Observations Concerning Effective Caseflow Management in Common Law Countries

The State-of-the-Art

"As now generally accepted in the courts community, caseflow management connotes supervision or management of the time and events involved in the movement of a case through the court system from the point of initiation to disposition, regardless of the type of disposition. In fact, caseflow management emphasizes early case management to achieve early disposition in the great majority of cases that ultimately will reach a non-trial disposition."

Whether achieved by legislation, procedural rules or through the inherent power of the court to manage its own business, the paramount goal of adopting this concept is the fair and just disposition of each case. To do this, effective caseflow management creates expectations about the operation of the judicial system that assure that events will occur as scheduled and, thus, encourage timely lawyer preparation. It is widely recognized that a system that incorporates goals for timely disposition, early judicial involvement in each case, uniform judicial management of cases, deadlines for completion of key case events and credible hearing/trial dates will avoid the delays and backlogs which threaten a justice system's ability to achieve a just and timely disposition without unnecessary cost.

An effective caseflow management system assures that each case is accorded the time and attention it needs, but not more. This principle is enunciated in the American Bar Association's Standards Relating to Trial Court Delay Reduction:

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

The Key to Effective Case Management: Early and Continuous Judicial Supervision of Case Progress

Without exception, in the United States, Australia, New Zealand, and Canada, the foundation of all successful caseflow management systems has been judicial leadership grounded in the philosophy that the court is ultimately responsible for system

1 Excerpt from a Paper originally prepared by Maureen Solomon for Colorado New-Judge Orientation.
3 It is important to recognize that the discussion of timely disposition does not contemplate speed for its own sake but, instead, recognizes that timeliness of disposition is a key element of achieving justice in each case and in appearing to achieve justice.
4 A key finding in a recent NI study of felony case disposition times was that "The relative pace of litigation depended largely on the local legal culture, that is, the expectations and attitudes of judges, prosecutors, and defense attorneys." (See National Institute of Justice, Efficiency, Timeliness, and Quality: A New Perspective From Nine State Criminal Courts, June, 2000)
5 National Conference of State Trial Judges, Standards Relating to Trial Courts (Chicago, IL: American Bar Association, 1985), Sec 2.50
management to achieve the fair, just, timely and economical disposition of cases. A rational, predictable process must be created and managed so that lawyers understand, and can depend on, procedures and timetables. The court's philosophy, practices and requirements set the tone for system operation. If little appears to be required by the court, the process lacks order, cases tend to drift and dispositions take longer than needed.

The best disposition in a case occurs between two (or more) well-prepared lawyers. However, experience shows that when the adversarial process is not supervised by the court, the likelihood of timely case preparation and disposition by the lawyers declines and the cost of litigation often increases. Moreover, lawyers themselves grow dissatisfied with a process which lacks certainty and predictability. Judicial management of the caseflow process is necessary to create a predictable, orderly, efficient, and effective system. This in turn creates an environment in which timely disposition is the expectation, the quality of the process is enhanced, and litigants are assured equal access to the justice system.

The judge, in consultation with the lawyers in each case, plays an active role, early, to encourage focused case evaluation by the parties. Initially, the judge and the lawyers establish ground rules and a timetable for all further activities leading to disposition. Thereafter, active judicial supervision assures that deadlines are met, that negotiations regarding possible disposition occur, that motions are filed and disposed of promptly, and that scheduled hearing and trial dates are firm. The underlying principles apply to all jurisdictional areas: civil, criminal, domestic relations and juvenile.

In the past, judicial involvement in cases has not necessarily included a strong case management component. That is, judges presided at arraignments, hearings and trials, ruled on motions, and sentenced after a guilty plea or conviction. There is now ample evidence, however, that this limited role leads to a system characterized by an absence of structure and disposition times that are longer than necessitated by the facts and complexity of most cases. Early judicial supervision and a uniformly applied case management system creates a new culture which fosters efficient case preparation and an "expectation of timeliness" on the part of the lawyers in the case.

A managed system offers clear incentives for cooperation and collaboration on the part of the court, prosecution, defense, and other agencies. Among these are: better use of attorney and staff time; ability to close cases earlier; less paperwork; ability to rely on scheduled dates; fewer unproductive trips to the courthouse by victims, witnesses, defendants, lawyers and law enforcement personnel; less stress; and greater job satisfaction for those working in the system.

Thus, while an effective caseflow management system usually reduces disposition time, this result essentially derives from improving the process itself.

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