Calendar and Case Management Practices
in the Second Judicial District Court
Washoe County (Reno), Nevada

TECHNICAL ASSISTANCE REPORT

Bureau of Justice Assistance
CRIMINAL COURTS TECHNICAL ASSISTANCE PROJECT
A Joint Program of the Bureau of Justice Assistance, U.S. Department of Justice, and
American University School of Public Affairs
ADJUDICATION TECHNICAL ASSISTANCE PROJECT
Technical Assistance Assignment No. 124

Calendar and Case Management Practices
in the Second Judicial District Court
Washoe County (Reno), Nevada

March 1988

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Prepared Under BJA Cooperative Agreement No. 87-DD-CX-K-61
Republished Under BJA Grant No. 89-DD-CX-K013
Adjudication Technical Assistance Project
The American University
ASSIGNMENT DATA SHEET

Technical Assistance No.: 124
Requesting Jurisdiction: Washoe County, Nevada
Requesting Agency: Second Judicial District Court
Requesting Official: Dennis Metrick, Court Administrator
Dates of On-Site Study: March 16, 17, 18, 1988
Consultant Assigned: Joseph Jordan
Central Focus of Study: Review of civil and criminal case management practices.

This report was prepared in conjunction with the EMT Adjudication Technical Assistance Project, under a Cooperative Agreement with the Bureau of Justice Assistance of the U.S. Department of Justice.

Organizations undertaking such projects under Federal Government sponsorship are encouraged to express their own judgment freely. Therefore, points of view or opinions stated in this report do not necessarily represent the official position of the Department of Justice. EMT is solely responsible for the factual accuracy of all material presented in this publication.
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I. INTRODUCTION

In mid-1987 the Second Judicial District Court of Nevada, in Reno, requested technical assistance from the EMT Group's BJA-sponsored Adjudication Technical Assistance Project for review of the Court's jury management system and its case management practices, including the calendaring system and statistical reports.

This fairly comprehensive request for technical assistance was divided into two assignments based, essentially, on the Court's planning priorities and timetables. The jury management study was conducted by ATAP during the fall of 1987, using the services of Thomas Munstermann, director of the Center for Jury Studies, and reported to the Court in ATAP Technical Assistance Project Report No. 98.

Following that assignment, another study was conducted on the Court's case management practices, including the calendaring system and statistical reports. The ATAP commissioned Mr. Joseph Jordan, an independent court management consultant with many years' experience in court consultation, to review the Court's case management, calendaring and statistical reporting systems. Mr. Jordan conducted this study while on-site March 16-18, 1988. Prior to Mr. Jordan's site visit, he met with Court Administrator Dennis Metrick on several occasions in order to refine the assignment's objectives.

The Nevada Supreme Court had passed new civil discovery rules in January, 1988, and the Court Administrator wanted some suggestions on how these rules could be integrated into local procedures. In addition, the Court Administrator requested a review of its current criminal calendaring system, especially the practice of monthly judge rotation.

Finally, the Court Administrator wanted a review of its current statistical reports. A new management information system was being implemented and the court wanted to integrate any revisions of the statistical reports into the new system.
II. FINDINGS

The review of the Second Judicial District Court for the State of Nevada was commenced with a meeting with the assistant court administrator for the purpose of identifying the individuals who would be interviewed. Because the assignment revolved around the calendaring function, the first interviews were conducted with the calendaring section. A detailed review of case processing, both civil and criminal, was conducted by following each case through the system from the point of filing to disposition. Samples of the various documents associated with the described procedures were collected. In addition to the detailed review of the procedures and processes, an examination was made of the rules of practice as well as the civil discovery rules that were recently adopted. Copies of the current statistical reports were collected and a review of the automated system was accomplished with the help of the court's systems analyst.

The court operates under a modified individual calendar system with divisions being alternated between criminal and civil. A division is composed of two judges. The criminal divisions are rotated on a monthly basis with no uniform procedures from one division to the other. The chief judgeship is rotated with each judge having their own approach to the position. The main function of the chief judge is the adjustment of the calendar on Monday mornings, based upon the cases that are available to be tried. The calendar clerks work with the attorneys in the formation of the calendar and attempt, through follow-up, to maintain the integrity of the trial settings. The use of automation in preparing the trial calendars, with associated record keeping functions, is currently being implemented.

Case management statistics are being refined, as well. However, it is suspected that the current available data is unreliable, in some instances, due to coding problems.
III. RECOMMENDATIONS

A. General Recommendations

The new discovery rules have been developed to provide a means of reducing delay in civil litigation. Typically, with the individual calendar system, complex and simple cases are mixed together; there isn't any differentiation of the cases for assignment or judicial treatment purposes. Case management relies on the ability to monitor individual cases as they progress from one event to the next. Because of the wide range of types of cases and their complexity, it is recommended that a tracking system be devised which would provide for the ability to identify complex cases and separate them from the routine cases which usually proceed through the system with fewer court activities. The new rules of civil procedure define the content and timeframes of the events that the case follows through litigation. This lends itself to the use of an automated system to track these cases and provides for case management. The less complex cases can be processed through a "fast track" system. The more complex cases, which require more management, can be monitored through a tracking system which is designed to identify the time events should occur.

A pilot division should be set up and a personal computer-based case management system should be implemented. This would provide an opportunity to test the applicability of automation to the individual divisions while assisting with the management of their civil case loads. It would also assist the cases that are on the "fast track" system by monitoring them to ensure their progress. As an additional benefit of a personal computer-based system, each division would have the ability to monitor their case inventories and provide a statistical base which would be useful for that division as well as the entire court.

B. Administration of Civil Litigation - A Model Policy

This section of Recommendations outlines a model policy for the administration of civil litigation.

It is the policy of the Second Judicial District Court to manage all of its cases from the moment the complaint is filed. Also, the court intends to conclude 90% of all of its cases filed within one year of the filing of the complaint. In addition, it is the policy of the court to conclude 98% of all civil litigation within 18 months of the filing of the complaint and 100% of the cases within 24 months.
It is also the policy of the court that once any date has been set, the date can only be changed by an ex-parte written application and a showing of good cause.

(a) Case Designation.

All civil cases will be classified by the plaintiff on the face of the complaint into one of the following categories:

1. General Civil;
2. Collection Civil;
3. Other

The clerks office shall not accept for filing any civil complaint that does not include a plaintiff's initial filing form as a part of the complaint or a subsequent filing that does not include a document control information sheet.

All cases classified by the plaintiff as general civil shall be processed by the appropriate part of (b) through (h), inclusive. All cases classified as complex shall be processed per section (i). All cases classified as collection civil shall be processed in accord with section (j). Nothing in this procedure shall be interpreted as to prevent a court, in an individual case, from issuing an execution order based on a specific finding that the intent of justice requires a modification of the routine process as prescribed by this procedure.

(b) Service of Complaint.

1. Within 60 days of the filing, the complaint must be served and a proof of service filed with the court unless a certificate of progress is filed indicating why service has not been effected and what is being done to effect service. Upon filing the certificate of progress, the court may conduct a hearing to determine if a date can be set by which the service will be effective. If the judge determines that service cannot reasonably be made, another hearing will be set as necessary until the statutory time for service has run.

2. On failure to serve the complaint and file proof of service, or to file the certificate of progress as required by (b) (1), an order to show cause shall issue as to why the party or counsel shall not be sanctioned for failure to comply with the procedure. Responsive papers must be filed and served five court days in advance of the hearing.
(3) Each party served shall file and serve all necessary responsive pleadings within the time required by code, or file a certificate of Inability to Respond stating why a responsive pleading could not, with due diligence, have been filed. Plaintiff may not extend the time for filing responsive pleadings.

(4) Absent the filing of a responsive pleading, or the filing of the certificate of Inability to Respond pursuant to (b) (3), the court shall conduct a hearing to determine when a responsive pleading shall be filed and issue an order requiring that it be filed or, in the absence of filing, that a default judgment be entered on that date.

(c) Motion to Treat as Complex Case or Motion to Enlarge Time for Filing the At Issue Memorandum.

(1) The court, on its own motion, may at any time declare an action a complex case. Once the complex designation has been made, the case will be treated under section (i).

(2) Within 140 days of the first responsive pleading, any party to an action may file a Motion to Enlarge Time for filing the At Issue Memorandum, or a notice of inability to do so, accompanied by either a discovery plan, or a declaration why a discovery plan cannot be submitted at this time.

(3) A hearing on a Motion to Enlarge Time, described in (c) (2), shall be held at which time the judge shall set the new date on which the At Issue Memorandum shall be filed.

(d) Joint Filing of an At Issue Memorandum.

(1) Absent the granting of a motion under (c) (1) or (2), the parties must execute a joint At Issue Memorandum listing agreements and disagreements. Plaintiff shall be responsible for filing the joint At Issue Memorandum within 140 days of the filing of the first responsive pleading.

(2) If after 140 days following the filing of the first responsive pleading no joint At Issue Memorandum has been filed, the court shall set the matter for a hearing. At the hearing all trial counsel must be present or represented by someone completely familiar with the case. Counsel must explain to the court why the case processing has not conformed with this
section. If the court finds that any plaintiff has not proceeded with due diligence in preparing the case for trial, the case, as to that plaintiff, may be dismissed under the Code of Civil Procedure. If the court finds that any defendant has failed to cooperate in efforts to proceed, the court may impose sanctions under the Code of Civil Procedure.

(e) Status Conference.
(1) If it is determined from the At Issue Memorandum that a case appears to be amenable to arbitration, the case will be set for a status conference.
(2) Appearance at the status conference is mandatory, except for good cause shown, for all counsel.
(3) Counsel must be prepared to discuss binding or non-binding arbitration, select an arbitrator, and, when necessary, stipulate to further discovery after arbitration.
(4) Whether or not discovery is completed, the case will be set for arbitration. The arbitration must be completed within 60 days (90 days if one extension of 30 days is granted by the arbitrator) of the appointment of the arbitrator pursuant to the rules of Civil Procedure.
(5) Discovery must be completed not later than 15 days prior to the date set for the arbitration hearing unless the court, upon showing good cause, makes an order allowing discovery up to the time of the arbitration hearing.

(f) Trial Setting Conference.
If it appears from the joint At Issue Memorandum that the case is outside the arbitration limits, the case will be set for a trial setting conference within 60 days. At the trial setting conference the court shall set deadlines for the exchange of experts and discovery and set the date for trial together with any other orders deemed necessary to ensure a just and expeditious disposition of the case.

(g) Settlement Conference.
On the date not less than 30 days from the trial date a non-judicial settlement conference will be held between all parties in the case, or their counsel, at a place, date and time designated by the court. At the scheduled conference the parties will attempt to resolve the case, and, if it is not fully resolved, the remaining parties will complete,
sign, and file, prior to the conclusion of the conference, a joint disposition conference report in the form prescribed by the court. If, in lieu of the scheduled conference, the parties meet, complete, sign, and file a joint disposition conference report, the scheduled conference shall be vacated.

(h) Issue Conference.

Fourteen days before the trial, or, at such time at the discretion of the judge, an issue conference will be held before the judge to whom the case has been assigned for trial at which all the matters needing to be resolved before trial will be before the court. All motions in limine shall have been submitted in writing with service completed at least three days before the conference. Jury instructions and verdict forms shall be submitted and the parties shall be prepared to deal with all of the following:

1. all matters required to be included in the joint disposition conference report form;
2. any unusual evidentiary or legal issues anticipated in the trial; and
3. all matters of fact believed by any party to be appropriate for stipulations.

The judge presiding over this conference may, without changing the trial date, send the parties to another judge for settlement discussions.

(i) Complex Litigation.

Policy: it shall be the policy of the court to conclude all complex litigation within 24 months of the filing of the complaint.

Definition: a complex case is one which involves complex issues, difficult legal questions, or unusual proof problems. A case management plan must be tailored to apply close and continuous supervision over each case's procedural development.

Designation: Once a case is designated as complex by the court, the calendar clerk shall set a first trial setting conference before a judge within 90 days, at which all parties will be ordered to attend. Unless otherwise relieved, a judge to whom it is assigned will handle the case for all purposes.
(j) Collection Cases.

(1) Cases shall be classified as collection civil if they are actions to recover liquidated damages or are actions in which the damages, if any, are easily computable on the documentation filed with the complaint.

(2) Cases classified by the plaintiff as collection civil may be reclassified as general civil on the motion of either party made within 140 days after service is completed.

(3) Cases classified as collection civil will be placed on a dismissal docket 180 days after the complaint has been filed unless:

(a) a default judgement has been taken; or
(b) a certificate has been filed stating that the case is the subject of a program of periodic payments; or
(c) a certificate has been filed stating that with due diligence the defendant has not been served;
(d) where the defendant has not been served, or where the case is the subject of an agreement for periodic payments, the certificate must be renewed each 180 days;
(e) if liability is denied, then the case will be tried in the normal course.

If the Second Judicial District Court wishes to pursue the implementation of this procedure the forms to support the clerical and tracking functions will be supplied by the consultants.

C. Criminal Calendar

The following recommendations relate to the review of the criminal calendar. As previously stated, the criminal calendar rotates from one division to the next on a monthly basis. This provides a very short period of time for the judge to gain any continuity with the cases or procedures in this division. Also, there is a potential for "judge shopping" with this type of a rotation because the attorney wishing to identify and appear before a particular division only has to wait until that division occurs. Controlling case events under the speedy trial act is also made more difficult under this one-month rotation cycle. It is therefore recommended that a uniform 6 month or 12
month rotation cycle be adopted for all divisions of the court. When a judge has been
assigned to a criminal division he or she will be removed from the civil assignment cycle.
During his or her tenure as criminal judge those civil cases in the inventory will be
handled by that judge in addition to the criminal cases.

It is further recommended that a continuance monitoring system be instituted.
Apparently, there is no abuse of this system, based upon the statistics reviewed.
However, this is an area that indicates problems in the progress of a case and should be
monitored.

Once problem areas are discovered, corrective action can be taken. For example, as
soon as it is determined, from examining the number of motions for continuance, that a
sizable number of requests for continuance are based upon the unavailability of a
laboratory report or a police witness, the agencies in the system who control the
chemical laboratory and schedule police officers for trial can be alerted to the problem.

It is also recommended that each case should be subjected to a mandatory pre-plea
conference, with the defendant present, 12 to 15 days before the trial date. This is an
effective procedure for identifying cases in which the defendant elects to plead guilty.
Currently, 75% of all guilty and nolo contendere pleas are disposed of before trial. This
is an excellent record, and one would be inclined to say that "if it works, don't fix it";
however, the record should be examined to determine when these pleas are taken.

A further recommendation is the establishment of a criminal coordinating committee.
Many agencies in the criminal justice system affect the ability of the court to function
effectively. Every agency that is involved in the system believes that some other system
agency is the cause of problems. Experience has demonstrated that where these agencies
are organized into a committee where problems are discussed and resolved, the entire
system functions more effectively.

With this fact in mind, it is suggested that the following people should be invited
to be members of the criminal coordinating committee: chief judge, court administrator,
sheriff, chief of police, senior district attorney, representatives of the private defense
bar, the public defender, and parole and probation officers. With the increase in the
duration of the tenure of the chief criminal court judge in the criminal division, this
committee would provide continuity and leadership on the part of the court.

The chief judge should be the chairman of the committee and preside over all of its
meetings. The meetings should proceed with an agenda and minutes should be kept and
distributed. The experience in many jurisdictions which have established such councils
has been that, in the early stages, meetings will be held on a monthly basis.
Following two or three meetings most of the problems have been identified and corrective action has been taken. All subsequent meetings should be called by the chief judge only when problems arise which need the attention of all of the members of the committee.

One of the other areas of concern in the criminal justice system is the early plea in criminal cases that relieves the system from the necessity of processing the case all the way to trial. It is recommended that a pre-plea conference be instituted in which the following procedures are included:

(1) The district attorney should be prepared to provide the following documents, assurances, and conditions at the time of arraignment;

(a) copy of preliminary hearing affidavit, copy of police report; names and statements of the state's victims and copy of statements made by the defendant at the time of arrest, if a statement was made;

(b) that the court will be advised of the defendant's prior criminal record;

(c) states what the recommended sentence to the court will be;

(d) states that he will not ask the court to exceed the sentencing guidelines;

(e) states that the defendant must waive the pre-sentence investigation report; and

(f) advises the defendant that he must accept or reject the offer within 7 days.

(2) In all other cases, the district attorney must be prepared to make a firm offer at the pre-plea conference with a cut-off date for acceptance or rejection of the offer.

By way of illustration of (2) above, assume the defendant has been charged with two counts. The district attorney offers to drop one count in exchange for a guilty plea to one remaining count. The recommended sentence is five years in the state penitentiary. The defendant is advised that the offer will remain open for a period of three days. If the offer is rejected, the defendant will go to trial on all charges filed against him.

The major purpose is to subject every case to the procedures outlined in (1) (2). This will permit the court to harden the trial calendar by identifying durable cases. Such a procedure reduces the number of guilty pleas on the day of trial and reduces the cost of operating the criminal justice system by saving jury and witness costs.
D. Statistical Reports

Case management, whether it be criminal or civil, relies on effective procedures for managing the individual case together with a comprehensive and well designed management information component. The format and the content of the reports should direct the person reviewing the report to a specific area to identify what needs to be done to correct the problem in the system. As an example, the reports should provide insight into where dispositions are occurring in the system as well as the timeframes between the activities that take place in the progress of the case through the system. Also, the data which constitutes the basis for the report must have integrity in terms of its collection, identification, and coding. This is currently a problem; however, steps have already been taken to provide standards by which the data will be put into the system as well as methods of auditing that data to ensure its accuracy and timeliness.

It is recommended that the "statscan" method of data entry be explored by the court. This method provides for automated input of the data relative to the type of case, the various activities of the case, as well as other information such as identification of continuances, dispositions, motions, and event dates. Because the data is entered using this method, errors such as the transposition of numbers and misinterpretation of the information on the source document, are virtually eliminated.

It is recommended that three formats be considered in the development of the new statistical system. The first format essentially follows the type of report that has been prepared in the past and which is currently being reshaped. This type of report shows the activity of the court in terms of its general activity. This gives one an idea of the court's current caseload.

The second type of report is a report that shows, in more specificity, the inventory of the cases in the system. This report should reflect trial activity. This gives each department a clear understanding of what the current backlog or what the current inventory of cases is in their particular department. As discussed in the first section, this would be particularly useful if a "fast track" system is adopted. This type of report would include, within each division, the number of pending cases in the system broken down in months. Also included would be the number of dispositions during this particular reporting period, which can be further broken down into cases settled, jury trial verdicts, bench trial judgments, and dismissed cases, all with the age of the case at disposition being recorded. Also, an additional field showing the cases that were continued from the assigned trial date is useful to establish the capability of the system to accommodate the case settings.
The third category of civil case reporting would include a comparative analysis of the civil case dispositions. This would include such information as the total cases that were set for trial together with the cases that were dismissed prior to the assignment for trial, cases continued, total settlement conferences, cases settled, and total motions heard. Also included, to determine the performance of the system, would be such information as the median time from the filing of the complaint to trial, as well as median time from the filing of the At Issue Memorandum to trial. Included in the report could be an identification of continuance requests that are granted and the stated reason for the continuance. This could be further broken down by plaintiff's attorney, defendant's attorney or no judge available.

A similar configuration of reports would be appropriate for the criminal court. The primary report that is recommended is one that deals with the disposition of criminal cases. This identifies the performance of the system by the points at which the cases are leaving the system and what the disposition types are. A further breakdown of this would be identification of the number of cases assigned during the reporting period, the number of cases set for trial, and the number of cases tried. Within the cases tried a further breakdown would relate to disposition by court or jury and total cases tried by each. The next section on this report would be the guilty plea performance and within that the method by which the guilty pleas were taken. Also included would be where the plea was taken in the process of the system. A breakdown of the methods of the guilty pleas could include the pleas to the original charge, pleas to a reduced charge, and pleas to a charge reduced to a misdemeanor. The point in the process where the guilty plea is taken could be identified as before the scheduling conference, at the scheduling conference, the day of trial, or during trial.

When examining where the cases are dismissed, this could be identified within the following classifications. The dismissal could be before the scheduling conference, at the scheduling conference, or on the day of trial. Also, there should be an indication of the number of defendant failures to appear. Within this disposition report for criminal, as we have seen with civil, could be included the types of disposition at arraignment, at the scheduling conference, and on the day of trial. Another important element of the disposition report would be the elapsed time from arrest to trial.

If interest is indicated in pursuing these formats, examples of the types of report formats can be provided by the consultant.