

# Caseflow Management Guide

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## **Preface**

In 1991 the Supreme Court, through Administrative Order 1991-4, explicitly recognized that ". . . the management of the flow of cases is properly the responsibility of the judiciary." The Court then reaffirmed its commitment to ". . . an effective, fair, and efficient system of justice." This guide to caseload management was originally developed in response to the Court's mandate and has recently been revised to incorporate changes produced by Supreme Court Administrative Order 2003-7 and 2011-3, and more recently, by Supreme Court Administrative Order 2013-12.

This guide has been prepared for judges and caseload management practitioners to assist them in developing and improving their caseload systems. Toward that end, it incorporates information about the following court management principles:

1. Caseload management is the supervision or management of the time and events necessary to move a case from initiation to disposition or adjudication.
2. Court supervision of case progress, including adjournments, is necessary for an effective and efficient case management system.
3. Judicial support and leadership and the involvement of the bar and justice agencies is critical to the development and maintenance of a caseload management system.
4. Management information, whether from an automated or manual system, is needed to determine if the court is meeting its caseload management goals and objectives, assess the effectiveness of case management procedures and practices, and determine the need for change.

The Advisory Committee that assisted in developing the original guide consisted of judges and administrators with extensive case management experience. A revision workgroup was established to assist in rewriting the guide to reflect current information and practices.

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## Chapter 1: Introduction to Caseflow Management

### A. Using this Guide

The purpose of this guide is to provide chief judges, judges, court administrators, and other staff in the court with necessary information about caseflow management so that they can design and implement a caseflow management plan for their court. The information presented in this guide tells each user:

- what caseflow management is;
- why caseflow management is important;
- how to determine whether your court has a problem with caseflow management;
- what a caseflow management plan should cover;
- how to use your trial court's case management or information system effectively with a caseflow management plan;
- how to implement a caseflow management plan; and
- how to monitor and successfully maintain the operation of your case management system and caseflow management plan.

Sample forms, reports, and other resources regarding caseflow management are available at <http://courts.mi.gov/Administration/admin/op/Pages/Caseflow-Management.aspx>.

### B. Caseflow Management Defined

#### 1. General Definition

Caseflow management is the court supervision of the case progress of all cases filed in that court. It includes management of the time and events necessary to move a case from the point of initiation (filing, date of contest, or arrest) through disposition, regardless of the type of disposition. Caseflow management is an administrative process; therefore, it does not directly impact the adjudication of substantive legal or procedural issues.

For purposes of reporting to the State Court Administrative Office (SCAO) only, initiation and disposition points are specifically defined in Part 4 of the *Caseload of Michigan Trial Courts: Reporting Forms and Instructions* (see Chapter 8). Trial courts may find it beneficial to apply these definitions to their case management systems.

Caseflow management includes early court intervention, establishing meaningful events, establishing reasonable timeframes for events, establishing reasonable timeframes for disposition, and creating a judicial system that is predictable to all users of that system. In a predictable system, events occur on the first date scheduled by the court. This results in counsel being prepared, less need for adjournments, and enhanced ability to effectively allocate staff and judicial resources. These elements of caseflow management are explained in more detail in

Chapter 4.

## **2. Definition of Delay**

The American Bar Association (ABA) defines delay as any elapsed time other than reasonably required for pleadings, discovery, and court events. To instill public confidence in the fairness and use of court systems, delay must be eliminated by courts. An effective caseflow management system does not initiate or cause delay.

### **C. Caseflow Management and Administrative Order 2013-12**

Caseflow management is dependent upon time guidelines to provide the goals for reducing delay in case processing. Some time guidelines for pre- and postjudgment case processing are provided for by court rule and statute while Administrative Order 2013-12: Caseflow Management Guidelines (adopted by the Supreme Court and effective January 1, 2014) provides the outlying time guidelines for disposition of cases.

For the most part, these guidelines reflect the standards of the ABA, and the SCAO will use them as a means for collecting aggregate statistical data by judge about the overall age of pending cases and the age of cases at disposition.

More importantly, these guidelines provide the basis for Michigan courts' caseflow management plans. Without these guidelines, the courts have no uniform goals for case processing, and litigants and their attorneys have no predictable, uniform time frames from one court to the next within which to expect their cases to be processed.

### **D. History of Caseflow Management in Michigan**

There was considerable activity in the caseflow management area in the 1980s. In 1985 the Supreme Court appointed a Caseflow Management Coordinating Committee comprised of judges, bar members, court administrators, and a county clerk representative. The Committee was charged with improving the just resolution of criminal and civil matters by developing procedures and time guidelines for use in Michigan's trial courts and reducing unreasonable delay for litigants and the general public. Among the significant recommendations made by this committee was that time guidelines for case processing be introduced into all trial courts. The Supreme Court later agreed that guidelines were an essential part of an effective case management program and directed the SCAO to assist in their implementation,

A Caseflow Management Rules Committee was formed by the Supreme Court in 1989 to consider rules on caseflow management procedures and practices. Included in their review were: 1) the summons process; 2) discovery practices; 3) pretrial procedures; 4) trial scheduling; and 5) trial management. Their proposals in each of these areas were published for comment.

The work of the Caseflow Management Coordinating Committee and the Caseflow Management Rules Committee resulted in the promulgation of Supreme Court

Administrative Order 1991-4, Caseflow Management. That order was replaced by Administrative Order 2003-7, which not only upheld the original order but refined and expanded the time guidelines to capture changes in the definitions of case initiation and disposition, to include new categories of cases, and to accommodate jurisdictional changes within the Michigan trial court structure. In that order, the Supreme Court stated that the judiciary has a responsibility to balance the rights and interests of individual litigants; the limited resources of the judicial branch and other participants in the adjudication process; and the interests of the citizens of (the) state in having an effective, fair, and efficient system of justice. The Court ordered further changes in 2011 and 2013 after evaluating caseload and time guidelines data collected by the SCAO.

In addition to the above, the Commission on the Courts in the 21<sup>st</sup> Century recommended in its *Michigan Courts in the 21<sup>st</sup> Century*<sup>1</sup> report that: 1) the state court administrator design and supervise a uniform system of case management for all state courts; 2) an individual calendar system of case assignment be uniformly required in all multi-judge courts; and 3) a uniform statistical and data management system be required by the state court administrator and made operational in all courts.

Although the SCAO has developed a uniform statistical and data management system referred to as the Caseload Reporting System (CRS), it is not synonymous with a trial court's local case management system or caseflow management. For details about CRS, see Chapter 8.

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<sup>1</sup> Commission on the Courts in the 21<sup>st</sup> Century, *Michigan's Court in the 21<sup>st</sup> Century* (1990), p. 19.



## **Chapter 2: Why Manage Caseflow?**

### **A. Function of the Court**

The overall function of the court is to carry out justice, resolve disputes, protect individuals, deter and punish crime, ensure fair access, provide for restitution, and generally uphold the law. An effective caseflow management system should ensure the function of the court is accomplished. Additionally this system should provide for fair treatment of all litigants by the court, ensure that the time established for disposition is consistent with the nature of the case, enhance the quality of the litigation process, and instill public confidence in the court.

### **B. Caseflow Management Plan**

A caseflow management plan is a court's plan for actively overseeing the progress of all cases filed in that court. Its primary purpose is to prevent delay in case processing and it is used to implement and maintain caseflow management as defined in Chapter 1. A caseflow management plan will support the reasons for the court's existence and will support and promote the responsibilities of the court and the bench. It should be designed for the user, not the individual judges, and it should be designed for the typical case.

Since 90 to 98 percent of all cases are resolved through nontrial dispositions such as settlements, pleas, transfers, dismissals, diversion, and withdrawals and may be achieved with or without judicial initiation, a caseflow management system should facilitate nontrial dispositions as early in the court process as possible. For some cases, this may mean disposition after case initiation based on the screening of case management information. Other cases may be ready for disposition immediately before trial. Ultimately, timely disposition of cases reduces unnecessary and costly hearings and events.

### **C. Emerging Performance Standards**

The National Center for State Courts and the Bureau of Justice Assistance of the U.S. Department of Justice initiated a Trial Court Performance Standards project in August 1987 to develop measurable performance standards for trial courts. Evaluation of trial courts normally focuses on resources and processes; however, performance standards shift this emphasis to performance, partly in response to demands for increased accountability.

Performance standards, like caseflow management standards, are intended to be used for internal evaluation, self-assessment, and self-improvement. While the Michigan judiciary itself does not have performance standards, there is increasing interest in evaluating, assessing, and improving the trial courts' performance throughout the state, not only by the judiciary, but by the Legislature. Since the judiciary should be self-regulating, trial courts are encouraged to begin evaluating and assessing their performance in the areas of access to justice; expedition and timeliness of court activities; equality, fairness, and integrity; independence and accountability; and public trust and confidence.<sup>2</sup>

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<sup>2</sup> Commission on Trial Court Performance Standards, *Trial Court Performance Standards* (1990), p. 5.

### **Chapter 3: Identifying a Caseflow Management Problem**

To determine whether there is a caseflow management problem in your court, review your court's historical data. There are a number of reports that can be produced to identify problems, some of which are described below as well as explained in more detail in Chapter 5. Simply put, if your filings are outpacing your dispositions, the age of your pending caseload exceeds the time guidelines, or the age of your cases at disposition exceeds the time guidelines, you have a problem.

#### **A. Pending Inventory Report**

First, generate a pending inventory. This type of information is important because it provides a picture of the court's current workload and indicates the number of cases near or exceeding time standards. A good pending caseload report will show the number of cases pending, by major case types as well as individual case type and age of pending cases, both from initiation and from any key intermediate stage.

#### **B. Case Age at Disposition Report**

Second, generate a report of case age at disposition. This information should be provided by both case type and by method of disposition. Although information on disposed cases is historical by definition, it is extremely valuable because it provides baseline data at the commencement of a delay reduction program, it enables the court to measure its performance in light of time standards, and it facilitates planning for efforts such as differential case management.

#### **C. Filings, Dispositions, Activity, and Adjourment Rate Reports**

Monthly and annual aggregate data on filings, dispositions, and number of hearings per case are useful if they are available for several years because they can yield information on trends and effectiveness in case processing. This data can be used to generate reports on filing trends, the pace of dispositions compared with filings (clearance rate), and adjourment rates.

Clearance rates can be calculated by dividing the number of cases filed by the number of cases disposed. These should be calculated for distinct groups of cases, such as general civil, criminal, and divorce, etc., to identify sources of a caseflow management problem. The rates do not necessarily need to be compared to another court because a clearance rate of 100 percent indicates that the court is keeping up with its current caseload, a rate greater than 100 percent indicates that the court is reducing a pending caseload, and a rate less than 100 percent indicates a pending caseload is being created. See statewide clearance rates at <http://courts.mi.gov/education/stats/dashboards/Pages/Dashboard-Clearance-Rates-Why.aspx>.

#### **D. Open Cases Report**

Reports on open cases are a basic management tool for judges because they provide more detail than the summary reports mentioned above. A good open cases report will typically

list all of the open cases in order of chronological age with oldest cases listed first and will contain information about each case such as case number, party names, case initiation date, case status including the date and nature of the last action and the next scheduled action, names of attorneys, and any special case considerations. These reports will enable the court to appraise the status of the oldest cases, identify and evaluate problem cases, determine whether there are particular attorneys causing special caseflow management problems, and identify case types that consistently take longer or need special attention. Some of these reports are explained in more detail in Chapter 5.

## **Chapter 4: Developing a Caseflow Management Plan**

### **A. Components of a Caseflow Management Plan**

In order to adequately supervise case progress, a court must have a caseflow management plan in place. This plan provides judges, administrators, court staff, attorneys, and others in the judicial system with the overall goals of the court in processing its cases. At a minimum, a caseflow management plan should include the following:

1. the overall policy of the court and a statement of purpose;
2. for each group of cases, interim processing time goals based on court rules and statutes and final processing time goals based on the time guidelines outlined in Administrative Order 2013-12;
3. a scheduling policy;
4. an adjournment policy;
5. the mechanisms that will be used to promote effective caseflow management such as alternative dispute resolution, pretrial scheduling orders, differential case management systems, mediation, settlement or final pretrial conferences, trial scheduling and management, and local administrative orders that aid the courts in the processing of cases (i.e. multiple district plans for magistrate, video arraignment, e-filing, and felony pleas accepted by district judges);
6. the monitoring systems that will be used such as case age tracking systems and management information reporting methodologies including the SCAO-required reporting.

A model caseflow management plan in the form of a local administrative order is located at <http://courts.mi.gov/Administration/SCAO/Resources/LAOs/LAO%2022%20Model.rtf>.

### **B. Fundamental Elements of Caseflow Management**

In order to properly develop a caseflow management plan, the fundamental elements of caseflow management must be considered. According to the American Bar Association (ABA) in its publication, *Caseflow Management in the Trial Court: Now and For the Future*,<sup>3</sup> these elements are (1) judicial leadership and commitment, (2) consultation with the bar, (3) court supervision of case progress, (4) standards and goals, (5) monitoring and information systems, (6) scheduling for trial date credibility, and (7) control of continuances. These elements are discussed in the rest of this chapter and in Chapter 5.

#### **1. Leadership and Commitment**

If judges are not supportive of caseflow management, then little will be gained by designing an effective and efficient system. Judicial support is best manifested through leadership and commitment. The duties and powers of the chief judge, including caseflow management responsibilities, are described in MCR 8.110(C).

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<sup>3</sup> M. Solomon, D. Somerlot, *Caseflow Management in the Trial Court: Now and for the Future* (1987), pp 7-31.

Implementing caseflow management programs will necessitate changes in personal style to ensure consistency in operating the program and equal treatment of cases regardless of the judge to whom cases are assigned. There will be a tendency for some judges to view the caseflow management system as a threat to judicial independence. It is important to distinguish between independence in decision making and administrative independence. An effective caseflow management system, while requiring some sacrifice in administrative independence, should in no way threaten independent judicial decision making.

## **2. Consulting with Stakeholders**

Caseflow management systems in Michigan are often developed through a state-local court partnership. The Supreme Court and the SCAO encourage local court judges and court staff, with input from the bar, to develop systems using this approach because it ensures continuity in implementation and a continuing commitment to system development. This approach recognizes the unique perspective and potential contributions of diverse parties in the justice community. There are several reasons for this approach. The first reason is commitment. Second is that the court staff and the bar are excellent resources. Finally, devising the best system requires the participation of dissenters.

### **a. Local Bar and Justice Agencies**

The involvement of the bar and justice agencies that are affected by caseflow management is essential in developing, implementing, and institutionalizing a caseflow system. Participation may mean more than offering an opportunity to comment on rules the court wants to adopt or inviting a representative to serve on a planning committee since changes to caseflow procedures can be met with resistance from these groups if they are not allowed to participate in the process from the beginning.

### **b. Court Staff**

As recordkeepers, clerks of the court are responsible for obtaining case files, recording case activity, and preparing court orders and documents. Clerk of the court staff and assignment office personnel depend on the information supplied by the court clerks to perform their jobs. The clerk of court can only maintain an accurate and current register of actions if case information received from the courtroom is timely and correct. Assignment staff needs information from the courtroom to prepare future calendars. If the information essential to case management administration is to be obtained, coordination and communication between the court clerks, clerk of the court staff, and assignment personnel is imperative for creating accurate and timely court records. Judicial secretaries may also be involved in collecting and maintaining caseflow information. Accordingly, they should be kept apprised of any changes in recordkeeping procedures or requirements.

Court clerks and judicial secretaries serve as "traffic cops" for the courts. They know what cases are scheduled, what attorneys are present and ready, what scheduling problems exist, and when a jury will be needed. They also provide information to litigants, counsel, and witnesses on case status, hearing times, and judicial availability. The information they provide to assignment staff assists in determining judicial availability.

Courtroom clerks play an important role in moving cases to disposition or adjudication. They are particularly effective in this case management role when they understand the case management goals and principles of the court and their judge. Armed with that information, the assistance they render to the court, litigants, and counsel will complement, support, and be consistent with the court's case management program. Periodic training sessions are a good vehicle for ensuring that courtroom staff persons understand their roles in the court's caseload management system.

The role of the judicial secretary varies depending on the duties assigned by his or her judge. The secretary's responsibilities may include, but are not limited to, coordinating the court calendar; interfacing with counsel; and preparing orders, judgments, and other documents.

### **3. Early and Continuous Control of Cases**

Early court intervention is any substantive action taken by the court at the earliest meaningful point in the litigation process. The term "early" means court activity at the time of filing or arrest, or shortly thereafter. "Substantive action" occurs when the activity is related to management rather than solely clerical in nature and either prepares a case for disposition or disposes of the case. Screening cases for complexity is an example of a substantive action compared to the clerical tasks associated with recording and indexing newly filed cases and subsequent pleadings. If the judiciary is to fulfill its responsibility in assuring litigants of a timely and just disposition, it is essential that intervention be by the "court."

#### **a. How to Control Cases**

To adequately control cases, the court must monitor case initiation, screen cases, achieve event date certainty through the control of schedules and adjournments, and manage trials. The court should also appropriately use resources such as quasi-judicial officers (magistrates, referees, friends of the court). When the court assumes responsibility for a case at initiation and intervenes at the earliest meaningful point possible, problems that can result in adjournments can be identified and addressed early in the process. Also, when the court institutes pretrial management from the time the case management plan is issued to the projected trial date, trial preparation focuses on preparing the case for trial including the setting of a firm trial date only in cases likely to go to trial, thereby reducing unnecessary time

and litigation costs.

Also, by intervening early in the process, nontrial dispositions can be achieved earlier. This can result in significant time savings since 90 to 98 percent of all cases are disposed of by nontrial means. Nontrial disposition can be achieved at the case initiation stage through dismissal or default; at case screening through a facilitated settlement; through scheduling orders and case management plans that help counsel to consider the merits of their case and directs their focus to the information needed to resolve the dispute, thereby reducing unnecessary discovery, litigation time, and cost; through alternative dispute resolution or diversion; at settlement conferences; and at pretrial conferences.

**b. Use of Resources**

Using quasi-judicial officers and shared judicial resources can aid the court in achieving early and continuous control over cases.

- District court magistrates provide many judges with significant support in moving cases from one processing step to another in criminal, small claims, summary proceedings, and general civil cases.
- The friend of the court and domestic relations referees provide for the mediation of both custody and parenting time disputes, conduct referral hearings, and hear show cause motions.
- Juvenile referees take testimony of witnesses, take statements from parties, hear petitions, administer oaths, and make recommendations as to findings and disposition in proceedings under the juvenile code.
- Probate registers, deputy probate registers, clerks of the probate court, and other probate court employees have the authority to do all acts required of the probate judge except judicial acts in a contested matter and acts forbidden by law to be performed by the probate register.
- Plans for felony plea to be taken by district judges shortens the time to trial after bind-over of a felony case from the district court to the circuit court by allowing the district court judge to conduct the circuit court arraignment and plea immediately following the order to bind the defendant over for trial in circuit court.
- Multiple district plans for magistrates that authorize magistrates to conduct arraignments, set bail or recognizance, provide for the appointment of counsel, make determinations of probable cause and issue warrants for all of the participating districts within the multiple district area allows judicial and quasi-judicial resources to be better used, streamlines scheduling, and shortens the time between arrest and arraignment and subsequent events.

#### **4. Goals and Objectives for Case Processing**

Setting goals and objectives is essential to case management. The process of setting goals and objectives accomplishes three things. First, it forces those designing or proposing change to articulate the purpose of the effort. Second, it provides a basis for identifying the resources and time needed to implement the change. Finally, and perhaps most importantly, it provides the basis for evaluating the success of the program or procedure. The following aspects of case management can be used as a basis for goal setting: 1) time standards or guidelines; 2) adjournment rate; 3) scheduling accuracy; 4) time for completion of discovery; or 5) dispositions per judge.

##### **a. Time Standards**

A key element to achieving the goals of an effective caseload management system is the creation of time standards for governing case progress and disposition. These standards help judges, administrators, lawyers, and others examine: 1) the appropriate time from filing to disposition; 2) how rapidly cases should be prepared for disposition; and 3) how soon a court should be able to provide a trial. In Michigan these standards are in the form of disposition time guidelines (called case processing time guidelines) issued by the Supreme Court Administrative Order 2013-12.

##### **1) Disposition Time Guidelines**

The disposition time guidelines serve to define the outer limits of delay and provide a basis for measuring the effectiveness of the caseload management system. These time guidelines are management goals for the court -- not procedural timeframes provided for by court rule, case law, or statute. These guidelines also do not provide for the setting of disposition goals based on case complexity, which reflects the time needed to move the case to disposition.

Disposition timeframes are the length of time needed to move a case from initiation to disposition. The timeframes should be based on case complexity and the court's experience with case disposition times. For example, the disposition timeframe for a slip and fall case is generally shorter than the timeframe for a products liability matter.

##### **2) Intermediate Event Standards**

Intermediate event standards are established timeframes for case processing events such as the 21 days allowed for a first answer after the filing of a civil or domestic relations complaint under MCR



2.108(A) or the 24 hours within which a preliminary hearing must be held after a minor is removed from his or her home under MCR 3.935(A)(1) and 3.965(A)(1). Intermediate standards are an important part of a caseload system since they ensure the continuous monitoring of case progress necessary to meet the overall disposition goal. Furthermore, by monitoring interim events, the progress toward a timely disposition can be measured and problems can be identified and corrected. Interim event standards also apply to postadjudication processing and are especially important in delinquency and child protective proceedings.

Michigan has no established intermediate event guidelines as part of the time guidelines published in Administrative Order 2013-12; however, there are numerous intermediate time standards provided for by statute and court rule. If met, these intermediate time standards will enable a court to meet the overall case processing time guidelines as well as to meet federal requirements associated with postadjudication time guidelines. In some situations, compliance with these intermediate time standards must be reported to the SCAO. Two examples are speedy trial pursuant to MCR 6.004 (the reporting requirement is found MCR 8.110) and permanency indicators for child protective proceedings pursuant to MCL 712A.22. In addition to Michigan guidelines, there are national guidelines for child protective cases that should be considered as outlined in *Resource Guidelines: Improving Court Practice in Child Abuse & Neglect Cases*<sup>4</sup>.

### 3) **Postdisposition Time Guidelines**

Court responsibility for case processing does not always cease when a case reaches disposition. Many activities take place after disposition. In criminal cases, for example, a presentence investigation is often required prior to sentencing. In the family division of circuit court, domestic relations matters include extensive postjudgment activity in the way of support, parenting time, and custody enforcement, and most child protective and delinquency cases require dispositional review hearings, permanency planning hearings, progress reviews, and other post-disposition/adjudication activity. In the probate court, guardianship and conservatorships reviews occur on a regular basis.

With the exception of the time guidelines for appeals to circuit court, there are no postdisposition time guidelines published in

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<sup>4</sup> National Council of Juvenile and Family Court Judges, *Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases* (1995).

Administrative Order 2013-12. Any standards, to the extent they exist, are provided for by statute and court rule.

#### **4) Implementing Case Processing Time Guidelines**

Overall case processing time guidelines are management tools that assist courts in evaluating the timeliness and efficiency of their case management systems. The guidelines must incorporate statutory or rule requirements in order to be accurate and practical. For example, statutes and court rules regarding speedy trial are often the basis for criminal disposition guidelines and procedural rules often serve as a framework for civil guidelines. However, it is important to keep in mind that the disposition guidelines, while incorporating rule and statutory provisions, should be based on the optimum time for processing cases in accordance with their management needs. For example, complex cases are generally in the system longer than simple matters.

The scheduling of case events must be based on the characteristics of individual cases. A single set of processing time frames applied to all case types can result in too much time being allotted between events for a simple case and insufficient time given for a more complex case. In most circumstances, however, the period of time between significant case events such as scheduling conference to completion of discovery, completion of discovery to mediation, and mediation to final pretrial conference, should be consistent among cases.

Intermediate event guidelines should be based on the processing events for a category or class of cases. For example, circuit court civil and district court landlord/tenant and small claims cases would have different intermediate and overall case processing goals. The total time needed for intermediate events should not exceed the overall time from filing to case disposition. Any time beyond that needed to move the case to disposition should be construed as delay and should be eliminated.

Preparing case processing flowcharts will assist in planning and implementing the guidelines. The time guidelines serve as the basis for analyzing current caseflow practices and determining the processing events and times that should be implemented to dispose of cases within the guidelines.

#### **5. Date Certainty and Credibility**

Event date certainty is when a court event occurs on the first date scheduled. Events

routinely scheduled by courts include conferences, preliminary hearings, trials, alternative dispute resolution sessions, sentencing hearings, disposition hearings, and motions. Achieving event date certainty should be a primary goal of each court's case scheduling system. Unless attorneys and other justice system personnel believe that events will occur as scheduled, their timely preparation or compliance becomes problematic. When it becomes clear to attorneys that events are not routinely held as scheduled, they are more likely to be unprepared when the event is finally held.

Trial date certainty in child protective cases is essential in order to achieve timely permanence for children and other important bench marks. Trial date certainty in criminal cases is especially important in cases where the defendant is incarcerated. Finally, trial date certainty is important since there is general agreement among court practitioners that a firm trial date encourages counsel and others involved in the case to be prepared. In civil cases, this often results in a settlement; in child protective cases, this may mean permanence for children occurs more quickly, with better outcomes; and in domestic relations cases, parties may be spared delays which prolong an already stressful situation.

**a. Achieving Event Date Certainty**

Event date certainty can best be achieved if trial dates are set only in cases where a trial is likely. Setting trial dates in the 90 to 98 percent of cases that will be resolved through nontrial dispositions makes accurate scheduling and event date certainty difficult to achieve.

There are multiple factors to consider in developing a scheduling system that achieves event date certainty, including: 1) availability of counsel; 2) judicial availability; and 3) case processing time guidelines. Dates set sufficiently in advance and mutually agreed to by counsel, where appropriate, will increase the likelihood that conferences, hearings, and trials will occur as scheduled. Many trial courts employ scheduling orders, after consultation with counsel, to establish dates for witness exchange and discovery completion under MCR 2.401 (MCR 5.141), *Pretrial Procedures; Conferences; Scheduling Orders*. Dates for mediation, settlement conference, and trial may also be addressed.

ABA standards call for the commencement of trials on the original date with adequate advance notice. In child protective proceedings, the *Resource Guidelines: Improving Court Practice in Child Abuse & Neglect Cases*<sup>5</sup> recommend that hearings be scheduled by the court for a day and time certain and conducted on that day and time. If a hearing is contested, it should be started on the day and time planned and completed within a

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<sup>5</sup> National Council of Juvenile and Family Court Judges, *Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases* (1995), p. 21.

couple of days rather than tried over the course of one or several months.

Accurate scheduling must take into account the judicial resources expected to be available, the historical capacity of judicial resources, and the expected fallout after scheduling. Seven factors to consider in developing a date certain trial schedule are: the likelihood of trial, the length of trial, the number of court days, the expected number of judges available, judge days available, judicial capacity (the number of cases that can be expected to be tried or settled by judicial involvement), and disposition expected before trial (the percentage of cases scheduled for trial that are disposed without judicial intervention).

**b. Setting Trial Dates**

The appropriate time to set a trial date has been a subject of considerable discussion by caseload management practitioners. Even for cases brought under the juvenile code, the time for setting a trial date is unspecified except in cases where the minor has been removed from the home. While there is general agreement that a firm trial date often promotes settlement or timelier disposition, there is disagreement as to when a trial date should be set. Some suggest the trial date should be set at the time of filing. Others advocate setting trial dates at the first case management conference. These diverse views suggest that courts have not yet reconciled the purpose of a trial date - setting a time for trial -- with its use as a settlement tool.

As mentioned earlier, event date certainty can best be achieved if trial dates are set only in cases where a trial is likely. Usually, cases are given trial dates with full knowledge that only a small number will actually be tried, attorney's schedules are filled with trial dates they know will not occur, and court staff schedule and prepare notices for cases they know will never reach trial. The problem raised in response to setting trial dates only in matters likely to go to trial is that the effectiveness of the trial date as a settlement tool is diminished. How, then, can trials be set in a manner that promotes event date certainty and nontrial dispositions?

One approach is to set a disposition deadline, based on the case processing time goal, at the start of the case. This will notify counsel of the expected disposition time. Under a differential case management system, a set time will reflect case complexity and the time necessary for counsel to prepare the case. The actual trial date, however, will only be set when the court determines that all nontrial disposition possibilities have been reasonably explored. As a result, trial dates will be set for a smaller number of cases than are expected to be tried. The basic premise of this approach is to give notice of disposition time without setting a trial date. This approach, of course, may not be appropriate for all courts but is one that should be explored in developing a trial scheduling system.

**c. Court Control of Adjournments**

An adjournment is the continuance of a scheduled date by the court and may be requested by counsel or initiated by the court. Court control of adjournments is important because: 1) adjournments contribute to delay; 2) an adjournment policy influences attorney and litigant perceptions of court commitment to caseflow management; and 3) a lenient adjournment policy undermines a predictable system of event date certainty.

Court control of adjournments is closely related to achieving event date credibility -- one cannot be successfully implemented without the other. Therefore, credible scheduling must be based on a restrictive adjournment policy. It is only through such a policy that the court can convey its expectation of readiness to counsel. The court must not surrender its responsibility for controlling adjournments. Therefore, MCR 2.503(D), which states the court may grant adjournments for good cause ". . . to promote the cause of justice," must be strictly applied. In child protective proceedings, MCR 3.923(G) states that adjournments of trials or hearings should be granted only for good cause, after taking into consideration the best interests of the child; and for as short a period of time as necessary.

A court's adjournment policy should not be excessively rigid or governed by arbitrary rules, but it should create the expectation that events will occur when scheduled unless there are compelling reasons to postpone; otherwise, a lenient adjournment policy will create the cyclical effect depicted on the next page. Instead, the adjournment of scheduled events should be limited to unforeseen and exceptional circumstances. When developing an adjournment policy, court procedures that contribute to adjournments must be eliminated. A court that postpones many cases because judges are unavailable will find that counsel no longer believe cases will be reached as scheduled. As a result, counsel may be unprepared and will seek adjournments. Local rules that permit prosecutors to adjourn felony pretrials or allow the scheduling office to adjourn civil pretrials up to two times after receiving a written stipulation and order should be eliminated if possible. Under MCL 766.11a, courts may be able to reduce some adjournments in criminal trials due to the unavailability of witness.

Special note must be given with regard to adjournments in child protective cases. In fashioning an adjournment policy for these cases, recommendations 9 and 10 of the *Michigan Court Improvement Program Assessment of Probate Courts' Handling of Child Abuse & Neglect Cases*,<sup>6</sup>

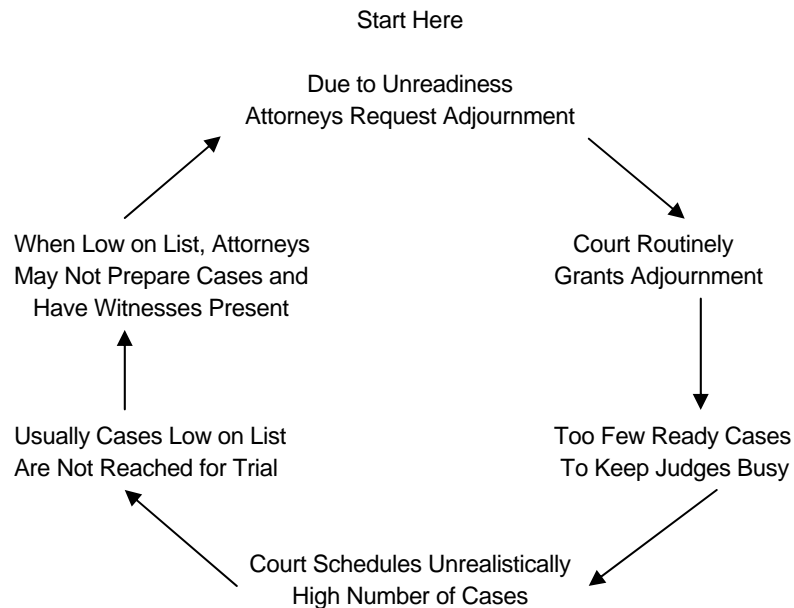
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<sup>6</sup> ABA Center on Children and the Law and National Center for State Courts, *Michigan Court Improvement Program Assessment of Probate Courts' Handling of Child Abuse and Neglect Cases* (1997), p. 45.

should be observed. Adjournments in these cases should be granted only in the most exceptional of circumstances. See also MCR 3.923(G).

Several areas are affected by adjournments and should be considered in developing an adjournment policy. They are: 1) the use of judicial time; 2) the use of facilities; and 3) the quality of the litigation and the outcome of the case. By addressing each of these areas, the commitment to a firm adjournment policy can be obtained from judges, counsel, and administrators.

#### Effect of the Absence of Effective Adjournment and Scheduling Policies on Attorney Readiness



To implement a successful adjournment policy, the court may want to put some of the following practices in place:

- 1) provide information to judges regularly on the percent of the calendar adjourned;
- 2) provide information to judges on the number of adjournments in each case;
- 3) reduce the number of cases on the calendar if cases have been adjourned because of overscheduling;
- 4) require clients to sign adjournment requests, provide clients with notice of adjournment requests, or require counsel to provide evidence of client concurrence with the adjournment request;
- 5) impose costs and conditions in accordance with MCR 2.503(D)(2);
- 6) record the number of, and reasons for, adjournments;
- 7) monitor the rate of adjournments requested and granted;
- 8) institute a back-up system for events, particularly trials that cannot

- be reached on the scheduled date;
- 9) develop a case management system that facilitates the early identification of problems that result in adjournment requests.

## **6. Identifying and Monitoring Meaningful Events**

"Meaningful events" are those activities scheduled or initiated by the court that either move a case to disposition or dispose of it. Examples are case management conferences, settlement conferences, alternative dispute resolution techniques, or the submission of case management information by counsel. Events that are not designed to resolve a case or move it to resolution are unproductive and are inconsistent with an efficient and effective caseflow management program. Examples of this type of event are summoning parties to court only for administrative purposes such as a trial call, a required appearance for a no progress calendar, or an arraignment on the information where the only activity is entry of a not guilty plea.

### **a. Factors in Developing a Monitoring System**

The ability to monitor case progress is essential for sustaining an effective case management system. Several factors should be considered in developing a monitoring system. They include:

- Determining the events to be monitored (usually key document filings and events that can trigger case disposition or adjudication).
- Deciding whether timeframes for and between the events will be monitored. This is strongly recommended as part of the time guidelines program and is required, in part, through caseload reporting to the SCAO.
- Assessing existing automated and/or manual recordkeeping systems to determine if they have monitoring capabilities.
- Identifying reports to generate and to whom the information will be given.

Case management staff should have the ability and responsibility to monitoring case progress. This monitoring responsibility encompasses individual aggregate and exception reporting. For more details about staff responsibilities, see Chapter 5.

### **b. Case Progress Reports**

Case progress reports alone are not sufficient to support a case management system. Equally important is how the information is used to identify problems, resolve cases, and anticipate and address future problems. Accordingly, once reports are issued to judges and case management personnel, there must be sufficient follow-up to determine if action was, in

fact, taken. For details on case progress reports, see Chapter 5, page 26.

**c. Obtaining Case Management Information**

Methods for obtaining case management information generally fall into three categories: 1) standard forms; 2) a conference; or 3) a combination of the two. Under any of these methods, the data obtained supplements the information supplied in the pleadings or arrest documents. Seek information on areas likely to affect case processing time and resources. Items typically collected are case type, case priority, number of parties, and the need for expert testimony.

Courts obtaining information at the time of filing usually rely on a standard court form completed by counsel. The form is then used by judges and court support staff to determine the management needs of the case. This approach requires only limited judicial and staff resources.

Information gathered at conferences, as listed by MCR 2.401(B)(1), *Early Scheduling Conference and Order*, is obtained directly from counsel. This approach, while requiring more court time, can be more effective than forms for three reasons. First, the judge can determine case management needs by listening to both attorneys and seeking clarification as necessary. Second, the judge can move beyond the initial case assessment to discovery and, if appropriate, discuss settlement of the matter. Finally, counsel from all sides is present and each can evaluate the merits of the case early in the process. Sample case management information forms and sample orders are at <http://courts.mi.gov/Administration/admin/op/Pages/Caseflow-Management.aspx>.

**d. Stages of Case Monitoring and Control**

The following are the various stages for case monitoring and control:

**1) Case Initiation**

Case initiation is the point at which a case is filed with the court such as the filing of a civil complaint in the circuit or district court in accordance with MCR 2.101, a petition in the family division of circuit court under MCR 3.931 or 3.961, a petition in the probate court under MCR 5.101, or an arrest or complaint under MCR 6.101.

Several strategies can be used to monitor the early stages of litigation and reduce or eliminate unnecessary time, which contributes to case processing delays. Court support staff should monitor, according to court rules: 1) the return of service, and dismiss cases not served in a timely fashion; 2) the receipt of the



answer in civil cases, and send notice to the plaintiff requiring the filing of a motion for default judgment or to show cause why the suit should not be dismissed for lack of progress; and 3) cases for lack of progress, and notify parties to civil cases in which there has been no activity within 91 days that the action will be dismissed. Lack of progress dismissals should be done at least once each calendar quarter.

## 2) **Case Screening**

Case screening is the review of case information for management purposes by judges and/or court staff. It is generally the most meaningful form of early intervention because it provides a basis for the court to assess the management requirements of a case at the beginning of the process. It is an essential step in implementing differential case management, including the possibility of diversion in criminal cases and alternative dispute resolution (ADR) in civil cases. It is also useful to screen filings before entering them into the case management system to identify filings that do not meet court rule or statutory requirements, or filings that contain clear errors or have procedural issues that should be brought to the attention of the judge. Examples of the latter are unsigned pleadings, illegible documents, incorrect filing or motion fees, improper parties, incorrect venue, or filings not within time frames.

Two factors are particularly relevant in determining the optimal screening point: 1) the method of data collection; and 2) the stage at which necessary management information is available. For example, submission of case information by counsel and/or litigants at the time of filing permits case management screening to occur early in the process. However, important management information such as a defendant's criminal history or a plaintiff's medical expenses may be unavailable early in the process. Thus, additional data collection at a status or pretrial conference merits consideration.

Issues to be addressed during case screening include, but are not limited to: 1) status of service; 2) case complexity and projected length of trial; 3) case priority including public policy issues and impending death; 4) relationship between parties; 5) discovery including time needed, type needed, problems anticipated, and experts needed; 6) jury/nonjury; 7) alternative dispute resolution/diversion referral; 8) need for interpreters; 9) need for psychiatric evaluation; and 10) jurisdiction.

The length of time necessary for screening and the type of screening will vary depending upon the nature of the case. For example, case

screening conferences, in the form of the early scheduling conference referred to in MCR 2.401(B)(1), would be appropriate for circuit court civil or criminal felony matters and some special proceeding cases. District court cases, on the other hand, would probably benefit from a supplemental information sheet which provides the information needed to identify problem cases quickly.

### **3) Scheduling Conference**

A scheduling plan sets forth the key events and deadlines for a case. It is generally issued early in the life of a case in the form of a court order. Such orders should be prepared at an early scheduling conference. MCR 2.401(B)(2)(a) provides for: 1) the preparation of a case management plan (referred to as a scheduling order) that establishes the time for completion of discovery; 2) the exchange of witness lists; and 3) any other matters such as the time frame for filing motions that the court deems appropriate.

A scheduling order, also known as a case management plan, is generally the product of case screening. The most effective scheduling plans are issued at the earliest point possible in the process, provide a reasonable framework for case processing, and are completed in consultation with counsel whenever reasonably practical. [MCR 2.401(B)(2)(c)] For example, counsel participation in individual cases is often warranted in circuit court matters but generally not in district court cases. Ideally, courts should develop a uniform scheduling order to eliminate the confusion experienced by counsel and court support staff in responding to a different order from each judge.

In substantive matters, whether circuit, probate, or special proceeding cases, it is desirable for attorneys to participate in developing the scheduling plan. This approach is consistent with MCR 2.401(B)(2)(c), which provides for entry of a scheduling order after consultation with counsel whenever reasonably practical. Working with counsel, the judge can set mutually agreeable discovery schedules, case conference dates, and the estimated time to dispose of the case based on the relevant case processing time goal.

Standard case management plans can be used in less complex matters in the district and probate courts; however, they should be developed in participation with the local bar, tailored to particular case types in order to be meaningful and reasonable, and issued as early in the process as possible in the short life of these cases.

#### 4) **Discovery**

Discovery is an essential part of civil and probate case management (MCR 2.301 and MCR 5.301) and should be completed within the time frame established in the early scheduling conference order [MCR 2.401(B)(2)(a)]. Adult criminal cases are specifically excluded under MCR 6.001(D) and juvenile cases are governed by MCR 3.922. Discovery is a significant portion of litigation time and expense; therefore, management of discovery is essential if a case management system is to be effective and efficient. The court should limit the nature and scope of discovery according to the management needs of the case. Each of the following approaches is aimed at minimizing the time and expense devoted to discovery while promoting nontrial dispositions at the earliest point in the process:

- a) Designing a discovery plan for each case in consultation with counsel, generally as part of the case management plan under MCR 2.401(B), Early Scheduling Conference and Order.
- b) Limiting the nature and scope of discovery by category of cases. For example, under a DCM system complex cases have longer discovery periods, using the full range of discovery techniques, and expedited cases have shorter time periods with limits on interrogatories and depositions.
- c) Providing informal methods for resolving discovery disputes such as teleconferencing before the filing of a motion.
- d) Developing a process where initial discovery focuses on the information needed for settlement with discovery for trial provided only in cases that are not likely to be tried.
- e) Monitoring the close of discovery.

#### 5) **Motion Practice**

Motion practice is generally governed by MCR 2.119. Motions can generally be categorized as dispositive or nondispositive. Non-dispositive motions do not have the potential for disposing of a case. They include, but are not limited to, motions to extend time for pleadings and matters related to discovery.

Dispositive motions may dispose of a case. For example, in a civil case where a summary judgment motion is granted, all or part of the case may be resolved. Likewise, granting a suppression motion in a

criminal matter may resolve the entire case. Therefore, scheduling dispositive motions as part of the scheduling conference order is particularly important. Once they are resolved, further case management activity may be unnecessary. Providing cut-off dates in the scheduling conference order for the filing of motions and briefs will ensure the timely resolution of motions, eliminating a potential source of delay.

## **6) Trial Management**

A trial is the ultimate event in the judicial system. It also is one of the most visible and expensive events for all concerned. Judges not only have the authority and responsibility to manage individual trials but a responsibility to those who desire access to the court to present their case. Research has shown that trial length can be shortened without sacrificing fairness by increasing continuity in trial days and by actively managing each phase of the trial.

Trial management oversees the final disposition stage of the caseload management process. It is a process primarily supervised by the judge. In managing the trial proceedings, the trial judge ensures 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. Inefficient use of trial time undermines the caseload management system by unnecessarily delaying the disposition of events in other cases.

### **a) Trial Management Conference**

A trial management conference should be held in those cases that appear more likely than not to go to trial, whether jury or nonjury matters. The purpose of the conference is to ensure that counsel is prepared and that the trial judge is prepared to preside.

It is important to note that this conference is not a settlement conference, but rather, is focused on preparing for trial. Ideally, the conference should be held 10 to 20 days before the trial commences. In order to ensure a meaningful conference, counsel should also be required to confer before the conference to resolve any outstanding issues regarding the exchange of information needed to prepare for trial. The following are items that are appropriate for the trial management conference: 1) preparation of exhibits; 2) preparation of witnesses; 3) separating issues of law or fact

in dispute from those that are not part of the litigation; 4) establishing time limits for each portion of the trial; 5) reviewing pending motions and ruling on those that can be disposed immediately; 6) reviewing jury instructions and form of verdict to determine if parties agree on appropriate instructions, to rule on objections to those that deal with matters of law, and to ascertain parties' positions on instruction that will be ruled upon after evidence is received; 7) determining special trial needs such as need for interpreter; and 8) determining the procedures for voir dire.

**b) Setting Trial Time Limits**

The purpose of time limits is to set expectations and determine the appropriate time needed for the various segments of trial. This permits the judge and court staff to schedule trial time and allows counsel to plan their presentations. It also emphasizes the importance of maintaining momentum, avoids unnecessary or inappropriate presentations, and instills the attitude that the trial will be efficiently presented. In general, time limits should be considered for the following areas: 1) trial length; 2) voir dire; and 3) counsel arguments.

**c) Trial Certainty**

The trial judge should arrange the court's docket to start trial as scheduled and provide parties the number of hours set each day for the trial. To ensure this ABA standard is applied, trial judges and their support staff should review their method of scheduling trials, whether on an individual basis or a master calendar basis. This approach will only work, of course, if the court's expectations are communicated to counsel and counsel then meets those expectations.

**d) Maintaining Trial Momentum**

The judge should ensure that once a trial has begun, the momentum of that trial is maintained. This ABA standard is consistent with MCR 6.414, which states that the ". . . trial court must control the proceedings during trial. . . ." Momentum involves such matters as having court staff handle requests for judicial conference; seeking the cooperation of other judges to handle other cases as needed; court room staff responsibility for the length of recesses; and

making sure that the jury, witness, and counsel convene as required.

An area of particular importance is ruling on objections. Since objections can be a source of delay, causing loss in momentum, the trial judge should make his or her requirements for presenting objections known from the start.

e) **Conducting Voir Dire**

MCR 6.412(C) provides that the scope of the voir dire examination is within the discretion of the court and that the court may conduct the examination of prospective jurors or permit the lawyers to do so. The ABA standard requires that the trial judge ensure that voir dire elicits information from prospective jurors related to challenges for cause and for counsel peremptory challenges.

Trial judges may want to consider different methods for using, orienting, calling, and seating jurors. Juror information can be collected using questionnaires either at the time they are selected for service or by using a trial specific one, preferably discussed at the trial management conference. Juror orientation can be accomplished by using a video, slides, or even a written introduction for the jury panel to read upon arriving in the courtroom.

## **Chapter 5: Case Management and Information Systems**

### **A. Minimum Standards for Case Management Systems**

Setting standards and goals is ineffective unless accompanied by a system to monitor performance and compare performance to the standards. The ability to monitor both individual case progress and the success in meeting disposition standards is essential to sustain an effective case management system. Whether manual or automated, an effective case management system is an information system, not a reporting system. At a minimum, a case management system should provide the capability to: 1) monitor case progress; 2) generate various reports for measuring inventory, delay, activity, and scheduling practices; and 3) generate reports showing compliance with time guidelines. These case management system functions are described in the following pages. Samples of some reports are at <http://courts.mi.gov/Administration/admin/op/Pages/Caseflow-Management.aspx>.

Developing an efficient and effective computer system in district court is particularly important for traffic case processing. First, traffic cases comprise close to 60 to 70 percent of the district court caseload and must be processed effectively if the court is to be efficient. Second, traffic payments account for a significant portion of district court revenue and the processing procedures must ensure timely accounting. Third, and perhaps most important, these cases are often the only contact the public has with the court system, which presents an opportunity for the court to demonstrate its efficiency and responsiveness. Finally, effective traffic courts which produce fair, swift, and predictable resolution of traffic violations lend credibility to the entire process of traffic enforcement and are the keystone to the effectiveness of traffic safety programs. Elements of this system include accurate and timely data entry, an efficient filing system, case status, timely and efficient processing of notices, accurate and timely reporting requirements, and timely payment processing of obligations and the availability of alternative payment methods.

### **B. Staff Responsibilities in the Case Management System**

The caseflow management system must be organized to record, use, and manage the information necessary to move cases to disposition in a timely and efficient manner. The recordkeeping, screening, assigning, and scheduling of cases is a vital part of caseflow management. Each court must identify these responsibilities and case management requirements to determine how court support staff can best be organized. In smaller courts, staff may perform both the recordkeeping and case management functions while in larger courts the functions may be divided between different staff members or offices. In either case, it is important that recordkeeping functions and case management requirements be identified and understood in order to achieve the coordination and integration necessary to an effective system.

#### **1. Recordkeeping**

MCR 8.119 establishes clerks of the court, including county clerks, as the recordkeepers of the court. The rule also governs records and entries kept by the

clerks of the court. Clerks of the court are required to comply with the records standards in MCR 8.119 and as prescribed by the Supreme Court as set forth in the *Michigan Trial Court Case File Management Standards*,<sup>7</sup> located at [http://courts.mi.gov/Administration/SCAO/Resources/Documents/standards/cf\\_stds.pdf](http://courts.mi.gov/Administration/SCAO/Resources/Documents/standards/cf_stds.pdf).

The clerk must date each paper when filed, maintain a file folder for each action containing all papers in the case, maintain numerical and alphabetical indexes, and maintain a register of actions.

Court records are an essential part of a caseload management program. The clerk of court: 1) records the filing of a case; 2) maintains the legal record of documents and proceedings filed; and 3) is responsible for the case file needed by the court to screen, evaluate, monitor, and dispose of cases. The accuracy with which case information is recorded (in a manual or automated system) and the timeliness with which it is processed is critical to supporting a caseload management system. Inaccurate or untimely recorded information such as lost files may delay the disposition of matters. This can result in: 1) events not being scheduled because the triggering event or document was not entered; or 2) errors in computing and submitting statistical management information.

In summary, a caseload management system cannot be developed and sustained in the absence of an effective recordkeeping system. Further, the court cannot fulfill its obligations to litigants, attorneys, or the public if accurate court records are not readily available.

## **2. Screening Cases**

Coordination between the court clerk staff responsible for initiating and maintaining case records and the personnel charged with evaluating or assessing filings is necessary. This coordination may take several forms: referring the actual file to screening personnel by clerk of the court staff; transmitting case information relevant to screening by clerk of the court staff by computer or in manually prepared form, or, in smaller courts, screening cases by the staff responsible for receiving the case and creating the file.

Effective coordination will not be possible in the absence of communication. Court clerk staff must be familiar with case screening procedures employed by the courts and they must be kept apprised of changes in the procedures. This will permit them to identify problems with information filed with the court and to return the pleadings or forms to counsel. Periodic training sessions are a good vehicle to ensure staff familiarity with screening procedures.

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<sup>7</sup> Michigan Trial Court Case File Management Standards Committee, *Michigan Trial Court Case File Management Standards* (2001).



### **3. Assigning and Scheduling Cases**

Court records play an important role in the assigning and scheduling of cases. Several examples demonstrate this. First, the procedures and information necessary to ensure that cases are assigned randomly (unless another system has been adopted by local administrative order) in accordance with MCR 8.111(B) must be timely. Second, records must provide for the scheduling of pretrial conferences and trials within established time frames. [MCR 2.501(A)] Third, defendant records in criminal matters provide the basis for complying with statutory and rule hearing requirements (MCL 257.625b, MCL 766.4, MCR 6.104(E), and MCR 6.125).

The organizational structure also reflects the calendar procedures adopted by the court. The random assignment of cases to judges required by court rule suggests an individual calendar system. However, subsequent hearings and events may be handled by a judge other than the one originally assigned. [MCR 8.111] As a result, the scheduling of events by the assigned judge typical of an individual calendar may not be present. Instead, the assignment and scheduling function may be performed by a central office, which is typical of a master calendar system. The timing of the assignment may differ based upon case type. Civil cases may be assigned at the time of filing, while criminal or traffic cases may be assigned after arraignment or pretrial.

In medium and large courts the assignment and scheduling functions are often performed by staff separate from the office responsible for receiving and filing papers. In smaller courts, the receipt and assignment functions are generally performed by the same office.

## **C. Types of Caseflow Management Reports**

There are two basic types of caseflow management reports: 1) individual case progress reports (those focusing on micro measurements that show whether case management goals are being met in individual cases); and 2) performance indicator reports (macro measurements that determine, after the fact, whether caseload goals were met). When considering what specific reports to develop, keep the number generated to a minimum; present appropriate information, in an appropriate format, in the appropriate amount, at the appropriate time; and report only the information necessary to get the point across and to get the recipient's attention. If a report requires a lot of information, provide a summary and highlight the most important data. Where appropriate, provide comparative statistics to place current data in perspective. Define the terms and measures used within the report. For example, define filing or disposition. Prepare a brief analysis to accompany the statistics to provide the recipient with the purpose of the report, highlights of current and comparative data, and a description of how the information can or should be applied.

### **1. Individual Case Progress Reports**

Individual case progress reports may include the following information:

- case status (such as open, pending/disposed, closed or jail/bail)
- case age (age of the case at any stage in the process)
- last activity (type of last event and date)
- next activity (type of next event and date)
- number of adjournments and reasons for adjournments
- compliance with court deadlines or procedural deadlines (filing an answer)

Examples of case progress reports are: cases with no next action date, no progress or lack of service, age of cases at each event, time intervals between events, and exception reports.

## **2. Performance Indicator Reports**

Performance indicator reports include the following measures:

### **a. Inventory Measures**

The principal measure of inventory is the number of cases pending. This measure should be classified in different ways for maximum usefulness by management. Possible classifications include cases pending at each case processing stage, changes in each category since the last reporting period, and the number of cases of each type that exceed case processing time goals. An example of this report is the pending case age inventory.

The pending case inventory serves as a snapshot of all pending cases according to case-type, case-age, last action held and date, and next action scheduled and date. The report should include the following information: case number, party name(s), date of complaint, last action date, and next action date. One type of inventory counts all cases pending by each case type, as defined by the instructions for the quarterly caseload report. Another type not only counts the pending cases, but also identifies the age and status of each case in order to compute time guidelines performance. See Measures of Delay below.

The inventory serves to ensure that no cases are pending for which next action or review dates have not been set. If the inventory discloses cases in an "open adjournment" status, the court should take immediate steps to schedule them for appropriate action to facilitate disposition. The inventory will also disclose cases suitable for dismissal due to lack of service or no progress. Civil cases suitable for dismissal for lack of service and lack of progress should be so identified and action should be taken to initiate those dismissals. Civil cases for which an answer has not been filed within the specified time should be noticed for default. Felony and misdemeanor cases for which the defendant has failed to appear in court or failed to answer a citation should have a warrant issued, or when appropriate, a notice of failure to appear in court sent to the Secretary of State. Civil infractions for

which the defendant has failed to answer the citation or appear for a scheduled court date should be defaulted.

**b. Measures of Delay**

Closely related to inventory, and of equal or greater importance to caseflow management, are measures of delay. The most significant delay measure is the age of the pending caseload, reported by major case type. This measure describes the inventory awaiting processing including older cases that the court may want to address immediately. For details on the Pending Case Age Reports required by the State Court Administrative Office, see Chapter 8.

Another measure of delay is the time to disposition. This analysis measures the time trial courts take to dispose/adjudicate their cases. However, while the time from filing to disposition is often used because it is easily computed and directly related to system goals, **it is less useful for management purposes because it is historical information.**

Many disposed cases cannot be affected by changes in the caseflow management system but cases in the pending inventory can be. At the same time, an analysis of the time required to dispose of cases is essential to implement those time guidelines, which are part of the overall case management program. For details on the Case Age at Disposition Reports required by the SCAO, see Chapter 8.

This report measures the success of courts in the timely processing of cases, identifies the case types where possible delays occur, and assists in assessing the resources needed to improve court management and accessibility to the courts. While this report is primarily used to show past performance, it is more important to use it proactively as a management tool to:

- 1) Analyze Scheduling Practices – Judges and administrators can use this report as the basis for more specific reports to analyze and identify areas where case processing could be made more efficient through modifications to scheduling practices to reduce delay.
- 2) Identify Information System Errors – The report can be used as the basis for identifying errors or problems in the court's management information system or data base and as documentation of the need to initiate changes.
- 3) Measure Performance – The report can be used to measure the court's performance in comparison with the time guidelines from one reporting period to another.

- 4) **Manage Cases Proactively** – By generating this report weekly or monthly, the data can be reviewed regularly by judges and administrators to anticipate problems and develop solutions before a negative trend develops.
- 5) **Monitor and Control Case Progress** – Courts can track the time between case events and the age of cases at disposition or conclusion of contest. This can identify points of delay and establish control over case progress.

Several factors should be considered in conducting a time to disposition analysis: 1) the time period to be examined; 2) whether disposition information is readily available from court records or a special data collection effort is necessary; 3) the information to be collected such as case type and the number of cases disposed of within established time categories; and 4) the points of case initiation and disposition or adjudication. The analyzed time to disposition information can then be used to: 1) measure performance for one time period as compared to another; 2) improve scheduling practices by ascertaining which case types are not being processed in a timely fashion; and 3) provide chief judges and case management personnel with key caseflow data for developing an effective caseflow management strategy.

Other measures of delay include: disposition method by case age at disposition; age of cases at disposition compared to time standards; and identification of cases, by event, which have exceeded the time allocated in the event goals established by the court. Other reports that can be useful are reports for backlog and clearance rate.

**c. Activity Measures**

This category usually includes aggregate figures for filings and dispositions and other counts for specific purposes or the number of adjournments per case or the number of trials, conferences, or hearings held in a given period. Possibly the most useful activity measures are those that report "system rates" such as the proportion of filed cases that go to trial or that report changes in measures such as filings and dispositions over a period of time. Such comparative information reveals trends that can be useful for planning purposes.

Activity measures often are not the most useful for caseflow management purposes at the trial court level because they do not show where delay is occurring or may occur. For that reason, the information collected in this category should be reviewed to determine if the effort necessary to produce the statistics is justified by the usefulness of the information. Examples of

these types of reports are the fallout analysis and adjournment analysis.

### **1) Fallout Analysis**

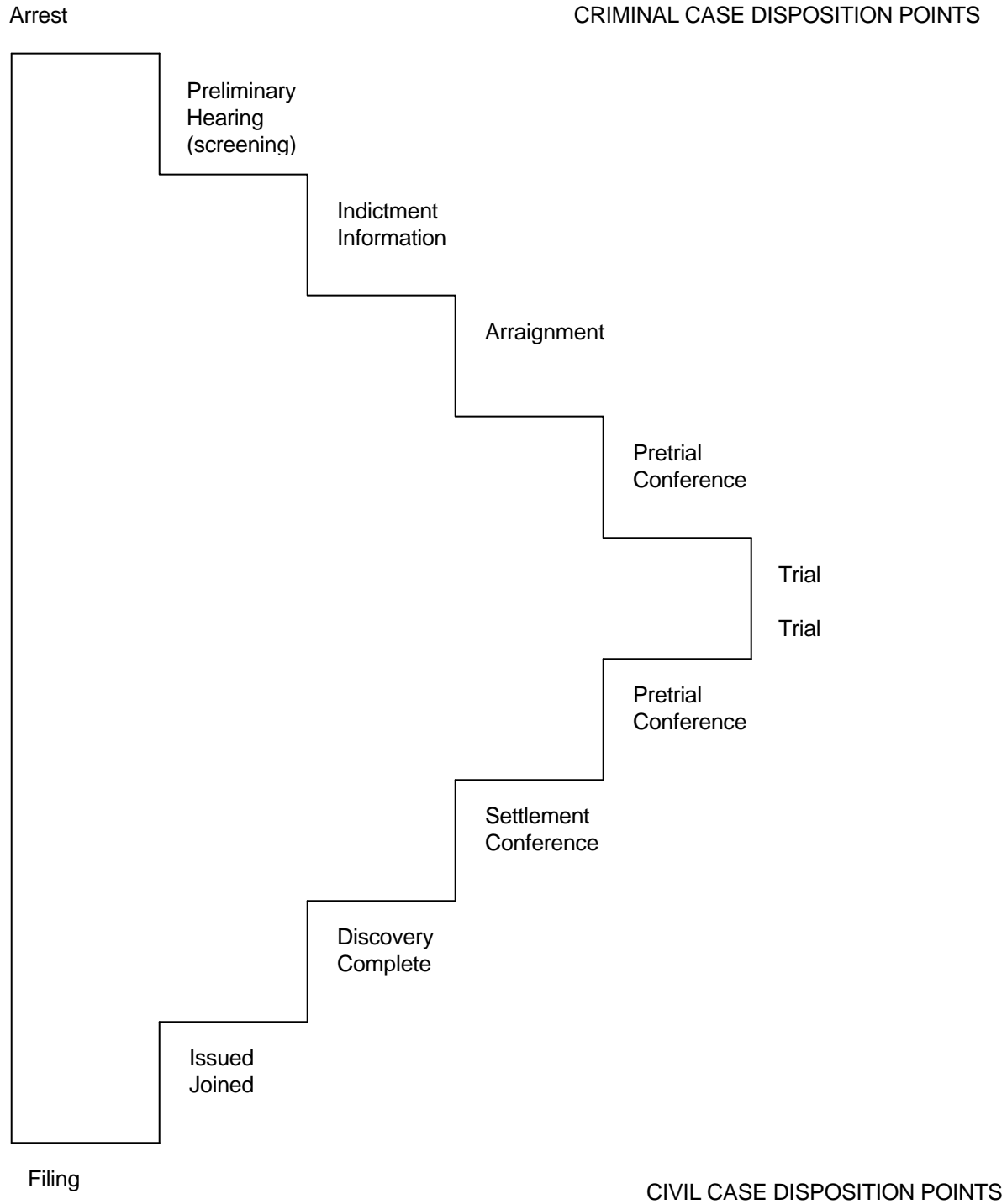
A fallout analysis examines the point in the process at which cases are disposed or adjudicated and is used to determine whether the court should explore procedures to facilitate earlier case disposition. Placing this information in chart form provides a more useful representation of the points in the process at which cases are being disposed.

There are three types of information needed to conduct a fallout chart analysis: 1) the group of cases to be examined; 2) the stages in the process at which nontrial dispositions can occur (such as filing of answer, ADR, preliminary hearing, arraignment, pretrial, and trial stages); and 3) the point in the process at which disposition or adjudication took place.

The disposition points must be modified based on the court and case category being studied, so in some instances the number of disposition points may be as few as three or as many as ten. Page 33 contains a suggested analysis format. Once the disposition or adjudication points are determined for all cases within the selected time period, the percentage of dispositions at each point should be calculated. Judges and case management staff can then see the point at which cases are "falling-out" of the system.

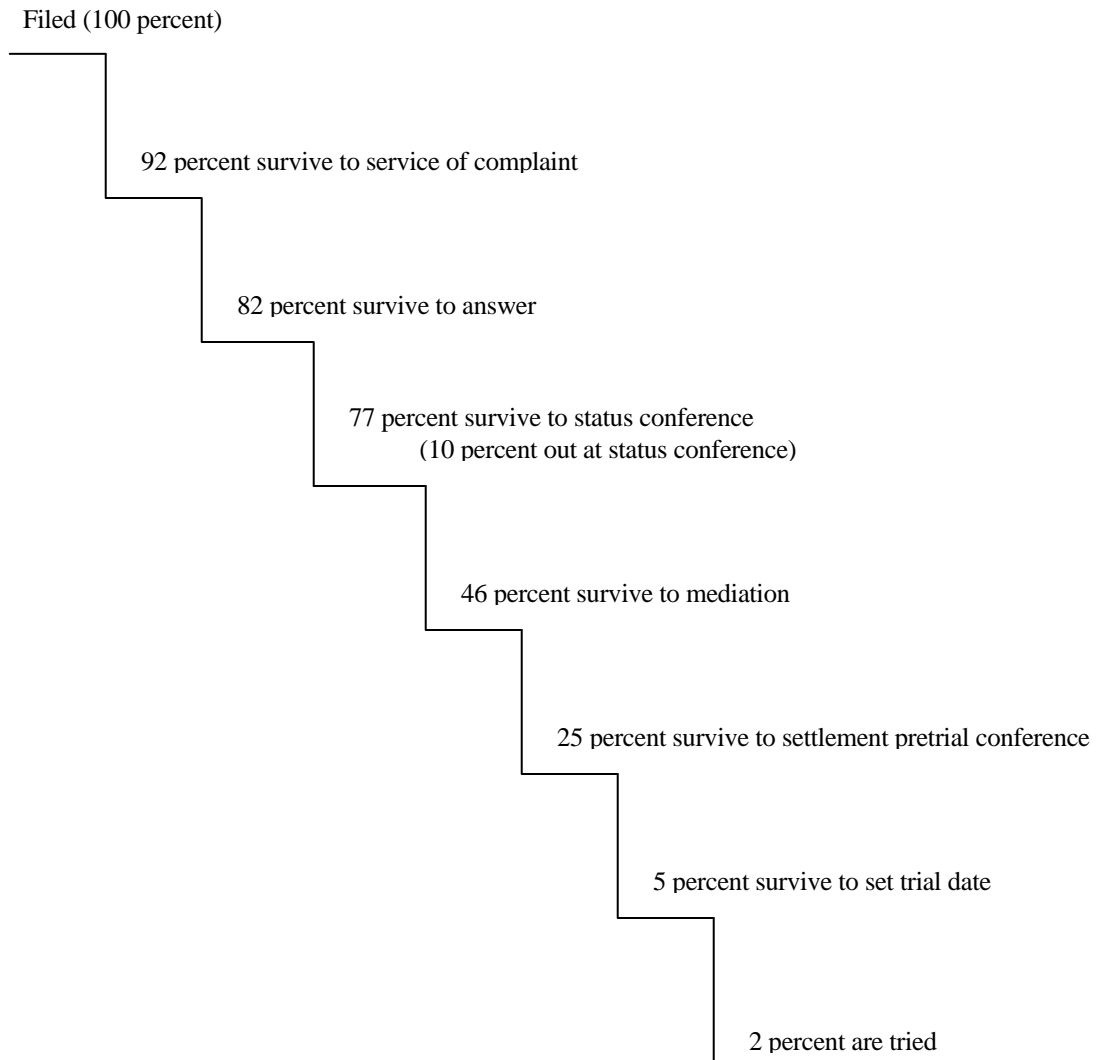
A sample fall-out chart is provided on page 34. Ideally, the chart resulting from the analysis would have a trial point similar to that shown on page 33, with the majority of cases falling out before trial. The higher the percentage of cases disposed of by nontrial dispositions at or near the point of trial, the more court, attorney, and litigant resources are used. Such a result suggests that the court should consider how nontrial dispositions can be facilitated at earlier points in the process.

### CASE DISPOSITION POINTS



### Example Fallout Chart for Civil Cases

(The figures in this chart are for demonstration purposes only.)



## 2) **Adjournment Analysis**

Determining the adjournment rate is another essential part of a court caseload assessment because adjournments granted without good cause undermine a case management system even if the system is credible in other respects. A trial calendar analysis is of equal importance because it helps evaluate judicial resource allocation. Both provide insight into current court scheduling practices.

Several factors should be considered in conducting an adjournment analysis. They include:

- a) the time period to be examined;
- b) whether adjournments from filing to disposition or for a particular stage in the process such as arraignment, pretrial conferences, or trials will be examined;
- c) whether adjournment information is readily available from court records or a special data collection effort is necessary; and
- d) the information to be collected such as number of adjournments per case/per event and the reason for adjournment. Some reasons are no judge available, attorney conflict in county, mutual consent of attorneys, attorney conflict in other county, discovery incomplete, expert witness unavailable, lab report unavailable, or attorney on vacation. Judges and administrators, working together, can assess their court adjournment policy to determine its effectiveness in assuring event date certainty and what changes in practices, if any, are needed.

Adjournment information required by the SCAO in the *Reporting Forms and Instructions for Permanency Indicators Reports* is at <http://courts.mi.gov/Administration/SCAO/Resources/Documents/Publications/Reports/SCAO%2066.pdf>.

### d. **Case Scheduling Measures**

These measures show the need for changes in the scheduling system to achieve event date certainty, particularly of trials. A useful measure in this area is the number of cases scheduled for a specific calendar and period, classified by the number settled before the trial date, that went to trial, adjourned at request of counsel, adjourned because no judge was available, held over to later dates, and disposed.



Trial probability by type of case and the number of cases scheduled for specific dates by type of event also provide useful information. Since event date certainty is important to trial lawyers, it is imperative that the court maintain and review case scheduling data regularly.

Several factors should be considered in conducting the trial calendar analysis, including: 1) the time period to be examined; 2) the number of cases set during the court scheduling cycle such as week, month, etc.; 3) the number of cases removed from the calendar **before** the court date; 4) the number of pleas/settlements attained on trial dates **without** judicial assistance; 5) the number of cases dismissed on the trial date; 6) the number of cases placed on the inactive list; 7) the number of cases continued because no judge was available; and 8) the number of cases settled or tried by the judge.

These factors must be considered in light of available judge days (judicial time available for assignment). Sample forms for these computations are at <http://courts.mi.gov/Administration/admin/op/Pages/Caseflow-Management.aspx>.

**e. Evaluation Measures**

Evaluation measures should be based on the goals of the program or procedure being examined. For example, if the purpose of a new procedure is to reduce the time between the completion of discovery and trial, then the time between trial and discovery completion must be measured in the evaluation. For comparative purposes, this same measure should be applied either to a period before introducing the new procedure or to a group of cases not subject to the change.

While evaluation measures should be based on goals, other measures are also useful. For example, a part or parts of a new procedure may be selected for evaluation. If the new practice is a status conference, information on the length of the conferences and the percentage of cases meeting the timetable established at the conference would be of interest.

## **Chapter 6: Implementing a Caseflow Management Plan**

### **A. Changing the Legal Culture**

To successfully change the legal culture, the court must provide the information, motivation, and organizational support. Planning and implementing a case management system or revising case management procedures requires major changes in long-established attitudes, behaviors, expectations, and working relationships. Successful implementation of programs or practices requires attention to virtually all aspects of the system. Goals and objectives must be agreed upon and set. Individual responsibility and relationships with others must be examined and, in many instances, system leaders and managers will want to reorganize tasks, introduce new technologies, develop new criteria for evaluating performance, and establish new ways of rewarding effective performance and sanctioning inadequate performance.

One of the pitfalls to successful change is misunderstanding why attempts to change tend to fail in the first place. Court managers should keep the following in mind when developing and implementing change:

- Innovations are not generally accepted on their merits. Rather, they are more likely to be accepted because they are proposed and advocated by someone who is widely respected.
- Change is not always a rational process. Emotions, particularly feelings about proponents of the change, are much more likely to influence the attitudes and behaviors of those affected by the change process.
- The acceptance of change is not always an individual process. Group attitudes, or the feelings of peers affected by the changes, are likely to influence each individual's feelings about the change.
- Overcoming resistance to change can be difficult, but generally it is even harder to manage the change process after it is started and initial resistance has been overcome.

### **B. Reasons for Resistance to Caseflow Management**

Five reasons for individual and organizational resistance to change are: 1) fear of the unknown; 2) sense of loss; 3) threats to competence; 4) altered relationships; and 5) lack of involvement.<sup>8</sup>

#### **1. Fear of the Unknown**

It is generally recognized that people prefer predictability and routine. Even if the

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<sup>8</sup> Adapted from B. Mahoney *et al*, "Planning and Conducting a Workshop on Reducing Delay in Felony Cases" (1991).

current situation is less than perfect, they know what to expect. Further, introducing new procedures often means that individuals will have to perform new tasks, work with different people, and meet new expectations. In short, change generally presents a number of unknowns.

## **2. Sense of Loss**

Individuals generally assess a proposed organizational change in light of its implications for them in terms of power, status, and their relationship to others. Leaders seeking to implement change must try to anticipate these losses, whether real or perceived, and develop strategies to address them.

## **3. Threats to Competence**

Assigning people new tasks and responsibilities often creates stress. People are uncertain about what is expected and whether they will be able to meet expectations. To reduce stress, training should be adequate and timely and expectations should be clarified so that people know what is expected of them.

## **4. Altered Relationships**

Personal relationships developed over time are an important part of the work environment. New procedures may alter or eliminate long-standing relationships and result in people working with people they do not know. Therefore, it is important to be cognizant of existing relationships and that breaking established patterns of interaction may be necessary to implement change.

## **5. Lack of Involvement**

If the cooperation of others is needed to implement a case management program or change, they should at least be informed of the change before it is announced publicly. If possible, they should be involved in the planning process.

# **C. How to Effectively Produce Change**

## **1. Disseminate and Explain Information About the Change**

Information about a situation is a critical ingredient of change. For example, data showing that a court has very long case processing times and a growing backlog may simply suggest the existence of a problem or, if more complete, may describe the scope of the problem. For purposes of successful change, it is important for leaders to communicate the substance and meaning of the information to those whose participation is essential to the change process.

In gathering and analyzing the information, remember that most professionals have relatively little knowledge about their total working environment. They tend to

focus on their day-to-day work. Thus, the tendency is to think in terms of their own workload, not in terms of overall system operation, and they are rarely aware of their own system's performance in comparison to other systems or to an ideal system.

Resistance to change is almost assured if people who will be affected do not understand why the change is being introduced. At a minimum, this means that leaders must explain the problem using information that describes the current situation and demonstrates why it must be addressed. Sharing information at the outset and on an ongoing basis helps to clarify the reason for the changes, reduces suspicions, and encourages commitment and support.

## **2. Motivate Through Leadership**

Information may provide a rational basis for understanding why a particular change is necessary, but it will rarely be enough to sustain support for the change. Motivation is necessary and can only be provided through leadership. The leaders of the change effort must identify ways in which individuals affected by change will benefit, articulate a vision of a better system, and demonstrate how the system will be improved; and reinforce the leadership commitment over time by collecting and disseminating information on program performance and rewarding practitioners who are effective in helping achieve program goals.

## **3. Involve Organizational Support**

In order for a major innovation or change to succeed, it must be supported by the members of the organization most directly involved in it and affected by it. Examples of organizational support include assigning a highly respected senior judge or court practitioner to head the program, assigning other experienced professional and administrative personnel to assist in program design and implementation, and allocating adequate technical and physical resources to the program such as computer terminals, courtrooms, office space, and conference rooms.

While additional resources are sometimes available to undertake a new case management effort, often they are not. If the effort is to succeed, the change cannot simply be added onto existing tasks performed by busy people. An overall review of system operations and reallocation of tasks may be necessary in order to provide personnel with sufficient time to work on the implementation effort.

## **C. Long-Term Plan**

In the long-term, the purpose of the caseload management plan is to achieve the goals and standards of the plan.

## **D. Short-Term Plan**

In the short-term, it may be necessary for a court to implement case processing time guidelines in phases by setting interim case processing time goals in order to gain the experience needed to achieve the time guidelines for the court.

#### **E. Convening a Team**

Judges and court staff must be committed to caseload management if the court's caseload management system is to succeed. Michigan Court Rule 8.110(E)(3) specifically provides that chief judges supervise caseload management and monitor disposition of the judicial work in their courts. This encompasses the apportionment and assignment of the court's business [MCR 8.110(c)(3)(b)] and the performance and assignment of court personnel [MCR 8.110(c)(3)(d),(e)]. As appropriate, implementation teams consisting of judges, court administrators, clerks, and other staff should be established to handle each phase of implementation.

#### **F. Disseminating Information**

An effective caseload management system cannot be sustained without timely and accurate case information. Several factors should be considered in examining the administrative support function of case management information. These factors include: 1) where information will be obtained; 2) how information will be obtained; 3) and who will receive the information and in what format. The following checklist will assist in considering these areas:

1. Determine the information currently captured by the court, how it is captured, who collects it, and if it is comprehensive and timely for case management purposes.
2. Assess what new information, if any, is required by judges, case management personnel, or court staff.
3. Determine who will use the information (judges, case management staff, local justice system advisory committees, or funding agencies).
4. Determine the most effective means of collecting the information including from whom the information will be collected and the frequency with which it will be gathered, and the capability of existing manual and automated systems to provide management information.

Recordkeeping staff, assignment personnel, and courtroom staff each play a role in providing case management information. Coordinating their work reduces or eliminates the duplicate efforts that characterize many systems. Ideally, information on what occurs in chambers, scheduling data from assignment staff, and filing information from recordkeeping personnel will be integrated to provide an accurate picture of case progress from filing to disposition and adjudication.

**Chapter 7: Alternative Dispute Resolution and Caseflow**

The two often cited goals of alternative dispute resolution (ADR) are to reduce cost and to expedite disposition. These goals can only be achieved, however, in a case management system which promotes the timely referral of cases to ADR and screens cases to ensure that the referral is appropriate in light of existing rules, statutes, and case type. Timely and appropriate referrals can best be achieved through early court intervention and case screening. Given the focus of ADR and diversion on expediting disposition, the referral of cases to these options should be considered at appropriate points throughout the court process. Integrating these procedures at each stage, from case screening to the pretrial conference, is an essential component of an effective case management program. ADR is not appropriate in all cases or circumstances; it is not to be used to delay trial as a means to encourage settlement, and it should not be used more than once on a case unless the parties specifically request it or agree to it.

Michigan Court Rules and statutes provide a broad range of ADR techniques including: 1) early neutral evaluation; 2) community dispute resolution; 3) arbitration; 4) domestic relations client orientation program; 5) mediation and case evaluation; 6) summary jury trials; and 7) prejudgment conciliation conferences. Case evaluation is a process through which a panel of attorneys not involved in the dispute hear issues specified by the parties and then render a monetary evaluation of the case. Penalties may attach for not accepting the outcome of this process, and failure to receive a more favorable trial verdict than the evaluation results in penalties to the party rejecting the evaluation. Mediation, on the other hand, is a process in which a neutral third party facilitates communication between parties, assists in identifying issues, and helps explore solutions to promote a mutually acceptable settlement.

See <http://courts.mi.gov/Administration/SCAO/OfficesPrograms/ODR/Pages/default.aspx> (the website for the SCAO's Office of Dispute Resolution) for various resources for alternative dispute resolution.

The Michigan Court Rules regarding alternative dispute resolution are: 1) MCR 2.403, Case Evaluation; 2) MCR 2.411, Mediation; 3) MCR 3.216, Domestic Relations Mediation; 4) MCR 3.602, Arbitration; and 5) MCR 5.143, Alternative Dispute Resolution in Probate. In addition, MCL 700.21 expands probate court jurisdiction to include civil actions arising from estate cases. This permits the court to use mediation to resolve those disputes.

Diversion can be viewed as ADR for criminal cases including misdemeanor criminal matters, felonies, and juvenile offenses. Like ADR, one of the goals of diversion is the early resolution of selected cases. Diversion is authorized in juvenile cases by MCL 712A.11(7) and MCR 3.932(A)(2).

## Chapter 8: State Court Administrative Office Reporting Requirements

The SCAO reporting requirements for caseload are specified in the following collection instruments at <http://courts.mi.gov/education/stats/reporting-materials/pages/caseload-and-caseload-management.aspx>:

- District/Municipal, Probate, and Circuit Court Caseload
- Delay in Criminal Proceedings
- Statement of Matters Undecided
- Deficiencies in Guardianship/Conservatorship Administration

Some of these collection instruments are incorporated into the Caseload Reporting System (CRS), a web-based application that specifies the case management system requirements necessary for reporting caseload data and confirms the significance of integrating the reporting requirements with a court's case management system and the essential elements of caseload management. When used and programmed properly, these reporting specifications **can be a catalyst** for initiating improvements to the management of a court's caseload by providing basic information about caseload mix, the age of caseload, the age at which cases are being adjudicated, and whether the pending caseload is increasing or decreasing.

Two of the reports produced by CRS are the Pending Case Age report and the Case Age at Disposition report. Details on the SCAO's reporting criteria for these reports are outlined in Part 4 of the *Michigan Trial Courts: Reporting Forms and Instructions* manuals located through MCAP. For detailed information about these kinds of reports, see Chapter 5.

The Pending Case Age report shows the number of days that cases have been pending, according to case type, and categorizes case pendency within the time guidelines processing parameters. A pending case, for the purposes of the SCAO's Pending Case Age report, is considered commenced or initiated at different times depending on the type of case. Cases that do not appear on the SCAO Pending Case Age report due to a preadjudication event leading to temporary case inactivity as prescribed by Part 4 of the *Michigan Trial Courts: Reporting Forms and Instructions* should be listed separately and their progress monitored. These cases will be reentered onto the SCAO Pending Case Age Report when they are reopened (reactivated).

The Case Age at Disposition report is intended to indicate the amount of time taken by courts to dispose of cases, by specific case type. It will also allow comparison of the disposition time frames with the time guidelines established by Administrative Order 2011-3. A disposed case, for the purposes of SCAO's Case Age at Disposition reports, varies depending on the type of case, and time guidelines measurement occurs at different stages of a case depending on the case type. The time involved in delay due to a preadjudication event leading to temporary case inactivity as prescribed by Part 4 of the *Michigan Trial Courts: Reporting Forms and Instructions* should be subtracted from the age of a case at disposition as permitted in the instructions. All time involved as a pending case, except during these periods of inactivity, should be counted.

When the number of pending cases within a particular case type and within a particular period of days is significantly higher than the number of cases reported on a case age at disposition report for that same case type and period of days, a potential delay problem is identified. Court managers and

judges should routinely review these two reports so that attention can be focused upon disposing of the very oldest groups of cases on the court's docket.



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