of Chief Justices, American Judges Association, and The National Judicial College. The inclusion or role of independent experts and consultants in the Consortium remains to be determined. Flexibility is the key to the Consortium's activities and products. As justice system issues change, so should the Consortium's activities and offerings. The list of potential activities set forth herein is a starting point with its actual services continually updated responding to the latest research so it will be a resource to all courts.



CASEFLOW MANAGEMENT COORDINATOR

The Consortium can create and educate CFM coordinators within states and large jurisdictions. The CFM coordinator can conduct trainings in their state and be a first responder to assist with addressing CFM issues within a state. The CFM coordinators responsibilities and their relationship with the Consortium will also promote sustainability. However, the Consortium must go beyond training coordinators or winning the heart and minds of judges and court administrators to achieve sustainability. It must be forward thinking and available to address the latest trends arising within the justice system. The Consortium working with the coordinators and other justice entities will provide the resources courts need to proactively create innovative effective solutions to emerging caseload challenges.



CONCLUSION

The national Consortium and other suggestions set forth herein are the keys to promoting the benefits of CFM and encouraging courts to initiating change to incorporate and sustain effective CFM. Although the Consortium's eventual membership, funding, and mission remain open to discussion, we are convinced that the Consortium is indispensable to a sustained future for CFM. The Consortium's multi- disciplinary membership will be a resource to promote CFM as the foundation of accessible, affordable, fair and timely justice.



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