Caseflow Management: A prescription for renewal

By Ernest Friesen

A consensus has developed among observers of caseflow management in the United States that the achievements of the 1980s have slipped away, once again leaving the courts with accumulating backlog and delay. Courts that had achieved near currency in both civil and criminal case processing are experiencing delays reminiscent of the early 1970s when case management was in its infancy.

The causes of this regression are not clear, but there is some indication that the rotation of leadership and the replacement of judges may be part of the problem. Most trial courts have limited terms in their leadership positions and have minimal case management orientation for new judges. Judges coming on the bench are younger with narrower experience than in earlier years and, in fact, need more, rather than less, training in the management of their workloads.

Caseflow management has two elements: control of the process by the individual judge and systemic controls that are the responsibility of the presiding or administrative judge. It is common today to have new leaders chosen who have little or no awareness of the relationships fostered by their predecessors. Their interests are in new initiatives, often needed, but not of the same priority as caseflow management. New judges coming from a limited specialty, and often resenting the controls imposed on them in their litigation experience, have neither the knowledge nor inclination to exercise the control necessary for good caseflow management.

Case management is court management. The business of courts is cases. If court systems are not adequately managed, they will slowly erode into the “mutual convenience” calendaring system that characterized the case resolution process of the 1950s and 1960s. That is, events will occur only when everyone involved finds it mutually convenient to take the steps necessary to resolve a dispute. Those who really do not want the dispute resolved promptly will prevail, and the old delays will reappear.

The present condition requires several approaches to restore the case management progress once made. First, the judges in leadership positions in the courts must be persuaded that timely resolution of cases is their first priority. In states where the chief justice of the higher court has authority over administration, they must be held accountable for the condition of all of the dockets. Once they accept responsibility, they must employ all tools available, starting with an information system that records the aging of cases by individual judge. When necessary, secondary and tertiary use of the information should be used to create incentives among the judges. Chief or presiding judges in charge of local calendars should be held responsible for the pace of their courts as well.

Secondly, new judges and judges moved from one calendar to another must be given adequate familiarization and training to effectively oversee the calendars to which they are assigned. Case management is usually based on forms and procedures that have been
tested and which tend to force the judicial and legal behavior required. These forms and procedures are not followed unless the judges are convinced that they are useful and will help to make the processes work. It has been said that “no souls are saved by a 20-minute sermon.” It is equally true that no judge buys into caseflow management by just a few hours of familiarization. Caseflow management is as much an attitude as it is a matter of comprehension. To be accepted and used, it needs a participatory training program incorporating practice skills utilized in the interface with litigants. Finally, in some courts the failure of the case management system occurred because of the failure to accept the need for time expectations. Processes copied from other courts were put in place without providing benchmarks against which to measure progress. In some states, the benchmarks were found to be too difficult and were abandoned. Specific expectations, however, are a necessary part of any control system. Time expectations need to be revisited, and the real measure of the “time necessary” to accomplish each phase of the judicial process must be determined.

Most of the early progress toward excellence in case management was based on carefully researched awareness that while most cases can be resolved quickly, a few cases require extensive preparation. This awareness led to the development of “differentiated case management” and a realistic ability to deal effectively with the wide variety of cases present in a modern court. By reexamining the actual preparations needed for a diversity of cases, an understanding of delay developed based on facts rather than the hunches of the uninformed. Starting again to study, evaluate, and implement case timelines will result in marked improvement. However, if the present system of non-maintenance is employed, it will deteriorate again in another 10 to 20 years as new judges are chosen, new leaders installed, and the conditions for erosion set in place. The prescription needed to avoid this backslide is the development and adoption of a formal plan for judicial transition, training, and diagnostic development. The plan should be adopted as policy and transmitted to new leaders and judges. Only when this is accomplished will effective caseflow management develop resilience within a court and, along with it, the potential to survive into the second or third generation of court administration.

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