DEFEATING DELAY
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Developing and Implementing a Court Delay Reduction Program

Based upon the American Bar Association’s Court Delay Reduction Standards

American Bar Association
Division for Judicial Services
Lawyers Conference Task Force on
Reduction of Litigation Cost and Delay
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Foreword by Warren E. Burger

On the occasion of his ascending the bench in England in 1614, Francis Bacon observed, "Fresh justice is the sweetest." Nearly three centuries later, all who work in our court systems—judges, lawyers, administrators, and staff—continue to strive to deliver the best quality of justice at the least cost in the shortest time. This Manual is not a theoretical tract. The approach here is to assemble methods of reducing court delay that "many experts have accomplished at many times and in many places." In a sense, this is a "how-to" manual based on real successes in implementing court reform.

Changes in our civil justice system are long overdue. There is too much delay as caseloads continue to rise. In the federal system alone, for example, the number of new filings in District Courts have nearly tripled from 112,606 when I took office in 1969 to 307,582 in 1985; the number of judges has increased only about 50%. In short, 300% more cases are to be handled by 50% more judges.

While the Manual takes the position that leadership from the judiciary is central to reducing delay, it also states clearly that the help of the organized bar is imperative; the bar can "turn on the pressure" in a system that needs change. Only when the judiciary and the bar work together will needed changes be achieved.

Many other books deal with court improvement and reduction of delay. This Manual is written by the Bar primarily for the Bar. The dedication of the Bar to the public interest is shown by the Lawyers Conference Task Force in producing this Manual; it is another example of the profession seeking to improve its work.

I commend this Manual to members of the Bench and Bar, and others, interested in the kind of judicial administration that will provide "fresh justice."

Warren E. Burger
Chief Justice of the United States
Comments by
William W. Falsgraf

The delivery of legal services at an affordable price is one of the most important issues facing our profession. Unnecessary delay, together with its attendant escalating costs, renders the utilization of legal services impossible for many people in our society.

The work of the Lawyers Conference Task Force on Reduction of Litigation Cost and Delay to mobilize the skills and resources of the bench and bar for the purpose of defeating delay in our courts holds great promise and should be commended. The publication of this book by that task force represents the most recent example of the American Bar Association’s continuing dedication to the task of defeating delay.

Much of the currently accepted thinking about delay reduction comes from the fertile minds of Ernie Friesen, Ed McConnell and Harvey Solomon, all of whom are members of the ABA.

My congratulations to those task force members who directed the preparation of this book, to Project Director Douglas K. Somerlot for his writing, and to Judicial Administration Division staff member Steve Goldspiel for his editorial assistance.

William W. Falsgraf
President, American Bar Association
Comments by
Eugene C. Thomas

Many Americans derive their impression of the law, judges and lawyers from their perception of the court. That image, unfortunately, is frequently dominated by the anguish and exasperation of excessive delay and expense. The work of the Lawyers Conference Task Force on Reduction of Litigation Cost and Delay, therefore, is a particularly significant effort of the American Bar Association because it evidences the high priority our profession places on responding to the public needs with economic, timely litigation services.

The elimination of excessive delay in litigation can only be accomplished by lawyers and judges working together and proclaiming, as the committee name suggests, that this evil of traditional dispute resolution must be singled out for special attention. Accordingly, task force members and staff responsible for the development of this book are to be congratulated, for it is a striking achievement in that direction.

The blueprint for reduction of delay that can be found in the Court Delay Reduction Standards and the practical advice contained in Defeating Delay, combined with the skills of the task force and the commitment of the bench and practicing bar, will impact costs and delay, bringing them under control to the benefit of the image and appreciation of law and, ultimately, of the lawyers and judges who deliver those essential services, which are central to our commitment to justice for all.

Eugene C. Thomas
President-Elect, American Bar Association
Comments by
Leon Segan

The Judicial Administration Division of the American Bar Association brings together the talents of judges and lawyers concerned about improving the judicial system of this country. The Lawyers Conference Task Force on Reduction of Litigation Cost and Delay, whose members represent all facets of the bench and bar, is an example of what can be achieved through such cooperation.

The publication of *Defeating Delay* by the task force is only the first step this group will make toward the solution of the delay problem. A very special word of appreciation and acknowledgment goes to Chairman Theodore A. Kolb and his task force without whom this project would not have succeeded.

Project staff members Douglas K. Somerlot and Susan C. O’Neill, under the direction of Judicial Services Director Wantland L. Sandel, Jr., should be recognized for the efforts they made in the preparation of this book.

The Judicial Administration Division wishes to express our special appreciation to the John D. & Catherine T. MacArthur Foundation and the Dart & Kraft Foundation for the financial support that makes the production of this book and the activities of this task force possible.

Leon Segan
Chairman, Judicial Administration Division
American Bar Association
Preface

Why does reduction of delay in civil litigation merit the efforts of the bench and bar? In the minds of most of the general public lawyers and the law are closely associated with the actions of the courts. Excessive costs and delay in the disposition of civil cases devalue judgments, cause the memories of witnesses and parties to fade, cause litigants to accept less than full value for their claims, prolong and exacerbate differences between people or entities, and make pursuing legal remedies prohibitively expensive for many people. In a word, the public’s perception is that excessive costs and delay render the law and lawyers incapable of performing the basic services for which they exist.

Reduction of delay in civil litigation demands the immediate attention of the bench and bar. Speaking about two of the more frequently identified aspects of the delay problem, Chief Justice Burger stated, “The caseloads in both federal and state courts experienced a fantastic growth during the past sixteen years. . . . Numbers are only part of the story; cases are becoming increasingly complex. Both trends are cause for concern—and possibly alarm—when projected toward the twenty-first century.”

The key to successfully reducing delay is a public commitment by the bench and bar to the idea that litigation delay is a problem that can no longer be either ethically or economically tolerated.

It is the ethical obligation of judges and lawyers to conclude litigation promptly. This obligation is specifically stated in the Model Rules of Professional Conduct, in Rules 1.2, 1.3, 1.4, 3.1, 3.2 and 3.4, and in the Code of Judicial Conduct, Canons 3A(5) and 3B.

Although the organized bar and bench have long struggled with delay, now the public and the litigants are also organizing themselves to oppose it. For example, the chief executive of a major corporation
has recently made prompt disposition of the cases handled by retained trial counsel, and control of outside counsel’s pretrial activities by management, high-level corporate issues.

The organized bar and bench have a uniquely constructive opportunity to resolve the delay problem. Aside from the ethical responsibility and economic and social benefits to judges and lawyers, what more appropriate way can there be to reaffirm professional ideals than to improve the system for the benefit of the litigants and the public at large?

Delay can be eradicated if system participants accept the fact that delay is a problem; if a program is designed to deal with all of its causes; if judges, lawyers and the public believe that the program can solve the problem; and if the judicial and bar leadership will openly and publicly commit themselves to meeting and maintaining the goal of delay reduction.

**Footnotes**


CHAPTER 1

Introduction

A. Purpose

This book has several functions. First, it describes how a jurisdiction should organize to attack delay. Included in Chapter II are descriptions of the people and groups who have been represented on design teams in jurisdictions that have successfully attacked delay.

Second, the text suggests the agenda for the team designing the delay reduction program. Chapter III describes methods of analyzing the court's caseload in order to identify the magnitude and the location of the backlog and delay. Techniques for determining the causes of delay are given. Various backlog and delay reduction techniques are illustrated.

Lastly, Chapter IV explains how to plan the implementation of a delay reduction program. Standard 2.54(C) of the Court Delay Reduction Standards suggests, and all of the successful programs prove, that planning the implementation is as important as developing the program. Two examples of delay reduction plans are contained in Appendix D.

B. The Process of Program Development

Delay is the most significant single problem affecting the civil justice system. Court reformers from the time of Jethro, the father-in-law of Moses, have recognized the need to conclude disputes fairly and promptly. Yet delay, like the common cold, remains a problem despite the long history of concern.

One of the clear pictures that emerges from a review of the work of those who have examined the process of implementing change in courts is that success is difficult to achieve. One writer suggests that the attempt to reform the criminal courts is a study of repeated failure.\footnote{1}
Why is this so? Joy Chapper, former Staff Director of the Action Commission to Reduce Court Costs and Delay, suggests that judges’ reliance on legal precedent; the decentralization of court systems; the discretion residing in each judge, lawyer, litigant and staff person; the lack of a unified, institutional perspective; and the allocation of power and resources all combine as obstacles to change.3

Professor Raymond Nimmer suggests that reform efforts continue to fail because of “. . . misperceptions about the nature of the judicial process and about how behavior within that process may be modified.”

Delay is not the result of some deficiency of the processing system, Nimmer suggests, but rather, “[t]he basic explanation for delay is found in the priorities of participants in the process. It is toward these priorities and how they are acted on that judicial reforms must be directed.” Finally, he asserts, “there is a seeming desire to displace attention from the behavior of judicial professionals to alleged artificial barriers and constraints.”

A first reaction to such statements is to dismiss them as apologies for failed programs. Yet, on reflection, they are clearly correct. In addition to addressing the technical aspects of developing and implementing a delay reduction program, this text will examine the behavioral aspects as well. This book proceeds on the premise that defeating delay is a four-step operation.

The first step is the general acceptance by the bench and bar of the proposition not merely that delay exists, but that the delay that exists is a problem that must be solved.

The second step is obtaining management information that, upon analysis, will identify the specific problems of the court and enable the design of a program that will eliminate the impediments to delay reduction.

The third step is planning for implementation, including the administrative aspects of the implementation and the techniques to be used to modify the behavior of the system participants.

The fourth step is the actual implementation.

As Nimmer suggests, we must distinguish between the substance of reform (the delay reduction plan) and the tactics of reform (how to modify expectations and behavior).7

C. Models of Successful Programs

The National Conference of State Trial Judges developed and adopted a set of Court Delay Reduction Standards (reprinted in Appendix E). At the August 1984 annual meeting, the House of Delegates of the
American Bar Association overwhelmingly approved these Standards. The Lawyers Conference Task Force on Reduction of Litigation Cost and Delay supports these Standards and the commentary that accompanies them. These Standards are the basis not only for a delay reduction program but for a delay prevention system as well. If each jurisdiction adopts the Standards, the result will be a significant first step in eliminating delay.

However, merely adopting the Court Delay Reduction Standards is not sufficient. Adoption signals a commitment to developing a program to reduce delay. Standard 2.51, Case Management, and Standard 2.54, Court Delay Reduction Program, require, by their own language, further implementation. This text illustrates a method of fulfilling the commitment to implement the Standards by establishing a committee of judges, lawyers and other interested citizens to design and implement a delay reduction program.

Many courts and court-related organizations have come to grips with litigation delay. Successful delay reduction programs have been created and now exist. The Lawyers Conference Task Force conducted telephone interviews with representatives of jurisdictions that have successfully implemented delay reduction programs and studied documentation illustrating what had been adopted and how the programs had been developed. No attempt was made to structure the interviews around the Court Delay Reduction Standards. However, what emerged from the process was a document that read remarkably like an expanded version of the Standards and their accompanying commentary. While that result was not a goal of the research, it was not surprising. These Standards capture the state of the art in delay reduction philosophy and methodology.

The Standards are a restatement of what is working right now in courts of the United States. The concepts and methodology embodied by these Standards have existed for a long time and have been repeatedly tested by pragmatic people interested in efficient, effective and just disposition of the business of the courts. Each technique requires a commitment by the jurisdiction employing it to provide the hard work and positive attitude necessary for success. A reader familiar with the field of court administration will find little new in this material. Rather than presenting any dramatic new insights or techniques, this text assembles in one place a summary of what many experts have accomplished at many times and in many places.

Although jurisdictions may attack delay in the courts without having adopted the Standards, we urge each jurisdiction to consider their adoption. This text integrates the provisions of the Standards into the manuscript developed by the interview process.
We explain the concepts upon which the specific delay reduction techniques are based, so that the reader can adapt the material to the local situation. Although this book discusses all phases of development and implementation of a delay reduction program, each segment may be used, modified or ignored by the reader as appropriate. The goal of this publication, like the goal of the Standards and the goal of the persons attempting to implement programs, is to reduce delay. If we are helpful in that effort, then this book will have achieved its purpose.

Footnotes

5. Id. at 93.
6. Id. at 176.
7. Id. at 3.
CHAPTER II

Organizing to Defeat Delay: Building the Design Team

A. Impetus for Change

The initial impetus for a delay reduction program may come from the bench or the bar.

This book was developed primarily to encourage activity by bar associations and other nonjudicial groups, because the judiciary needs the help and encouragement of the organized bar. This assistance has already begun at the national level. Although the Court Delay Reduction Standards were originally developed by the National Conference of State Trial Judges, they were adopted by the House of Delegates at the August 1984 annual meeting of the American Bar Association. Thus, the policy-making body of the ABA, including plaintiff’s lawyers, civil defense counsel and corporate and business counsel, has joined with the judiciary to say with one voice that delay can and must be eliminated.

Successful delay reduction programs have been instigated by a variety of groups. Of the reform programs reviewed for this publication, the primary impetus was from the judiciary in seven jurisdictions, from the combination of outside agencies and the judiciary in four, and from the state legislature in one.¹

Delay reduction programs often follow other successful court reforms.

A recurring theme among the jurisdictions researched was that one successful reform often leads to others. Thus, states that have recently experienced major revisions of statutes or procedural rules may then be willing to undertake delay reduction projects.² Or, where spe-
Specific programs have succeeded in reducing a backlog of pending cases, interest may exist in developing programs to assure that the backlog does not recur. One need not sit back and allow the system to absorb some other change before commencing delay reduction or prevention programs. Successful reform in other areas may acclimatize the local legal culture to change, creating an atmosphere in which a program to institutionalize delay reduction can flourish.

The first important concept for delay reduction programming is that the court must control the pace of litigation. The support and encouragement of the bar is helpful to judges taking this step.

Standard 2.50 requires that the court, not the lawyers or the litigants, control the pace of litigation. The ABA House of Delegates acceptance of this premise is one of the most significant aspects of the adoption of the Standards. However, for the court to assume control requires taking some risks. Judges may be reluctant to act, fearing lack of support from the bar. Successful programs in many jurisdictions have begun based upon a bar committee recommendation that the court, not the lawyers, control the cases. The agreement of the organized bar in the jurisdiction that judicial control is paramount in delay reduction is a vital first step in the local legal culture's acceptance of the reform.

Where judges are elected, they may fear that strict enforcement of time standards may earn them the opposition of the bar at the next election. Interestingly enough, one study suggests that the judicial perception that lawyers do not want judicial control is inaccurate. Lawyers may be more willing to accept change and more convinced that delay can be controlled than are judges. Therefore, bar leadership can convey the lawyers' desires for change and allay the judges' anxieties.

Effective support may require more than moral support and public pronouncements. Although delay reduction programs are rarely expensive, some additional staff, with associated equipment, is often needed. The judicial leadership and the leaders of the bar should be able to persuade the funding authority that the program is worth the cost.

Delay is most often perpetuated because the judges and lawyers accept it as the norm. Changing this acceptance of delay as normal requires everyone to agree that delay is unsatisfactory.

There is another reason why the organized bar should be involved in this process. In most jurisdictions, delay, which is defined as the time elapsed beyond that necessary to prepare and conclude a par-
ticular case, is the norm. In any system, a norm exists partly because it is accepted by the system’s participants. To change a norm requires modifying the expectations and behavior of those who are governed by it. Although the judges and lawyers may recognize that cases take longer than necessary, they may not realize that this delay is a problem. The first step toward modifying behavior is obtaining acceptance of the notion that the current behavior is dysfunctional.

Litigants prefer that their cases be resolved in less than a year. Litigants are harmed by longer waits for dispositions. Yet, delay may be caused by lawyers who believe they are ethically representing the interests of their clients. Although the public and litigants generally tend to blame the courts for delay, the business community is beginning to realize that delay is the responsibility of counsel, and that misuses and abuses of the judicial system made in the name of zealous representation of the client are unacceptable. Because of the high costs and long delays in civil litigation that result from misuses and other system problems, over fifty large corporations have subscribed to a policy statement that agrees to explore alternative dispute resolution techniques prior to pursuing full-scale litigation. The organized bar, which is detached from individual cases and clients, is uniquely able to persuade the system participants, both judges and lawyers, that there is indeed a problem.

Delay can be defeated if everyone accepts that delay is a problem, that the problem is solvable, and that the program can solve the problem.

Standard 2.50, in part, reads as follows:

From the 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. [Emphasis added.]

Adopting a standard containing that sentence states that delay is a problem that must be resolved, a vital step in the delay reduction process.

The most important key to success in reducing delay is commitment. Those who develop delay reduction programs and those who operate under them must believe that delay is a problem, that the problem is solvable and that the program can solve the problem. Delay is not merely an issue for the judiciary. It is the concern of the entire legal profession and of everyone who relies upon the legal system to resolve disputes. Thus, the bar should assume an active leadership role in initi-
ating delay reduction reform, in obtaining government support for the reform program, and in encouraging those who are implementing the reform.

B. Who Should Take the Lead

The key to an effective delay reduction program is committed leadership.

Merely acknowledging the problem and appointing a study committee are no guarantee of success. Behind every successful effort has stood a person or a group of people who believe that a problem exists, believe that it can be solved, and are willing to invest themselves publicly in the effort to solve the problem.

The last sentence of Standard 2.50 reads as follows:

A strong judicial commitment is essential to reducing delay and, once achieved, maintaining a current docket. [Emphasis added.]

Strong commitment requires strong leadership. Occasionally, chief judges are chosen based upon criteria other than administrative skills or leadership ability. When a leader of a delay reduction program is chosen, the selection criteria must include ability and interest, not merely seniority or affability.

The success of reform requires that system participants believe in the rightness of the program; the belief of the leader must be the deepest of all. The leader must give the most—and will bear the largest share of the risk of failure. Thus, the delay reduction program should be structured so that the leader gains the most recognition by success. Although public servants, particularly judges, are expected to be motivated by the desire to aid their fellow citizens, ensuring success requires understanding that even the most public-spirited people need to be recognized for their achievements. Attempting to modify the behavior of colleagues of the bench and bar merits special recognition.

Since it is the judges who must be responsible for the pace of litigation, it is the judges who must be the formal leaders of the reform effort.

A second important element of any successful program is the assignment of responsibility to the court for the overall success of the program and for each increment of it. Although the bar and the public should play a vital role in reduction of delay, the court must take the lead. The bar’s responsibility is to inform the court of its concerns, initiate bench-bar committees, and support the court in implementing the
program. However, the judges must accept responsibility for the program. They will be responsible for the implementation; they will control the pace of litigation; therefore, they must lead the reform effort.

C. Who Should Be Involved

This book is premised on the idea that the best way to design a delay reduction program is to create a judge-led bench-bar organization to study the problem and develop solutions.

At least three objectives must be considered when the organization is designed.

First, the team members must be selected carefully, considering that the team is the logical base upon which to build acceptance of the program. Second, the team must evaluate the system based upon the information obtained from the process of analysis, not through the preexisting conceptual lens of its members. Third, the team must plan systematically, considering the impact of change on the entire system.

Although there have been exceptions to this rule, most successful teams have been heavily weighted toward judicial members. Several of the interviewees described their team as a "blue ribbon" committee. The term signifies that the members were well-respected and held positions of leadership. The typical committee included the chief justice (if the program was statewide and in some instances when it was not), the chief or presiding judge of the largest trial bench, the state court administrator, elected or appointed clerks of courts, lawyer members and, less frequently, public members. The team was picked by the organization by whose impetus it came into existence.

The "ownership" of the program must be broadly based.

Every successful program has enjoyed the early and enthusiastic support of the presiding judicial officer of the jurisdiction where the change is sought. Where the reform effort has been statewide, the cooperation of the presiding judicial officers of the largest local courts has always been sought. The committed power, prestige and skill of the presiding judicial officers are crucial for success. The National Conference of State Trial Judges and the National Center for State Courts, among other organizations, are encouraging judicial support for such programs.

Although success depends upon commitment of the leadership, the reform cannot become the leaders' program. "Ownership" of the reform must be as broadly based as possible. Although the public spokesperson for the program should be a judicial leader, and although others may be responsible for management of the plan, the
team members must be appropriately recognized for their contribution. Even if the team members are not involved in the day-to-day operation of the program, they should be kept informed of progress. If unanticipated problems arise during implementation, or if changes are needed, the team members most familiar with the area should be consulted.

Selection of the team members must consider the realities of the court system.

The makeup of the team is an appropriate subject for examination in a book, but the who, what and how of the organization should never become an issue in the reform process. The membership of the design team, like the delay reduction program itself, should take into account factors within the local socio-legal culture likely to affect the success of the plan’s development or implementation. The factors to consider include:

- The strengths and weaknesses of the system participants;
- Any differences in political affiliation among the judges, clerks of court, and bar leaders;
- The interpersonal relationships of the leaders within the jurisdiction; and
- The locally accepted means of dealing with problems.

Among the common elements of successful delay reduction programs are a lack of significant opposition and a nucleus of supportive actors. These elements may be enhanced by the careful selection of the team members. From the ranks of the members should emerge vocal supporters of the program. While program enemies need not be converted into program supporters, it is necessary to keep powerful potential program adversaries from becoming open, vocal opponents. To paraphrase Machiavelli, those who “would profit by the preservation of the old institutions” are less likely to be openly critical if they have had the opportunity to participate in the design of the program. Likewise, purposely or inadvertently excluding an influential leader or a significant group may create an enemy of the program where either a neutral party or a supporter may have existed. Since many uncontrollable factors may work against the success of court reform, the creation of additional impediments must be avoided.

In summary, consideration must be given to creating a base of committed reform advocates within the team, keeping potential adversaries neutral, and avoiding envy and enmity by including powerful members of the court community.
Footnotes

1. The original impetus came from the judiciary in the Arizona Court of Appeals, the Colorado Court of Appeals, the State of Kansas, the State of New Jersey, the State of Ohio, the State of South Carolina, and the State of Vermont. The original impetus came from both the judiciary and an outside agency in the California Court of Appeals, Suffolk County (Boston), Massachusetts, Hennepin County (Minneapolis), Minnesota, and the State of Wisconsin. The initial impetus came from the state legislature in the State of Washington.

2. For example, Ohio's Rules of Superintendence were developed after revised Rules of Civil Procedures and Rules of Appellate Procedure had been adopted. Similarly, after successful implementation of a statutorily mandated arbitration program in the State of Washington, the legislature created a Judicial Administration Commission to study the entire structure of the courts.

3. The California Court of Appeal (Sacramento), Division One of the Court of Appeals of Arizona (Phoenix), and the Fourth District Court of Minnesota (Hennepin County, Minneapolis) were willing to undertake expanded delay reduction activities as a result of earlier successes.


6. Id. at 211.

7. The many stages through which a delay reduction program must pass from initial commitment to final implementation will exceed the one-year life that is the norm for a bar association committee. Thus, the bar president who initiates a bench-bar committee would be providing a most useful service if the committee is given a life that is greater than the president's term. Theodore Kolb, Chairman, Lawyers Conference Task Force on Reduction of Litigation Cost and Delay, Address at the National Conference on Court Delay Reduction, Denver, Colorado (Sept. 5, 1985).


10. *Id.* at 276.
11. *Id.* at 282.
Designing the Delay Reduction Program: An Agenda for the Design Team

A. Goal Setting

Time standards, which are the goals of a delay reduction program, must be adopted. Achieving substantive justice in individual cases must be a stated goal of the program.

The Lawyers Conference Task Force on the Reduction of Litigation Cost and Delay recommends adoption of the Court Delay Reduction Standards. Standard 2.52 reads, in part, as follows:

The following time standards should be adopted and compliance monitored:

A. General Civil—90% of all civil cases should be settled, tried or otherwise concluded within 12 months of the date of case filing; 98% within 18 months of such filing; and the remainder within 24 months of such filing except for individual cases in which the Court determines exceptional circumstances exist and for which a continuing review should occur.

B. Summary Civil—Proceedings using summary hearing procedures, as in small claims, landlord-tenant and replevin actions, should be concluded within 30 days from filing. . . .

For purposes of implementation, the times specified in Standard 2.52 should be expanded. The design team should subdivide the civil docket into case categories having common features. The type of case, e.g., tort, contract, collection, equity, etc., and the amount of
damages are two of the factors that should be considered when subdivisions are created.

Standard 2.51(C) suggests that incremental time standards also be developed. The design team should identify the significant events that will occur during the processing of each identified classification of cases, e.g., responsive pleading received, discovery complete, trial date set, etc. Unless the time limits are mandated by statute or rule, the design team should then agree on the time intervals between the significant events when 90 percent, 98 percent and 100 percent of the case load should be completed. The total of the separate periods will be the tolerable waiting period, or time standard, for the subclassification. The goal of the entire delay reduction program is to meet these time standards. Goals that are clear, focused, measurable and achievable are excellent motivators. However, in any specific case, the achievement of a specific disposition time must always be weighed against the achievement of a just result. It is partially for this reason that Standard 2.52 is stated in terms of percentages.

The achievement of just results in individual cases should be a stated goal of the delay reduction program. Prompt disposition is not inconsistent with just disposition. There is nothing more potentially unjust than no disposition. Balancing the equities between speed and justice, if there is balancing to be done, is one of those difficult decisions that courts were created to make. The whole point of delay reduction programming is to allow the court to make that decision based upon the needs of the case, not the shortcomings of the case processing system.

Although no general agreement on time standards for appellate case processing presently exists, the same goal-setting and diagnostic exercise can be used at the appellate level. Cases can be subdivided into categories, significant events determined, and tolerable waiting times established.

B. Statistical Analysis

In-depth analysis of the current caseload must be completed.

1. Backlog

In any delay reduction effort, two separate but interrelated problems must be overcome. The first of these problems is backlog. Backlog has been defined as the number of cases that cannot be concluded within tolerable waiting periods. The following hypothetical example is given to illustrate backlog:
Assume that the agreed tolerable delay is one year and that the court’s annual disposition rate is 1,000 cases. If there are 2,050 active pending cases, subtracting a one-year supply (1,000 cases) leaves a backlog of 1,050 cases.

Tolerable delay: 1 year
Annual disposition rate: 1,000 cases
Active pending cases .................. 2,050
Less 1 year supply of cases
(period of tolerable delay) ............ -1,000
Backlog .................................. 1,050

2. Delay

The other interrelated concept is delay. Delay is the amount of processing time that exceeds the tolerable waiting period. While backlog is measured in number of cases, delay is measured in number of days. These terms become significant when specific techniques are chosen and implementation plans developed.

The following analytical system shows the existence and extent of backlog and delay within the court system. This technique is intended for diagnostic purposes. Like many methods of diagnosis, it is difficult and time-consuming. The design team either will need to employ a student to do this work on a part-time, temporary basis, or will need the assistance of the court administrator’s statistical staff. No suggestion is made that the technique be adopted as the statistical instrument upon which the court relies for routine monitoring. While some or all of the elements of the system may be usable for that purpose, a monitoring system should be designed to respond to the specific information needs of the court system using it. Thus, the monitoring instrument must be designed after the goals of the reform program have been identified and the plans aimed at meeting those goals have been formulated.

The pending cases must be inventoried. The information to be gathered about each case will depend upon the decision points and classifications of case types decided upon by the court as a part of the goal-setting process. However, at a minimum for each case, there should be identified the name, the case number, the type of case, the filing date, the stage of proceedings (between what two significant events), and the dates of all significant events that have already occurred.

A sampling technique should be used to review a number of cases that have been concluded by the court. The sample should be of sufficient size to allow generalizations to be made about the entire case-
load. The data described in the preceding paragraph should be collected for each case in the sample. In addition, the termination date and type of termination should be recorded.

A detailed flow chart of the case process should be developed, based not only upon the existing rules and statutes, but also based upon actually "walking the tracks" to see what happens to the cases. The flow chart should identify the people and offices located on the processing path, as well as the significant events and should track what happens along the alternative paths that may be taken after each significant event. Chart 1 is a segment of a flow chart.

The flow chart should be accompanied by a narrative that describes, in detail, what is illustrated by the chart. A separate chart and narrative should be developed for each case type. Chart 2 is a segment of a narrative description.

Based upon the data collected, several output reports should be developed for each type of case. The first report should be a simple description of the pending cases, grouped by age from filing. For purposes of the report, increments of thirty days should be sufficient. Chart 3 is one method of displaying the "Case Inventory Grouped by Age" report.

The median, mode and range of time between the identified significant events should be shown, along with the percentage of cases concluded at each significant event. Chart 4 is an example of an appellate chart that attaches statistics to a flow chart.

The median and mean age of cases at time of disposition should be reported by type of disposition. This report should also display the point at which 50 percent and 85 percent of the cases are concluded.

The reports, graphs, charts and narrative descriptions will display the age distribution of the court’s caseload. Comparing this information with the time standards gives a measure of the magnitude of the overall delay problem. Although most currently available statistics provide this information in some form, this system divides the overall caseload into specific subcategories by case type and subdues the overall case process into its constituent parts. Since the court has already subjectively determined the tolerable waiting period for each increment, the diagnosis will identify where within the system the real delays are occurring.

The sample will illustrate what portion of the caseload in each category is being concluded at each identified stage of the process. Since it will identify the points where most of the case-concluding activity occurs, the system may be used as a method for determining how to reallocate the court’s resources most efficiently. For instance, judges may be reassigned to, or from, default hearings.
Chart 1. Flow Chart of a Case in Process

Preparation
1a. Arresting officer prepares report
1b. Suspect is detained and prepared for booking.

<table>
<thead>
<tr>
<th>Event A</th>
<th>POLICE CHARGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>8300 Cases</td>
<td></td>
</tr>
</tbody>
</table>

1. Police supervisor reviews report of arresting officer and decides to approve or reject.
2. Within 3 hours of arrest the suspect is either charged or released; if released, Detention Journal entry made.
3. Precinct police forward case for papering.
4. Precinct police send copy of report to Police Liaison Unit.
5. Defendant locked up or bailed.

Median Lapse Time
Since Last Event: 0 Days
Since Arrest: ½ Day

As Detention Journal Entries
Chart 2. Narrative Accompanying a Flow Chart

NARRATIVE DESCRIPTION
OF THE
FELONY CASE FLOW

Charging

There are several enforcement agencies that may initiate a felony case
_________________________________. The typical case comes from
_________________________________. Once the police take a suspect into custody,
you are allowed up to three hours to make a decision on whether to charge or
release. If they release the suspect, a detention journal entry is made. The office
in charge of reviewing the detention journal entries indicated that on the
average there are 20 to 30 detention journal cases a month.

A sergeant or lieutenant at the precinct level will review the report of the ar-
resting officer and make a judgment as to whether the case ought to be ap-
proved or rejected. Indications are that about 97% of the cases where a suspect
is taken into custody are approved by the reviewing officer and are forwarded to
_________________________________ for charging. A copy of the arrest report is for-
warded to the Police Liaison Unit in the court. The arresting officer prepares
various forms; perhaps the most important one is ___________. A lieutenant at
the precinct, technically acting as a deputy clerk of court and relying on a court
published bail schedule makes a bail review and determines whether or not the
defendant should be locked up or bailed. There is a published bail schedule
which becomes the basis for determining the amount of bail if the lieutenant
determines that bail is appropriate. The decision to bail or to keep the defend-
ant in custody appears to be based on the classic criteria . . .

The narrative and flow chart may disclose bottlenecks in the
processing system that may be eliminated by a simple redesign of the
processing system. For example, one person may be doing too much,
while another does too little, or papers may be processed by the same
person for different reasons at different times when they could more
efficiently be processed only once.

C. Causes of Delay

After statistical analysis identifies the location of delays, then
the specific reasons for the delays may be determined.

The figures will indicate where within the case processing sys-
tem unnecessary delay occurs. They may not tell why delay is happening
in any specific area. Thus, the selection of specific delay reducing
## Chart 3. Report of Case Inventory by Age of Case

### Age of pending cases

<table>
<thead>
<tr>
<th>Days Pending</th>
<th>Felony</th>
<th>Misdemeanor</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>All Cases</td>
<td>Bench</td>
</tr>
<tr>
<td>0-30</td>
<td>354</td>
<td>5</td>
</tr>
<tr>
<td>31-60</td>
<td>312</td>
<td>9</td>
</tr>
<tr>
<td>61-90</td>
<td>245</td>
<td>8</td>
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<tr>
<td>91-120</td>
<td>208</td>
<td>9</td>
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<td>121-150</td>
<td>155</td>
<td>16</td>
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<td>151-180</td>
<td>132</td>
<td>13</td>
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<tr>
<td>181-240</td>
<td>150</td>
<td>18</td>
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<tr>
<td>241-300</td>
<td>147</td>
<td>24</td>
</tr>
<tr>
<td>301-360</td>
<td>101</td>
<td>20</td>
</tr>
<tr>
<td>361-420</td>
<td>66</td>
<td>13</td>
</tr>
<tr>
<td>421-480</td>
<td>61</td>
<td>15</td>
</tr>
<tr>
<td>481+</td>
<td>159</td>
<td>95</td>
</tr>
</tbody>
</table>

Total: 2090 245 1845 4496 1024 3472

Techniques and the design of those techniques require further analysis. However, the flow chart will identify the persons within the system who work in the specific area. Interviews with these system participants may then be arranged to find out why certain events take too long.

It is tempting to bypass the statistical analysis described in the previous section and proceed directly to the interview segment. Indeed, much will be learned in the interviews that will duplicate the information gained earlier. However, the purposes of the two segments of the diagnosis differ. The statistical analysis will tell where and how much delay and backlog exist. If the statistical analysis uncovers no delay or backlog, it will nonetheless provide a detailed description of how the process works, which will be a useful tool in designing a prevention system. The interviews, on the other hand, are designed to tell why certain activities take too long and why a backlog has developed in certain areas. In other words, while the statistical diagnosis can tell the location of the problem, the interviews will identify the specific causes of delay. Since the persons contacted will be those most familiar with the system, the interviews may also suggest solutions to the problems causing delay.

In the early 1970s, the State of Ohio significantly reduced court
Chart 4. Presentation of Statistics
COURT OF APPEALS (All Divisions)
Notice of Appeal Process (Civil)—1981 Dispositions

Notice of Appeal Filed in Trial Court

15 Days
Avg: 26 Days
Mdn: 15 Days
Rng: 0-403 Days
Num: 343 Cases

Notice of Appeal Received in Ct. of Appeals

Civil Appeal Statement (CAS)

7 Days
Avg: 15 Days
Mdn: 8 Days
Rng: 0-152 Days
Num: 281 Cases

Answer to CAS (ANS)

45 Days
Avg: 62 Days
Mdn: 46 Days
Rng: 2-786 Days
Num: 339 Cases

Statement of Arrangements

90 Days
Avg: 129 Days
Mdn: 101 Days
Rng: 2-633 Days
Num: 370 Cases

Report of Proceedings

*Can be returned at any point in appellate process.

PREPARED BY: Administrator for the Courts,
JSA—Research and Statistics
July 16, 1982

Order Setting Settlement Conference
Avg: 23 Days
Mdn: 14 Days
Rng: 2-203 Days
Num: 83 Cases

Settlement Conference Held
Avg: 60 Days
Mdn: 60 Days
Rng: 0-344 Days
Num: 62 Cases

Order Returning to Regular Calendar*
Avg: 47 Days
Mdn: 32 Days
Rng: 0-197 Days
Num: 42 Cases
Chart 4 (continued). Presentation of Statistics
COURT OF APPEALS (All Divisions)
Notice of Appeal Process (Civil)—1981 Dispositions

A

135

Days

B

Avg: 176 Days
Mdn: 152 Days
Rng: 14-837 Days
Num: 529 Cases

165

Days

Avg: 246 Days
Mdn: 212 Days
Rng: 21-993 Days
Num: 520 Cases

C

45

Days

Appellant's Brief Filed

 Avg: 89 Days
Mdn: 68 Days
Rng: 0-743 Days
Num: 346 Cases

Respondent's Brief Filed

 Avg: 70 Days
Mdn: 53 Days
Rng: 0-357 Days
Num: 515 Cases

Oral Argument

 Avg: 232 Days
Mdn: 244 Days
Rng: 0-942 Days
Num: 517 Cases

Decision
Opinion Filed

 E

Avg: 85 Days
Mdn: 79 Days
Rng: 14-472 Days
Num: 553 Cases

D

NO RP REQUIRED (See #1)
From date Notice of Appeal received in Ct. of Appeals

Avg: 150 Days
Mdn: 129 Days
Rng: 14-778 Days
Num: 93 Cases

#1 If no REPORT OF PROCEEDINGS REQUIRED, then Appellant Brief is to be filed 45 days from filing of the Designation of Clerk's Papers in Trial Court.

PREPARED BY: Administrator for the Courts, JSA—Research and Statistics
July 16, 1982
Chart 4 (continued). Presentation of Statistics
COURT OF APPEALS (All Divisions)
Notice of Appeal Process (Civil)—1981 Dispositions

PREPARED BY: Administrator for the Courts, JSA—Research and Statistics
July 16, 1982
delay through the work of the late Chief Justice C. William O’Neill. The diagnostic technique used was based upon personal interview. The following is Chief Justice O’Neill’s description:

Resolve not to accept generalities; demand that the specific causes of delay and high cost are found; and demand that specific action be designed to eliminate the specific causes.

... . . .

Who can do that? The best judges . . . on the trial bench. If you protect their confidences, they can and will disclose the real causes of delay in their courts.5

The judges were called into the closed conference of the Supreme Court of Ohio. They were asked what the real causes of delay were and how these causes could be addressed. Rules were then drafted to meet the specific causes identified.

Two significant ideas are presented by this method. First, because of the assurance of confidentiality, the judges were willing to speak candidly about the delay-producing behavior of lawyers, judges and administrators. Second, recognizing these judges as the best in the state and requesting their advice made the local judicial leadership a part of the reform.

Other states have also used the interview technique to identify causes of delay. New Jersey, for example, “involved the active participation of some 175 members of the civil trial bar, along with a similar number of judges, academics and lay persons.”

Many jurisdictions have used outside expertise to assist them in analyzing their dockets, identifying causes of delay and designing delay reduction programs. Standards 2.54(B)(3) and 2.54(C)(4) both encourage the utilization of experts. This text joins in that same chorus in Chapter IV.

However, two caveats seem appropriate. First, no matter whether a consultant, staff or the design committee is responsible for diagnosis, time remains of the essence. Second, successful reform efforts must be adapted to local situations. What works in one jurisdiction, even in the same state, may not work somewhere else.

The California Court of Appeal First Appellate District (San Francisco) attempted to replicate the successful accelerated-docket program of the Third District (Sacramento).6 One of the features of the Third District program was expanded oral argument. However, the accepted practice in the First Appellate District called for argument to be waived in a large percentage of the cases. In spite of statistical success, the accelerated docket program was never accepted by the judges and lawyers of the First District, and the program was discontinued.7
Many reasons were given for the abandonment of this program. However, the lack of acceptance of someone else’s program and the failure to modify the technique to suit the needs of the new jurisdiction appear to have been partly responsible for the abandonment of the program in San Francisco.

D. Caseflow Management

1. Concepts

Although many techniques exist to attack delay, the heart of all programs is active caseflow management.

The term caseflow management as used herein denotes management of the continuum of processes and resources necessary to move a case from filing to disposition, whether that disposition is by settlement, guilty plea, dismissal, trial or other method. It is concerned with active attention by the court to the progress of each case once it has been filed with the court.12

Many would describe caseflow management as a specific delay reduction technique. Indeed, active management of the cases is the single technique responsible for the success in reducing delay of a number of the jurisdictions reviewed for this paper, including the states of Kansas, Ohio and Vermont, and Hennepin County (Minneapolis), Minnesota.

Several concepts are common to all successful caseflow management systems:

1. The court should take early control of the case.
2. The court should maintain continuous control of the case.
3. Events should be scheduled within short time limits.
4. Attorneys’ schedules should be reasonably accommodated.
5. Events should occur when they are scheduled to occur.13

In addition to these concepts, two additional thoughts pertaining to monitoring the flow of cases should also be mentioned:

1. Standards should be developed for case processing time and for caseflow system performance.
2. System performance should be continuously monitored against those standards.14

Standard 2.51 of the Court Delay Reduction Standards incorporates these principles, as follows:

Essential elements which the trial court should use to manage its cases are:
A. Court supervision and control of the movement of all cases from the time of filing of the first document invoking court jurisdiction through final disposition.

B. Promulgation and monitoring of time standards for the overall disposition of cases.

C. By rules, conferences or other techniques, establishment of times for conclusion of the critical steps in the litigation process, including the discovery phase.

D. Procedures for early identification of cases that may be protracted, and for giving them special administrative attention where appropriate.

E. Adoption of a trial setting policy which schedules a sufficient number of cases to ensure efficient use of judge time while minimizing resettings caused by over scheduling.

F. Commencement of trials on the original date scheduled with adequate advance notice.

G. A firm, consistent policy for minimizing continuances.

The time standard provisions of Standards 2.51(B) and (D) are discussed above. Techniques for implementing Standards 2.51(A) and (D) will be discussed in the “Specific Techniques” section of this text, later in this chapter. Monitoring, trial settings, early control and date certain scheduling will be discussed at this point.

2. Monitoring

The monitoring system must be as simple as possible while still providing the information needed for management of the caseload.

As mentioned in Chapter III, Section B, the monitoring system must be designed after the delay reduction program is designed. Monitoring systems serve several functions. First, they provide the court with feedback on the progress of cases through the system. If particular techniques for reducing backlog or avoiding delay have been implemented, the monitoring system will provide management information about the progress of the program and will identify specific cases, parties or counsel who must be dealt with to keep the caseload moving. The monitoring system should also provide the statistical information published by the court." Since budgets, requests for staff increases, and requests for additional judges are often predicated on statistics, the monitoring system should provide data to support these requests. In jurisdictions where judges are assigned to specific jurisdictions by the Central Court Administration, and in jurisdictions where visiting
or retired judges are assigned to help dispose of pending caseload, the monitoring system should provide data for decisions on the assignment of judges.

While preparing the monitoring system, the design team should request guidance from the judges and administrators who will be using the output reports. Reports too often become cast in stone as soon as the design is completed, even if they do not serve the purposes for which they were designed. The output reports produced by the monitoring system should be periodically evaluated to ensure their continued value.

Any information system that has this many functions could be extremely complex, but need not be. All of the needs that have been described are output needs. The design team should determine what data must be collected in order to prepare the required output. Careful analysis and planning should keep the data input to a minimum and enable the computer to do the work. Where information systems become burdensome, it is often due to different agencies’ or the same agency’s asking for the same information many times, merely sorted in different ways. Designing backward from the output can reduce or eliminate duplication.

Some sample output reports are included on the following pages to show some of the possibilities. The design and content of reports are infinitely variable to satisfy the needs of the court system. The sample reports indicate their jurisdiction of origin, so that the reader can compare the information displayed with the source documents.

Chart 5 is a quarterly report of median time for pending civil cases prepared by the Kansas Office of Judicial Administration. Although the time standards that have been adopted by the State of Kansas are expressed in terms of median days from filing rather than percentages of cases disposed within set numbers of days, the report displays both median age and actual age information. This chart provides management data for use at the state level, indicating how each judicial district compares to the guidelines.

Chart 6 is an excerpt of a table prepared each quarter by the Kansas Office of Judicial Administration, which ranks the districts in terms of docket currency. A copy of the entire table is distributed to each judge. Since most judges are competitive, the ranking system is used in Kansas to promote competition in delay reduction between courts. The table identifies districts that are doing particularly well, so that others may contact them to learn of the specific methods being used to achieve the goals. Judges who have good records and judges who have made significant improvements are publicly recognized for their achievement by the Judicial Administrator.
Chart 7 is a chronological listing of pending civil cases of a particular type prepared quarterly by the Kansas Office of Judicial Administration. This case-specific report is distributed to each judge of the district for the cases assigned to that judge. The judge can identify cases that have been pending for significant lengths of time and intervene in the cases outside the norm.

While Chart 5 provides overall monitoring data, Chart 7 helps the judge discharge his or her responsibility to control the pace of litigation. Note that the actual printout reproduced in Chart 7 is on 8 1/2 X 11 inch computer paper. The smaller paper makes the document more usable by the judges than if it were produced on traditional 11 X 15 inch computer paper.

Several jurisdictions studied for this publication have particularly good monitoring systems. One of the hallmarks of a good system is that it provides needed information without placing additional burdens upon the personnel charged with preparing the input forms. South Carolina and Kansas are examples of jurisdictions that obtain case-specific data from a copy of the basic appearance docket material that the clerk of court would otherwise be required to prepare at the time each case is filed. Depending upon resources and sophistication, the data can then be entered into a computer locally and the tapes forwarded to a central site, or the documents themselves can be forwarded to the central site for data entry. At the time of termination of the case, information is added to a carbon copy of the same form, which is then forwarded for data entry.

Chart 8 is a copy of the first page of the Kansas Civil Docket and Report Form. Once each week the appropriate pages are forwarded to the Kansas State Office of Judicial Administration, where they are checked for accuracy and then forwarded to data entry. The remaining pages of the form are kept at the local court for later use. Similar forms are used for criminal, limited civil, domestic relations, juvenile, adoption, probate, treatment and small claims. Forms of this type are not used where only summary data are collected. The Civil Docket and Reporting Form is printed on lightweight card stock, and carbons are included. The left margin of the Docket pages is drilled for a three-ring binder. Instructions for completion of the form, as well as copies of all pages, are contained in Appendix A.

Chart 9 is a copy of the first page of the South Carolina Civil Docket and Report Form. As part of a weekly batch, page 2 of the form is mailed to the Office of Court Administration after each case is filed; page 3 of the form is mailed following termination. Page 1, which becomes part of the appearance docket, remains permanently with the local court. Pages 1 and 3 are printed on light card stock, while page 2 is
### Chart 5

**Office of Judicial Administration**

**Median Time Report**

Civil Pending Cases
By District
For Quarter Ending March 31, 1985

<table>
<thead>
<tr>
<th>District</th>
<th>181 Days to 2 Years</th>
<th>Over 2 Years</th>
<th>Total</th>
<th>Median Age</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>100</td>
<td>4</td>
<td>266</td>
<td>136</td>
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<tr>
<td>2</td>
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<td>101</td>
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<td>3</td>
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<td>16</td>
<td>51</td>
<td>2</td>
<td>165</td>
<td>94</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>District</th>
<th>61 Days to 2 Years</th>
<th>Over 2 Years</th>
<th>Total</th>
<th>Median Age</th>
</tr>
</thead>
<tbody>
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#### Office of Judicial Administration
#### Median Time Report

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**Source:** Kansas Office of Judicial Administration.

**Note:** See Chart 8 and Appendix A for source documents.
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<th>13-24 Months</th>
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(Dist. Rank)
### Chart 7. Kansas Office of Judicial Administration Chronological Listing of Pending Cases

**JUDICIAL ADMINISTRATION**
**MANAGEMENT INFORMATION SERVICES**
**JUDICIAL CASE REPORTING SYSTEM**

12/31/84

#### Chapter 60 Pending Cases by District

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1st Quartile

Describing the Delay Reduction Program
Chart 7 (continued). Chronological Listing of Pending Cases

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Median Case
### Chart 7 (continued).  Chronological Listing of Pending Cases

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#### 2nd Quarter

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*Note: See Chart 8 and Appendix A for source document.*
## Chart 8. Kansas Civil Docket and Reporting Form

### Civil Appearance Docket

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<th>Judicial District</th>
<th>County</th>
<th>Case Description:</th>
<th>STATE OF KANSAS</th>
<th>Date Filed</th>
<th>Case No.</th>
<th>Judge:</th>
<th>(Div. or ID)</th>
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<tbody>
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<td>(A) Source:</td>
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<td>(1) ☐ Original</td>
<td>(2) ☐ Retrial or reinstatement</td>
<td>(3) ☐ Appeal</td>
<td>(B) Nature of Action:</td>
<td>(1) ☐ Contract</td>
<td>(2) ☐ Tort</td>
<td>(3) ☐ Appeal</td>
<td>(8) ☐ Personal property</td>
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### CASE TITLE:  

### ATTORNEYS:  

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<th>DATE</th>
<th>ACTION FILED</th>
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</thead>
</table>

*APPROVED BY STATE OF KANSAS*
printed on paper. Carbon paper is included in the assembled form, and the left margin is drilled for a two-ring binder. Instructions for completion of the form, as well as copies of all pages, are contained in Appendix B.

Since the South Carolina form is designed to provide the data needed by the state administration for judicial assignments, no more information is collected than has been determined to be necessary.

Additional data necessary for adequate monitoring may be added, such as case type, termination type, and occurrence of internal events along the case processing path. In adding information, the designers must determine what is needed from the system and for what purpose. If particular information could be useful, then consideration should be given to adding it. Weighed against adding information is the necessity for identifying, collecting, recording and transmitting it. If the data are not already required for any other purpose, some additional burden is placed upon the court. Not only do more data create a greater burden on the local court, but the more detail collected, the greater the opportunity for incorrect or inexact data.

Chart 10 is a copy of the last page of the Minnesota State Judicial Information System (S.J.I.S.) Transaction Report Form for Civil, Probate and Family Cases. This form, unlike the Kansas and South Carolina examples, is used only for case reporting. It allows collection of data relating to intervals along the case processing path. The form is printed on chemical carbon paper. The top of the form is completed when the case is filed. As additional activity occurs, the information is placed on the form and the top copy forwarded. After all of the copies have been forwarded for data entry, the last page is kept for the court’s files. If needed, more than one form may be used on a case. Detailed instructions for completion of this form, as well as copies of all pages of the form, are contained in Appendix C.

3. Early Judicial Control

Standards 2.50 and 2.51 emphasize early control over the cases by the judge. Not only must the court take control of the pace of litigation, but that control must begin from the event that tolls the running of the statute of limitations. The commencement of judicial control must not indefinitely await the filing of a certificate of readiness. A case processing system that leaves the counsel in complete control prior to the filing of the certificate of readiness abdicates responsibility for a significant delay producing portion of the system.

4. Discovery Control

One major reason for early and continuous judicial control of
Chart 10. Minnesota Transaction Report

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<th>Next Judge I.D. #</th>
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<td>C Default Judgment</td>
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<td>C Request for Hearing</td>
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the cases is to ensure that time spent on discovery is proportionate to the value and complexity of the case.

While the liberal discovery concepts of the Federal Rules of Civil Procedure were cited as one of the great advances wrought by those rules at the time of their development, some of the results of liberal discovery have not been advantageous. Abuse of the discovery process has been the subject of extensive comment, both within and outside of the court community. By assuming early control of the case, a judge may establish limits on the amount and sequence of discovery, the time within which it must be concluded, and the need for it. This control has been formalized by the adoption of the 1983 amendments to Rule 16 of the Federal Rules of Civil Procedure (F.R.C.P.), which amendments require the court to enter a scheduling order in most cases. Further, the idea that the nature and extent of discovery should be geared to what is at stake in the litigation (proportionality) has been formalized in the 1983 amendment to Rule 26(b)(1)(iii) of the Federal Civil Rules.

One of the frequently cited methods of controlling discovery abuse is the shifting of the cost of discovery enforcement to the prevailing party under F.R.C.P. 37. A recent study suggests that cost shifting has not been as successful a deterrent as was hoped at the time Rule 37 was promulgated. The best approach is strict judicial control of discovery. Discovery planning should consider a two-stage process that provides sufficient information in the first stage to enable a meaningful assessment of the case for purposes of settlement and alternative dispute resolution.

One interesting approach to the problem of excessive discovery is under way in Portland, Oregon, where a joint task force of the plaintiff and defense trial bar created their own voluntary system of cost containment. The key element in the Portland system is obtaining sufficient information to facilitate early evaluation of the case. In spite of the cooperation evidenced by these actions, the inherent distrust between the adversary parties required agreement that the court announce and enforce discovery limits and deadlines. With the court’s assistance, the lawyers will attempt to resolve the cases promptly and inexpensively because they have recognized that it is in their clients’ and their own best interests to do so.

5. Effective Calendaring

Cases must be scheduled so as to maximize the productivity of the court without overscheduling.

Scheduling the proper number of trials and hearings to make
most efficient use of judge time is a specific tenet of the Court Delay Reduction Standards. The adoption of a scheduling system that increases the number of matters scheduled, while prohibiting extensive overscheduling, can have a dramatic effect on backlog. The short-term solution for a backlog problem is to increase the number of cases concluded by temporarily increasing the available judicial resources. However, a more efficient scheduling system increases productivity without the need to increase permanently the number of judges, staff or court rooms. A crash program to reduce the backlog by temporarily adding judicial resources should not be undertaken until a comprehensive program has been designed to solve the problems that caused the backlog.

The factors that must be considered when constructing an efficient assignment system include the percentage of filed cases tried, and the percentage of scheduled cases tried.

6. Date Certain Scheduling

An important part of high productivity is date certain scheduling. Counsel must believe that the cases will be heard when scheduled.

There is nearly universal agreement that judicial scheduling of and adherence to a firm trial date is an absolutely vital feature of any caseflow management system. There are five major reasons why judges, lawyers and academics all agree on this concept:

1. Settlement probabilities are increased dramatically when enforced early evaluation devices are backed by a certain trial date.
2. Where the court requires counsel to adhere to schedules for the completion of events, credibility is enhanced when the court also complies with time deadlines.
3. No attorney wants to or will assemble a cast of witnesses and parties only to be frustrated when the trial does not begin when scheduled.
4. A firm trial date is cost-effective for the trial attorney because it allows efficient and predictable scheduling of the only commodity the attorney has to sell, time.
5. Firm and reliable scheduling requires serious planning by the court.

Serious planning of trial schedules accompanied by adherence to those schedules requires efficient and effective use of all of the resources of the court, which in turn will make the entire case process function better.
Establishing judicial responsibility for the pace of litigation, combined with active caseflow management and the use of techniques for reducing delay and backlog, has reduced delay in many jurisdictions. Ohio reduced the number of pending personal injury cases over twenty-four months old from 5,885 to 3,282 in three years using this program. Chittenden County, Vermont reduced the number of civil cases over one year old from 1,010 in July 1981 to 224 in June 1985. The State of Kansas reduced the number of civil cases over twenty-four months old by 69 percent between July 1980 and December 1984. Not only are the statistics impressive, but comments such as the following from a participant echo the enthusiasm: "The system is no longer an amorphous octopus. It is now manageable. We have a handle and can grab onto the system." 

E. General Techniques for Reducing Delay

1. General Concepts

Once the specific causes of delay have been identified, a program can be designed to eliminate impediments to prompt processing.

As stated previously, the most important concept for delay reduction is the acceptance by the court, rather than the lawyers or the litigants, of the responsibility for the pace of litigation. The previously outlined analysis of the docket and case processing system will disclose the specific causes of delay. The specific techniques are merely tools designed to help the court discharge its caseflow responsibility and to eliminate identified causes of delay.

Any technique considered by the design team for inclusion in the delay reduction plan should be tested against two criteria: Does it aid the court in exercising responsibility for the cases? Does it address an identified cause of delay?

Three additional premises underlie the delay reduction techniques that will be described. The first premise is that not all cases are the same and they should not be treated as if they are. The statistical diagnostic system described earlier suggested that the docket be subdivided into groups of cases with similar characteristics. If group characteristics can be identified, then the system should be designed to accommodate those characteristics. To accommodate the varieties of cases that need different treatment, a system of judicial triage should be established. Cases can be routed down the path that has been designed to accommodate them.
Many of the current techniques for reducing delay rely upon judicial triage, which classifies cases into categories where they receive treatment that differs from the norm. The criteria for placing cases in these alternative tracks may be set, such as the maximum dollar limit for court-annexed arbitration, or may be flexible, such as a referral to fast track appeal processing.

The idea of all of these expedited procedures is that certain types of cases require less time and effort to prepare for trial. The reduction or elimination of any time interval within the preparation process allows the cases to be ready for disposition, by settlement, or any other form of resolution, at an earlier date. Examples of these concepts are set forth in Chapter III, Section E(6)–(9).

The second additional premise is that the techniques designed must make the most efficient use of the scarcest resource of the court system, the judge’s time. The judge should concentrate on those matters where the expenditure of time will be most fruitful. This concept does not suggest that some disputes are less important than others. Rather, the idea is a recognition that many, if not most, civil cases will be resolved by the litigants, not by a judge. When intervention is needed, it may often be adequately supplied by neutral, noncourt personnel or by court representatives other than judges. Additional information is contained in Chapter III, Section E(4).

The third premise is that the best disposition of a civil case is a settlement between two well-prepared attorneys with no advantage to either party based upon wealth or time. The civil justice system exists to peacefully resolve disputes when the parties are unable to do so privately. Even after filing, nine out of every ten cases will be resolved by the parties without trial.

Some techniques have been developed that are specifically designed either to facilitate settlement, or to promote settlement as a byproduct of activities designed for other purposes. These devices facilitate settlement in three ways. First, they give the parties and counsel an unbiased evaluation of the case. Second, they allow the parties and counsel to evaluate the other side’s case. Both of these results are extremely significant to settlement and are unique to techniques of this type. Third, like an impending trial, they require counsel to become familiar with their own case. All too many settlements occur “at the courthouse door” because the counsel did not evaluate their case until it was time to prepare for trial. When counsel must prepare for one of these devices, the likelihood of settlement is increased. Any other devices that accomplish this education function may result in earlier, and more just, settlements. These techniques do not reduce the number of trials. They allow the cases which will settle to do so earlier, allowing the
court to concentrate on the cases the parties are unable to resolve. Chapter III, Sections E(10) and (11) describe these types of settlement techniques.

All of the descriptions of specific delay reduction techniques set out below assume that early judicial responsibility for the progress of litigation, as articulated by Standard 2.50, and caseflow management, as suggested in Standard 2.51, have been accepted by the design team as the bases for the delay reduction program.

2. Assignment Systems

Most recently enacted delay reduction programs use some form of individual assignment system for routine and complex cases. Relatively easy matters are often handled on a master calendar basis.

The choice between individual and master calendar systems as the device for assigning cases to judges is a part of the caseflow management package. The conventional wisdom is that delay reduction does not depend upon the choice of assignment system. ¹⁰ Calendaring systems are mentioned in this review because several jurisdictions, including Ohio, Hennepin County, Minnesota, and the State of New Jersey, featured individual assignment or hybrid assignment systems as one of the building blocks of their court reform programs. Thus, in spite of the accepted wisdom, some form of the individual assignment system seems to be an extremely significant ingredient in delay reduction programming at the general jurisdiction trial level.

The reason for the adoption of the individual assignment system, which assigns responsibility for all aspects of the case to a single judge, is that it strongly signals the acceptance of responsibility that is so central to the idea of caseflow management. Those who advocate the master calendar system counter by saying that the flow of cases may be managed more efficiently by the use of central assignment and that it is the court collectively, rather than individual judges, that must control the docket.

Under the master calendar system, the presiding judge manages the calendar. Under individual assignment, the presiding judge must make the trial judges manage their calendars. In an individual calendar court, the strengths and weaknesses of the judges become apparent. The presiding judge must have the authority to reassign cases in order to ensure that litigants are not penalized by a judge who does not work as quickly as the other members of the court. Some large, multijudge courts have assigned cases to "teams" of four or five
judges. This technique combines the responsibility advantages of individual assignment with the flexibility inherent in the master calendar.

The proposed New Jersey system is an interesting combination because it proposes individual assignment of complex cases, where familiarity with the file is needed to deal with the multiplicity of pretrial matters, and master calendar for more routine cases that do not need a great deal of judicial intervention. A similar system has been in use for a number of years in the limited jurisdiction courts of Ohio, where the cases are individually assigned when they become contested by the filing of a motion other than for default or by the filing of the answer. While the Ohio system individually assigns more cases than does New Jersey, and at an earlier stage, both states gear the assignment not to filing, but rather to the need for intervention by a judge. Another well-documented hybrid assignment system is in operation in Washington, D.C.39

There may well be merit in the mere act of changing the assignment system. Revision of the assignment system carries with it the need to take inventory of the pending caseload and gain familiarity with the status of each case. Many inactive cases can be eliminated from the court's pending docket as a result of merely reviewing the file and contacting counsel.

3. Firm Continuance Policy

A firm continuance policy is required for high productivity, date certain scheduling.

Standard 2.51(G) mandates a firm, consistent policy on granting continuances. Standard 2.55 reiterates the need for enforcement of a firm continuance policy and suggests several elements of such a policy. As an enforcement technique, one Vermont judge lists the names of all attorneys requesting continuances in plain view in the judge’s chambers.38 Ohio requires each judge to report to the Supreme Court the names of each attorney requesting a continuance, the reason for the request, and whether the request was granted.39

A firm continuance policy is strongly linked to the concept of date certain scheduling. Where judicial enforcement of scheduled dates becomes the norm, the entire set of expectations and attitudes of the trial bar will adjust to that norm.

4. Additional Decision Makers

Additional decision makers, in the form of pro-tem judges, retired judges, visiting judges and referees, may provide temporary productivity boosts needed to cope with a backlog of pend-
ing cases, but should not be used either to avoid the adoption or use of early judicial control and active caseload management techniques, or as a substitute for efficient inventory control and case scheduling.

The Arizona Court of Appeals was able to make substantial progress on a backlog of cases with the adoption of a pro-tem judge program. While many jurisdictions may be able to obtain judges on assignment from other courts, the Arizona program, based upon legislative enactment, allows productivity to be expanded without borrowing judges from other districts.

In similar fashion, procedural rules usually allow the appointment of Referees or Masters who may perform some of the pretrial hearing functions of the judge. For example, the early conference used as a part of the Vermont case management plan is now conducted by clerks, and the screening to place cases on the Arizona Court of Appeals pro-tem judge hearing list is performed by staff attorneys. Mediation, the pretrial settlement conference, and all of the complex litigation techniques mentioned in Chapter III, Section E(13) can be conducted by adjunct decision makers. One Ohio court has, with consent of counsel, allowed referees to preside over jury trials. The use of additional decision makers to increase productivity is an excellent tool for reducing backlog over the short term. The reform program should establish authorization for the use of these measures at any time to eliminate short-term problems, while realizing that they may not be a long-term solution.

5. Docket Review

In any assignment system that has allowed counsel to control the pace of litigation, cases will remain on the active docket even though concluded or abandoned. Kenosha County, Wisconsin was able to reduce substantially the size of its apparent backlog by dismissing with prejudice cases upon which no action had taken place for a specified period of time. Ohio requires each judge to review all pending cases each quarter so that inactive cases may be dismissed. Inventory review decreases the apparent backlog of the court without any change in scheduling or allocation of judicial resources by merely deleting cases in which counsel and litigants are no longer interested.

6. Early Conference

The "early" conference, as used in Vermont, is an example of a hearing that can be used for a number of purposes. In Vermont, this hearing is the primary device for establishing judicial control.
within which all pretrial activities are to be concluded are established by order. If possible, a trial date is set. Since all counsel are present and all pleadings have been filed, this conference could be used to route a case into arbitration, a special economic litigation procedure or fast-track processing if these devices were in use in the court. (Each of these devices will be discussed below.)

If the scheduling conference is used as a triage device, cases are processed under the rules established for the assigned track. Where a case moves outside of the processing norms for the special track, court intervention occurs to get the case back on track, if possible, or to re-route the case onto a more appropriate processing path. Thus, these procedures all follow the ideas of early judicial control, continuous monitoring and management by exception.

7. Date Certain Certificate of Readiness

An alternative method for assuming control is demonstrated in the program initiated by the Third Judicial District of Alaska (Anchorage). This procedure requires counsel to file a certificate of readiness for trial. If no certificate is filed within nine months, the case is placed upon an inactive calendar. If no certificate is filed within two months after the case is placed upon the inactive calendar, the case is dismissed with prejudice. While active intervention does not occur as early under this system, the rule compresses the norm for the period between filing and completion of discovery to nine months and allows the court to intervene in those cases which exceed the norm. However, see earlier comments about judicial control and the certificate of readiness at Chapter III, Section D(4).

8. Economical Litigation Programs

Economical litigation programs, or ELPs, begin with the premise that certain types of cases of less than certain maximum dollar amounts can be processed in a manner that is economically feasible to the litigants if strict rules of caseflow management are accompanied by limitations on discovery. Interrogatories are limited or prohibited, and only parties may be deposed without prior court approval. Case progress is closely monitored, and dates for completion of events are set by court order. Much has been written describing these programs. The New Jersey reform program adopts the general ideas of the ELPs for the expedited case portion of its multitrack processing system.

9. Court-Annexed Arbitration

Court-annexed arbitration programs are not new. Philadelphia has had such a program since 1952. Alaska, Arizona, Nevada, New
York and Ohio have allowed arbitration since the early 1970s. As of January 1985, sixteen states and eleven Federal District Courts have authorized arbitration programs, and a significant number of additional states and Federal District Courts are considering programs. These programs typically provide that certain types of cases, with certain dollar limits, will be referred to mandatory, nonbinding arbitration. The arbitration panels are composed of either one or three attorneys. To establish the program's credibility, panel members must be experienced, respected members of the bar.

In the most successful programs, the courts schedule the hearings. The programs differ as to whether the hearings occur in the courtrooms or in attorneys' offices. Some programs provide that all "evidence" is to be presented only by papers and statements of counsel. Other programs allow presentation of testimony and evidence but relax the rules of evidence. Normally no record is made and the proceedings are private.

Unlike the ELPs arbitration does not involve judge time unless the award of the arbitration is appealed. Thus, while ELPs may reduce the expenditure of judicial resources needed for the disposition of cases assigned to the track, arbitration eliminates this expenditure altogether.

Court-annexed arbitration shortens the time between "at issue" and disposition. The decision to refer a case to arbitration may be made either as a result of a scheduling conference, or automatically based upon established criteria. Parties will often use the arbitration award as an impartial valuation of the case. Particularly where the arbitration rules do not allow presentation of testimony, the parties have received an important statement as to the value of the case without the expense of witness fees, etc.

10. Mediation

The mediation program of the Wayne County (Detroit), Michigan court has been described in detail. The essentials of the program are that each case is presented to a panel of three attorneys based upon a presubmitted summary of the case plus an informal presentation by counsel. No testimony is presented, although physical evidence may be used. At the conclusion of the presentation, the mediation panel places a value upon the case. If a party chooses to reject the valuation, and if the trial results in a judgment that does not improve that party's position by more than 10 percent, attorneys' fees are assessed against the party who refused the valuation.

11. Pretrial Settlement Conference

Some courts regularly conduct a pretrial settlement conference
after discovery is completed. The mandatory use of a pretrial settlement conference may not be efficient. However, such a conference may facilitate settlement, depending upon the skill of the decision maker, the nature of the case, and the local practice.

One study of federal court litigators indicates that active judicial participation at the pretrial conference can make a significant difference in the likelihood of a settlement. However, the attorneys feel that the judge who is actively involved in the pretrial should not be the one who ultimately tries the case.

12. Pretrial Issue Conference

In cases of intermediate or greater legal and factual complexity, a pretrial conference devoted to narrowing the issues may save trial time as well as lead to settlement.

Unlike the pretrial settlement conference, this conference should be presided over by the judge who will try the case, even in a master calendar jurisdiction. This conference helps both the judge and counsel prepare for the trial.

F. Techniques for Complex Litigation

Most of the techniques that have been described so far have been designed to reduce delay in cases that require little judicial intervention or only a "normal" amount of judicial intervention. Increasing numbers of cases are highly complex in nature. The complexity may result from the number of parties, the quantity and type of evidence, the novelty of the theory of recovery or the contentiousness of the parties or counsel. For any or all of these reasons, a complex case may require early intervention by a judge, and may consume a very large amount of judge time both during preparation and at trial.

Several techniques have been designed to facilitate settlement and to conserve resources in complex cases. Although much of this development has been in the federal courts, the techniques are just as suitable for use in state courts.

1. Special Masters

Special masters have been used to resolve discovery problems in complex litigation. Not only may they monitor the progress of discovery and rule on disputes, but they may also be used to develop plans that guide the entire discovery process in complex cases. Another use for special masters in complex cases has been to mediate settlement. This type of special master may be extremely expensive due
to the time required for success. However, if a mediation master is able to resolve disputes that might otherwise result in protracted trials, then the cost may be worthwhile.

2. **Summary Jury Trial**

Summary jury trial, developed by Judge Thomas D. Lambros of the U.S. District Court for the Northern District of Ohio, is a settlement device. Jurors are picked from the regular jury pool. Each side is given peremptory challenges. The trial may be presided over by a judge or a magistrate. The attorneys are given a set period of time to present their case, and the entire "trial" may last only one half day. Counsel present argument and a summary of evidence. No witnesses are called. The jury is instructed by the presiding officer and delivers a verdict. Some who have used the system tell the jurors that it will be an advisory verdict, others do not. Although there is some expense associated with the jury cost, this cost is much less than a protracted jury trial. Where actual trials have occurred after summary jury trials, the verdicts have been very similar to the summary jury trial verdicts.

The benefits of a summary jury trial are similar to those of an arbitration proceeding used as a settlement device: independent evaluation, an opportunity to evaluate the opponent's case, and a "day in court."

3. **Mini-Trial**

Like the summary jury trial, the mini-trial has come into increasing use as a method for the resolution of some types of large-scale litigation. This device is most effective where the central issues do not involve precedent-setting questions of law or witness credibility.

In the mini-trial, counsel present a concise version of their best case before representatives of the parties. What follows is an attempt to settle the dispute based upon the newly acquired understanding of the strengths of the opponent's case. The concepts underlying the technique are similar to the mediation program used in Wayne County (Detroit), Michigan, except that the parties may or may not use a neutral evaluator. Statements of the neutral advisor, like statements of the representatives of the parties, are not binding at any subsequent trial, unless agreement has been obtained in advance. At bottom, the technique attempts to reconvert the legal dispute back into a business problem.

G. **Techniques for Appellate Litigation**

The techniques described thus far appear to apply only to trial courts. However, all of the basic concepts—i.e., commitment by bench
and bar leadership, acceptance of responsibility for the processing of cases, differential treatment of cases, efficient use of scarce resources, and even settlement—apply to the appellate level as well as to the trial level. The principles of caseflow management likewise apply at all levels of the court system. Many of the specific techniques, given appropriate modification, are also just as applicable at the appellate level.

1. Accelerated Docket Program

The California Court of Appeal in Sacramento, using the information gained in a prehearing conference as the basis for screening, was one of the first to employ successfully an Accelerated Docket Program.

The Accelerated Docket experiments in Sacramento and San Francisco have been well documented.¹ These programs attempt to reduce appellate processing time by reducing the briefing time limits (twenty days), limiting the length of briefs (ten pages), eliminating reply briefs, setting oral argument for a short time ahead, and establishing time limits for the filing of opinions.

No fixed criteria for entry into the program were established.² As the program developed, more complex cases were placed in the program than had originally been thought possible. The criteria, which developed informally, related to relative simplicity of facts and law, and a smaller number of discrete legal issues.

A key feature of this program is that although briefing is contracted, oral argument is open-ended. Although no limit is set on the length of oral argument in Accelerated Docket cases, in practice the length is comparable to the regular oral argument calendar.³ The combination of early monitoring and modification of procedural rules makes the Accelerated Docket Program an appellate equivalent to the ELP previously discussed.

The Colorado Court of Appeals also developed an Accelerated Docket Program. However, since no prehearing conference procedure was in effect in Colorado, more specific screening criteria were established, and counsel were required to file a preliminary statement supplying the data upon which screening decisions could be predicated.⁴

2. Motion on the Merits

While the Accelerated Docket Program focused on reducing briefing time, the time between briefs and argument, and opinion writing time, Washington state’s Motion on the Merits Rule⁵ is aimed directly at the opinion writing stage. At any time after the appellant’s brief is received; either party or the court on its own may file a motion on the merits. The case may then be decided by a commissioner or sin-
gle judge without the need for a formal opinion. The rule is intended to shorten time on those cases where the issues are clearly controlled by settled law, are factual and supported by the evidence, or are an appeal of a discretionary matter where the decision was clearly within the discretion of the trial judge."

An interesting feature of the rule is that it may be used to dispose of the whole case or merely a part of the case.** Since the initial decision in a motion on the merits may be made by a commissioner, the technique may also be used as a device to increase productivity in the same way that a referee or master might be used.

**Footnotes**

1. The use of percentages acknowledges that some cases truly take longer than others. A time guideline should not be based upon the longest possible time, or "how long it took to try that case eight years ago," but should reflect how long most cases should take.

2. See Chapter III, Section B.

3. Robert D. Lipscher, Administrative Director of the Courts, New Jersey, Address at the National Conference on Court Delay Reduction, Denver, Colorado (Sept. 5, 1985).


5. Division One, Arizona Court of Appeals (Phoenix) conducted precisely this type of analysis during the development of the pro-tem judge program. This study divided the docket into civil and criminal and further into oral argument and conference. The increments used were: filing to at issue, at issue to advisement, and advisement to decision. Both median and average values were computed. Ohio's intermediate appellate courts have operated under a regular reporting system of this type since 1976. See Supreme Court of Ohio, Ohio Courts Summary 1976 and subsequent annual editions.

6. Special thanks must be given to Dean Ernest C. Friesen of the California Western School of Law and a member of the Lawyers Conference Task Force on the Reduction of Litigation Cost and Delay, who designed this diagnostic system. The material is an elaboration of an outline for a system of statistical analysis that Dean Friesen presented at the May 18, 1985 meeting of the task force.
11. Id.
15. In connection with this function of the monitoring system, see State Court Model Annual Report (1980) and State Court Model Statistical Dictionary (1984), both publications prepared by the Court Statistics and Information Management Project of the National Center for State Courts.
19. The Kansas delay reduction program allows local jurisdictions considerable latitude in developing specific techniques for resolving backlog and delay problems. Although the Kansas Supreme Court adopted time guidelines and caseflow management principles, see supra note 17, local courts are free to adopt additional techniques that are needed by their jurisdictions.
21. Id. at 245.


28. See Friesen, supra note 13; Peckham, supra note 23; Cooney, supra note 24.


30. Letter from Lee Suskin, Director, Trial Court Administration, Office of the Court Administrator, Supreme Court of Vermont, to Project Director (June 10, 1985).

31. Letter from Lowell Long, Case Management Specialist, Office of Judicial Administration, State of Kansas, to Project Director (June 12, 1985).

32. Telephone conversation with Mark Greeley, Court Case Management Project Leader, Boston, Mass. (June 6, 1985).

33. Dean Ernest C. Friesen, California Western School of Law, Address at First National Conference on Court-Ordered Arbitration (May 31, 1985).

34. W. Brazill, SETTLING CIVIL SUITS (1985) indicates that the litigants prefer a judge who expresses opinions as to the strengths and weaknesses of the case.


37. See Ohio Rules of Superintendence for Municipal Courts and County Courts, Rule 3(B) and (C).

38. Planet et al., Screening and Tracking Civil Cases: Managing Diverse Caseloads in the District of Columbia, 8 Just. Sys. J. 338 (1983), reprinted in Action Commission to Reduce Court Costs and Delay, At-


40. Ohio Rules of Superintendence for Courts of Common Pleas, Rule 7(D); Supreme Court of Ohio, Court of Common Pleas, General Division Report Form 14, Continuances.

41. See Administrative Order of May 7, 1984 of Division One, Court of Appeals, State of Arizona; Section 12-145 through 12-146 of the Arizona Revised Statutes. The pro-tem judges appointed through this statutory scheme meet the criteria specified by Section 1.26 of the AMERICAN BAR ASSOCIATION, STANDARDS RELATING TO COURT ORGANIZATION (1974).

42. Smith & Connolly, supra note 27, at 48.

43. Letter from Chief Judge Eino M. Jacobson, Division One, Arizona Court of Appeals, to Project Director (July 1, 1985).

44. Harold Paddock, The Use of Referees in a General Jurisdiction Trial Court (unpublished article).


47. Smith & Connolly, supra note 27, at 48.


54. Id. at 84.

56. Jonathan D. Pavluk, "Masters as Mediators: The Role of Special Masters in Resolving Legal Disputes," Address at the National Institute on New Techniques for Resolving Complex Litigation, June 20-21, 1985, sponsored by the ABA Division of Prof. Education (mimeographed).

57. N.L.J. (June 10, 1985) at 1.


60. Id. at 272.


62. Chapper & Hanson, supra note 61, at 703.

63. Id. at 705.

64. Id. at 708.

65. Chapper, supra note 61, at 55.


67. Id., Rule 18.14(e).

68. Id.


CHAPTER IV

Planning for Implementation

A. Introduction

If the Whittier staff members were to pick one fundamental finding of their years of study it would be that delay is not reduced by identifying the causes and prescribing a rational program for a cure.¹

Successful delay reduction programs are characterized by thorough planning of the implementation phase.

Once the design team has established its goals, analyzed the caseload and processing system, identified the causes of delay, designed a delay reduction program, and developed a monitoring system, the tasks of implementation planning and implementation itself must be addressed. One of the surest routes to failure of a court reform is to assume that the adoption of the plan concludes the process. Judges and lawyers in jurisdictions where reform efforts have failed have been accused of assuming that the passage of a rule solves the problem.

B. Transition Planning

Standard 2.54(C) reads as follows:

C. Where unacceptable delay exists, there should be a published transition program designed to achieve these time standards. The transition program should include:

1. Assessment of the current caseload including backlog identification.
2. Analysis of productivity.
3. A conscious effort to use internal resources.
4. Utilization of special expertise.
5. Revision of rules and practices to implement the transition program.
6. A scheduled termination of the transition program with interim goals ultimately resulting in full implementation of the Section 2.52 time standards.

1. Diagnosis: Use of Internal Resources

The analysis described in Chapter III, Section B will provide the information needed to complete the diagnosis required by Sections 1 and 2 of this standard. Proper construction of the delay reduction techniques described in Chapter III, Section E will maximize the use of internal resources.

2. Use of Special Expertise

Many of the jurisdictions studied employed consultants and visited court systems that were perceived to have dealt successfully with delay problems. Care should be taken to ensure that any techniques borrowed from other jurisdictions are modified to suit the situation in the local jurisdiction. Most of the jurisdictions contacted felt that the program that emerged in their court was primarily their own, rather than one borrowed from another jurisdiction. This assertion of ownership among representatives of successful programs demonstrates not only the pride that arises from success, but also the feeling that the participants have a stake in the program and did not have it imposed upon them. Other jurisdictions should be queried not only about the systemic devices they used, but also about the manner in which they implemented these devices. The experts are knowledgeable not only about what they did, but also how they did it.

The use of outside experts is sometimes criticized on the ground that what the expert reports is nothing more than what the employer already knew. This criticism is often invalid for two reasons. First, if the expert confirms the employer's diagnosis of the situation, the confirmation reinforces the conclusion already reached. Second, the expert's opinion lends credibility to the program in the eyes of the system participants.

The difficulty with visiting locations where programs have succeeded is the temptation to go too soon. The team should already have completed its diagnosis and be at the program planning stage prior to the visit. A specific set of questions about the program being visited should be developed before the trip. A good shopper always knows what is wanted and has prepared a list before beginning the shopping trip. Otherwise the trip might end with the purchase of a new rug when all that was needed was a broom.
Several national organizations can provide technical assistance to a court system. The Task Force on Reduction of Litigation Cost and Delay can assist with organizing to solve the problems, with developing delay reduction programs, and with identifying jurisdictions that are dealing with similar problems. The reader should review the footnotes to this book and to the commentary to the Standards as sources not only for additional information, but also as sources of persons knowledgeable about particular delay reduction techniques.

Although it is often said that an expert is anyone who lives more than fifty miles away, there may well be experts in neighboring jurisdictions who should be consulted. For example, the Kenosha County (Wisconsin) Court Management Study was staffed by members of the Wisconsin Administrative Office of Courts. Judges Martin and Morse, who successfully began the Vermont program, are now advising other Vermont jurisdictions that are seeking to implement similar programs.

3. Institutionalization

Successful programs are created as permanent features of the court system. In this way, the attitudes and expectations of the system participants will adapt to and incorporate the new features.

If the program is to be institutionalized rather than merely a "crash project" with only transitory success, then the procedural and administrative rules under which the court operates will need to be revised. Properly implementing some of the delay reduction techniques, such as a pro-tem judge program or court-annexed arbitration, may require statutory change. The significance of amending rules and statutes, besides the formal authorization of the program, is that changes in permanent law imply program permanence. Similarly, formalized monitoring devices imply to staff members that the new program is here to stay.

Institutionalization ultimately means that the goals of the program become the expectations of the system participants, and the program’s procedures become the normal behavior. This result occurs over time and requires the use of procedures set out in Chapter IV, Section D. However, part of achieving the fact of institutionalization is creating the appearance of institutionalization for the system participants.

4. Transition Planning

Since plans for delay reduction are often implemented in courts with severe backlog and delay problems, a plan to move incrementally from the present problem to the ultimate goal will lend
believability to the effort. However, transition plans must have fixed stages, so that the interim standards or emergency measures do not become the final goal.

A transition plan with intermediate goals and phased implementation may help to make the entire program seem more achievable. However, the transition plan must have an ending date. If any permanent change in the expectations and behavior of the system participants is to occur, then the judges, lawyers, litigants and staff members must understand that the transition plan represents only one stop in a longer journey toward the achievement of the new goals.

The Vermont counties of Washington and Chittenden, which were the first to implement delay and backlog reduction programs in that state, present an interesting contrast in terms of dealing with backlog and with the implementation of active caseflow management. The conclusion reached by the staff of the ABA Action Commission, which studied those two courts, was that the simultaneous implementation of caseflow management and backlog reduction programs transformed the local legal culture more rapidly.\footnote{7}

The whole subject of how to accommodate backlog reduction and caseflow management has caused concern in many delay reduction programs. The New Jersey Superior Court committee recognized that courts generally give priority to old cases. Thus, new cases that may be ready for trial and need prompt attention must await the completion of older, backlogged cases.\footnote{8} Accelerated docket programs were abandoned in the intermediate courts of appeals of both San Francisco and Denver because of the courts’ belief that it was unfair to give priority to the disposition of “new program” cases when backlogged cases remained.

In Washington County, Vermont, priority was given to the backlogged cases until the backlog was reduced. The significance of the approach taken in Chittenden County, Vermont is that priority was given the “new program” cases, that backlogged cases were given exactly the same case management treatment as new cases and that, as a result, the entire docket was ultimately concluded more quickly than when backlogged cases were given priority.\footnote{9}

The Vermont plan is set out in Appendix D1. The Hennepin County, Minnesota plan, which considered transition issues in detail, is set out in Appendix D2.

C. Administration

Planning implementation is as important as developing the program. On the day set for implementing the delay reduction plan, sys-
tem participants must know who will have what responsibilities, who is in charge, what is expected from them and when, and how they will gain from the new program. Projects that begin smoothly gain immediate credibility. Almost without exception, smooth, easy implementation results from planning and training."

1. Lines of Communication

The implementation plan must develop lines of communication among and between the lawyers, judges and court staff.

The first concern in planning implementation is developing lines of communication. Maintaining the lines of communication that have been established will not only be valuable in determining the need for any mid-course corrections, but may also lead to other productive information interchanges.

... [T]he court was of the opinion that it and the bar would benefit from an advisory committee... While this committee does not directly concern itself with delay, as such, it has proven helpful as a sounding board for the court's ideas in reducing delay. It also serves to disseminate information about the court's delay reduction programs, and it also furnishes the court with concerns of the bar in this area."

2. Change Analysis

While the design team may have consisted of high-level, policy making personnel, implementation strategy will require input from line employees. We earlier alluded to "walking the tracks" in order to discern how cases are processed. Implementation also requires a walking-the-tracks exercise. In this instance the team members should think through every step of each specific delay reduction technique. As each step is considered, the team must answer these questions:

a. Who specifically will do this?
b. What specifically will they do?
c. How specifically will it be done?
d. What specifically will be needed to do it?
e. What training will the system participants need?
f. What other tasks are now being performed that will be affected by this new responsibility?
g. How can all of the tasks be grouped most efficiently?

The results of the track-walking exercise in Hennepin County, Minnesota are included in Appendix D2.
3. **Time Schedules**

Time schedules must be established leading up to the date of implementation and for activities scheduled beyond the implementation date.

A time schedule for implementation must be determined. The timetable and the entire implementation plan should be formalized by adoption by the court in order to reinforce for both the court staff and the bar that the court is committed to the successful implementation of the program. All of the activities needed for smooth implementation must be identified and completion dates established. Activities will include, for example, procurement (and delivery) of needed supplies and equipment, publicity, and training. The time schedule should start from the implementation date and plan events both prior to and after that date. The design team (or implementing team if they are different) must monitor the events leading up to implementation to assure timely completion of each step.

4. **Program Evaluation**

Ongoing evaluation of all aspects of the delay reduction program must be planned in advance.

As a part of the implementation planning process, a vehicle should be developed for continuing assessment of the plan. The design or implementation team should schedule follow-up meetings. Not only should the monitoring devices be used to determine progress, but the input of the judges, the trial bar and the court staff should be sought out and considered.

Program evaluation should consider not only whether delay is being reduced, which can be determined by the statistical monitoring devices, but also whether the procedures are saving the lawyers and litigants time and money. Information about these last features, which are strong selling points for the program, is more likely to be available from the subjective input of system participants than from the formalized monitoring system.

**D. Tactics of Implementing Change**

Successful plans include methods for modifying the attitudes and expectations of the system participants.

Planning a successful program includes not only designing the plan (Chapter III) and preparing for the changes brought on by the
plan (Chapter IV, Sections A–C), but also planning the tactics of how to alter the expectations of the system participants.  

1. Why Court Reform Has Succeeded

The recurring reasons for failure of delay reduction programs are set out in Chapter I.

As we have seen, delay reduction programs have succeeded in many jurisdictions. One study suggests that the common elements among successful delay reduction programs include:

- lack of significant opposition;
- a nucleus of supportive local actors;
- incremental change;
- coercion/persuasion from a higher court;
- improved communications;
- additional resources;
- consonance with local socio-legal culture;
- incentives for the participants. 

Recently released research by the National Center for State Courts suggests that although there is no single model for success in delay reduction programs, there are some common critical components. These components are:

- Leadership—especially leadership by the chief judge of the trial court.
- Commitment—acceptance of responsibility, by the judges on the court, for minimizing delay and managing the processing of cases from inception to completion.
- Good communications, both within the court (among judges and court staff) and with the bar and other participants in the court process.
- Case management procedures—while specific techniques vary, the most successful urban courts monitor the progress of cases from filing onward and take charge of the scheduling of specific events.
- Management information, used by the court to identify problems and monitor caseload status.
- Calendaring practices and other mechanisms designed to provide accountability for the management of caseloads.
- Attention to detail, involving and utilizing the expertise of nonjudicial staff in implementing court policies and programs.
If the plan is to succeed, then the behavioral and institutional problems mentioned by Chapper and Nimmer (see Chapter I) must be solved, and the characteristics enumerated in the Ryan and National Center studies must be developed.

2. The Nature of System Change

To understand what must be done to implement change effectively, a few observations about the impact of change are needed. System change can be influenced and controlled. The timing and method of change can be planned. Careful analysis can yield the information needed to control the extent and direction of change.

Organizations are actually a system of relationships between people. Whether these relationships are formal or informal, they tend to stabilize unless they are acted upon by some force. When a force puts pressure on this system of relationships, the system must either adapt or be damaged. This adaptation will be only as much as is needed and will be in the easiest direction. Thus the design team must erect barriers, in order to funnel the change in the desirable direction, and then apply the pressure to set the system change process in motion.

In choosing the change tactics, the team must understand the nature of the system. The people and organizations who act on the system to cause the delay must be identified. The pressures chosen must influence only the desired portion of the system. Then the pressures can be tailored to meet the change desired and the people and organizations targeted. If the pressures are applied too narrowly (for example, only to court staff and not to counsel), then the likelihood of success suffers. If the pressures are applied too broadly, then the resulting change may be too broad.

Professionals are accepting of system change. Where change is resisted, the usual causes are frustration and inertia.

Some who have written on the subject of change in organizations have concluded that when professionals are asked to make changes for the betterment of the system, even though not in their individual interest, they are willing, even eager, to do so. Resistance to change may develop, but it is not always present initially. Professionals want to be effective.

Where resistance occurs, it is seldom based upon any selfish motive. Since institutional change involves alterations in established relationships and restructuring of jobs, it is upsetting. People have an investment in the status quo that has developed as a result of interper-
sonal compromises in which they have personally participated. Thus, change must be implemented with sensitivity to the feelings and needs of the system participants.

Resistance may also arise because of frustration borne out of failed attempts to implement the change.\textsuperscript{25} Well-motivated professionals may become convinced that the new system won't work because they have tried it and it hasn't.

The pressure for change often comes from sources external to the system: a series of negative media stories; an aroused public interest group; a strong state-level judicial leader.\textsuperscript{21} There are two reasons for change: discomfort with the present status, and a desire to improve.\textsuperscript{23} It is the pressure to change, coupled with either discomfort or desire to improve, that fuels a successful change process.

3. \textit{What the System Participants Have a Right to Expect}

Assuming that the system participants have decided to support the change effort, they have a right to expect the system leadership to:

- provide a clear picture of their new role requirements;
- revamp organizational arrangements to make them compatible with changes;
- provide the necessary training to prepare them to cope with the problems of implementation;
- provide the resources necessary to carry out the changes;
- provide the appropriate supports and rewards to maintain willingness to make the effort needed.\textsuperscript{26}

4. \textit{Specific Strategies}

a. Turning on the Pressure

Promote public commitment to succeed.

For the system participants to accept that delay is a problem, they must be made dissatisfied with the system and desirous of improving it. The pressure for making this change may originate from outside of the court system.

The active encouragement of the organized bar is one method of turning on the pressure. Most who have written on the subject of change in the courts emphasize the need to obtain the support of the bar.\textsuperscript{27} Standard 2.54(B) indicates that the delay reduction program will benefit from the support and cooperation of the bar. The program's likelihood of success is enhanced by every system participant who
comes to believe that a delay problem exists, that the problem can be solved, and that the new program can solve the problem. However, the bar must be convinced that delay is a problem. The program's likelihood of success is increased where the organized bar and the individual lawyers join in the recognition that cases take too long.

Entry into the California Court of Appeals accelerated docket program required the consent of the litigants because of the lack of authority under governing rules to impose the program. In the First Appellate District (San Francisco), almost half of those who were offered the technique refused it for "tactical reasons." In other words, counsel thought that they could profit by the delay. The program was discontinued after one year.

The outlook and the outcome in the First Appellate District differ markedly from that expressed by Judge Jacobson about the Phoenix bar's involvement with the pro-tem judge program. When asked how the bench and bar were motivated to support the delay reduction program, Judge Eino M. Jacobson, of Division One, Arizona Court of Appeals, replied:

... [T]he members of this court and the members of the bar associated with these programs shared a common concern over the delay occurring in the Arizona Court of Appeals. This concern translated into positive motivation to reduce that delay. If a [motivation] technique was involved, it may be that if a problem becomes serious enough people will try to correct it. 26

Since insurance industry groups, court organizations, trial lawyers organizations and corporations have all gone on record as favoring the reduction of court delay, the organized bar may use the pronouncements of these influential organizations in a private and public campaign to make the judges and trial lawyers aware of public dissatisfaction with the status quo. Bringing the views of these organizations to the attention of the media may result in media scrutiny of the local court system, which may, in turn, result in articles that will bring added pressure for change.

Every step of the development and implementation of the delay reduction program should be public. The announcement of the delay reduction program should be well planned in advance. The steps leading to the implementation date should have been determined prior to the public announcement, so that all questions can be anticipated and answers prepared. The public introduction of the plan should be at a press conference called for that purpose by those who will lead the reform effort. The press release announcing the Vermont experimental plan is set out in Appendix D1.
Although most of the reform implementors interviewed attempted to explain the program to the system participants, few attempted to bring the program to the public. As one administrator put it, "We did not want to raise expectations."

As part of the preparation for the second National Conference on the Judiciary held in Williamsburg, Virginia in 1978, the National Center for State Courts commissioned an in-depth opinion poll concerning public perceptions of the courts. Although the results are now almost eight years old, some of the conclusions reached by the analysts, Yankelovich, Skelly and White, Inc., still bear repeating:

The general public and community leaders are dissatisfied with the performance of courts and rank courts lower than many other major American institutions.

The general public’s knowledge of and direct experience with courts is low.

But, a very sobering fact is that those having knowledge and experience with courts voice greatest dissatisfaction and criticism. This contrasts sharply with research we have conducted on other institutions and organizations.

In spite of the limited knowledge and dissatisfaction, the interest of the general public in courts is high and there is impressive support for reform and improvement.

In light of these expressions of the public’s view of the courts, expressions that most likely still prevail in jurisdictions with delay problems, the proper course would seem to be public announcement of reform programs, an ongoing program of public education, and press announcements of program success. In at least one jurisdiction contacted for this publication, the impetus for court reform came partially as a result of news media criticism. Indeed, the delay problems of most jurisdictions have probably been the subject of news stories. The public should be kept informed of what the courts are doing to solve their problems.

One of the reasons for the success achieved in Ohio was Chief Justice O’Neill’s ability to capitalize on the support of the public, through the use of the media, as a means of motivating system participants.

Thirty-eight years of elective public office has taught me that you can run for public office, but you can’t run for editor. You are entitled to have the news media tell the truth about you and your work. Nothing more. If you promptly open your court and its work to the media in every way properly possible—and
when you can't comment or speak on a matter, explain why—you will be most gratified with the results.

If you really want to improve the quality of justice in your court, then set yourself a goal for improvement in the next six months, and the next year, and make it public in advance; go to work: work harder than you ever thought you could; and achieve your goals and give yourself more personal satisfaction as a judge than you ever thought possible.37

b. Spreading the Ownership

Seek the assistance of system participants and publicly recognize those who help.

Involvement of as many people and interests as possible has been discussed at several other points in this book. The design team should include all of the principal actors in the system.39 Identification of the causes of delay involves talking with the system participants who are the experts in how the case flow process really operates.39 Seeking the input of the staff members during the design of the implementation plan puts them on notice of their importance to the reform and gives them an investment to protect.6 Involving the judicial and legislative leaders in the statute and rule changes and the budget problems gives them an interest in the outcome. One method of recognizing the contributions of these co-workers is illustrated by Judge Martin's letter in Appendix D1.

c. Satisfying Needs

Publicly explain how the new system will help all of the system participants.

An atmosphere must be created and maintained that will keep judges and court staff informed and involved and will recognize them for their efforts. Monitoring reports should be available to show the progress of the reform. Public recognition of effective staff members should be ongoing.

Lawyers and judges must be convinced that what they have to gain by the new system exceeds what they are giving up in the old. It is always true that changing to anything new temporarily involves additional work. However, once the new system is in operation, the level of work, or at least the level of frustration, may be reduced. Concrete examples of these conclusions based upon the specific program must be provided. Visiting "experts" who are operating under the system in
other jurisdictions are particularly helpful in providing these examples.

Among the many benefits of a successful delay reduction program, the following are some of the more frequently mentioned. Certainty of trial dates will allow both lawyers and judges to plan their time more exactly and will also relieve litigant frustration. Quicker disposition may reduce costs and will reduce the amount of lawyer time per case. The economic incentives and disincentives of delay must be emphasized to the counsel and parties; these include the impact of prejudgment interest, the inflationary reduction of the value of a judgment, the required temporary investment of corporate funds at economically disadvantageous rates, and the spiraling costs of legal representation. Favorable publicity will enhance the elected judge’s possibilities of retention. Although people may be asked to work somewhat harder, the reforms will allow them to work a great deal smarter.41

All of these selling points must be made publicly to the media, and to the individuals and groups concerned.

d. Timing

The success of any effort at change depends upon timing.

Selection of the implementation date must take into consideration the budget cycle (if additional resources are needed), the season of the year (to avoid major vacation seasons if additional manpower is needed), and the success or failure of other recent court improvements. The success of a “crash program” may create an atmosphere where an institutionalized program will thrive. Media coverage may create the pressure and the momentum needed for success. A change in judicial or bar leadership may provide an appropriate watershed upon which to premise the new program.

However, timing also means time planning. Enough lead time must be allowed before implementation to obtain needed resources and equipment, educate and train the system participants, and develop implementation plans.42

e. Education

All system participant groups must be trained prior to implementation.

All system participants must understand the overall goals of the program and how their responsibilities contribute to the achievement of those goals. They must be trained in any revised procedures, so that
they can act as trainers themselves. The use of any new forms or equipment must be thoroughly explained and some hands-on experience provided.

Once the new system has been designed to provide benefits to the system participants, they must be taught how to maximize the use of these new tools. Washington County, Vermont, and the Colorado Court of Appeals are examples of jurisdictions where the judicial leadership met with the bar for luncheon or dinner meetings. Judges explained the new program, emphasizing why the need existed, what impact the changes would have on the practicing bar, and what benefits the bar could expect from the program. Judge Martin’s invitation to the Washington County trial lawyers is included in Appendix D1.

When the reform was statewide, as in Kansas and Ohio, a series of talks at bar association meetings about the reform effort became an ongoing part of implementation. Meetings became important occasions for telling the story of the reform, including not only the reasons for the reform but also its success. These meetings also provided opportunities to recognize members of the development team and system participants who were particularly successful in implementing the reforms.

Where portions of the program have been adapted from other courts, bar and judicial leaders from the other jurisdictions can offer expert advice and enthusiastic support. The use of these experts will provide program credibility as well as useful practical advice.

Education doesn’t end on the date of implementation. The basic education program should be repeated soon after implementation for those procrastinators who did not attend earlier. Since there is always turnover among judges, judicial staff and trial bar, basic education programs should be repeated regularly. For new participants there is no need to change expectations, but only to build them. This opportunity to institutionalize change should not be overlooked.

f. Incremental Implementation

Standard 2.54(C) suggests the use of a transition program with interim goals and an announced termination date. All of the writers suggest that a slow, steady pace of implementation has a greater likelihood of success.

Incremental implementation can take several forms. Interim goals can be set as a step on the way to final goals. For example, termination of cases in thirty months can later be reduced to twenty-four. Or only part of the goals can be introduced, such as getting control of the summary civil cases first or disposing of the backlog before implementing full caseflow management.
Implementation of the whole program can be undertaken in less than the total jurisdiction, such as beginning with only some judges of a multijudge court or with only some counties of a state. Any incremental implementation must be fully monitored. The Vermont experimental plan set out in Appendix D1 is an example of this type of incremental implementation.

The accomplishments of the program must be documented and publicized. Success always breeds more success. Judges who were unconvinced will become converts when they have experienced success; trial lawyers will find that they can function within the system and profit by it.

g. Diminishing Opposition

Public recognition of the problem followed by public announcement of the new program makes it more difficult for those who might openly oppose the program to do so. Most implemented programs will experience some early success because of the backlog-reducing devices and the desire of committed participants to make the program work. These early successes must be publicized.

Both the system participants and the public should be told when the system is working and when it is not. Success breeds momentum, which breeds success. If opponents have been included in the process and the program has now become a success, share the ownership of the success. Recognition of effective work motivates both the recipient and those who were not recognized.

h. Monitoring

The Whittier team felt that developing the monitoring portion of the delay reduction system was the most important phase. Since the system participants will concentrate on what is being monitored, if the design team carefully selects what will be counted, improvement in performance will result merely because counting is occurring. The monitoring system was described in Chapter III, Section D(2).

Monitoring includes planned feedback from system participants. All aspects of the new program, from rules and procedures to forms and lines of communication, must be evaluated. Although going back to the old system should not be an alternative, any suggestions for improvements should be welcomed. Suggestions for improvement come from participants who think the program can work. Those who manage the reform gain credibility if they solicit suggestions, honestly consider what is submitted, and are willing to make changes based upon what they are told.
i. Defusing Frustration

Once barriers to success are identified, they must be eliminated. Every attempt must be made to provide the participants with what they need in order to make the program work. The trial bar needs trial date certainty; they should have it. The staff members need the new report forms and knowledge of how to use them; make sure that the forms and training are provided. Judges need a ready supply of cases; make the scheduling system work. Anyone who has worked hard under the new system wants recognition; make sure that public recognition is promptly provided. Support in solving problems, plus recognition for hard work and progress, are the ways to keep frustration low and production high.

Footnotes

2. See Chapter III, Section C for further comments on the use of outside experts.
3. Friesen et al., supra note 1, at 7.
4. These organizations are: American Bar Association, Division for Judicial Services, Lawyers Conference Task Force on Reduction of Litigation Cost and Delay, 750 North Lake Shore Drive, Chicago, Illinois, 60611, (312) 988-5704; National Center for State Courts, Headquarters and Southeastern Regional Office, 300 Newport Avenue, Williamsburg, Virginia, 23185, (804) 253-2000; National Center for State Courts, Northeastern Regional Office, 1545 Osgood Street, North Andover, Massachusetts, 01845, (617) 687-0111; National Center for State Courts, Western Regional Office, 720 Sacramento Street, San Francisco, California, 94108, (415) 557-1515; Institute for Court Management of the National Center for State Courts, 1624 Market Street, Suite 210, Denver, Colorado, 80202, (303) 534-3063.
7. Id. at 41.
9. Olson, The San Francisco Expedited Appeal Program: A First Year Report, in ACTION COMMISSION TO REDUCE COURT COSTS AND DE-
LAY, ATTACKING LITIGATION COSTS AND DELAY: PROJECT REPORTS AND RESEARCH FINDINGS 157 (1984); Telephone conversation with Chief Judge David Enoch, Colorado Court of Appeals (June 6, 1985).
10. Connolly & Smith, supra note 6, at 41.
12. Letter from Chief Judge Eino M. Jacobson, Division One, Court of Appeals of Arizona to Project Director (July 1, 1985).
13. See Chapter III, Section B.
14. This technique was used by Division One, Court of Appeals of Arizona.
19. Friesen et al., supra note 1, at 7.
20. Id. at 38.
21. Id. at 39.
22. N. GROSS et al., IMPLEMENTING ORGANIZATIONAL INNOVATION: A SOCIOLOGICAL ANALYSIS OF PLANNED EDUCATION CHANGE (1971); see also Friesen et al., supra note 1.
23. Gross et al., supra note 22.
24. Church et al., supra note 16.
25. Friesen et al., supra note 1, at 38.
28. Olson, supra note 9, at 164.
29. Id.
30. See supra note 12.
32. See, e.g., Church et al., supra note 16.
34. See, e.g., Letter of David T. Kearns, Chief Executive Officer, Xerox Corporation, reprinted in 3/4 Alternatives to the High Cost of Litigation (Apr. 1985).
38. See Chapter II.
39. See Chapter III, Section C.
40. See Chapter IV, Section C.
42. Carlos F. Lucero, Address at the National Conference of Court Delay Reduction, Denver, Colorado (Sept. 5, 1985).
44. Gross et al., supra note 22, at 122.
46. See Friesen et al., supra note 1.
CHAPTER V

Conclusion

Delay is the most serious problem plaguing the courts of this country. Its symptoms include excessive case processing time and backlogs of uncompleted cases. Delay results in diminished justice because it devalues judgments, dims the memories of witnesses, increases costs, and places unfair pressures on litigants to resolve disputes for less than full value.

Many jurisdictions have successfully attacked court delay. Proven programs exist that can be adapted to the needs of individual jurisdictions.

The key elements to successful implementation of a delay reduction program are commitment of the judges to the goals of the program and acceptance of responsibility by the courts for the pace of litigation.

The combination of active caseflow management to aid the judges in discharging their responsibility for the pace of litigation, specific techniques to increase productivity and deal with the identified causes of delay, and preplanned tactics to overcome resistance to change form a delay reduction program that has worked and will work.

The Court Delay Reduction Standards, developed by the National Conference of State Trial Judges and adopted by the American Bar Association, are a blueprint for the design of a successful delay reduction program. These Standards, which represent the state of the art in delay reduction, should be adopted and implemented in every jurisdiction. The design of a delay reduction program requires careful analysis and wise planning. The implementation of such a plan also requires careful planning and the support and cooperation of the bar and lawyers.

Delay can be eradicated if system participants accept that delay is a problem; if a program is designed to deal with all of the causes of
the problem; if judges, lawyers and the public believe that the program can solve the problem; and if the judicial and bar leadership will openly and publicly commit themselves to meeting and maintaining the goal of delay reduction.
Kans...
# Chart 1. Kansas Civil Docket and Reporting Form

(Front of Part 1)

<table>
<thead>
<tr>
<th>Judicial District</th>
<th>County</th>
<th>Case Description</th>
<th>Date Filed</th>
<th>Case No.</th>
<th>Judge</th>
<th>(Div. or ID)</th>
</tr>
</thead>
</table>

(A) Source:
- (1) Original
- (2) Retrial or reinstatement
- (3) Appeal

(B) Nature of Action:
- (1) Contract
- (2) Tort
- (3) Real estate
- (4) Personal property
- (5) Tax appeal
- (6) Other
- (7) 60-1507
- (8) Habeas corpus
- (9) Worker’s comp.

**CASE TITLE:**

**ATTORNEYS:**

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<th>DATE</th>
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# Chart 3. Kansas Civil Docket and Reporting Form

## (Front of Part 2)

### TRIAL DOCKET

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<th>Case Description:</th>
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<th>Case No.</th>
<th>Date Filed</th>
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<th>Judge:</th>
<th>(Div. or ID)</th>
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</thead>
</table>

(5) Source:
(1) Original
(2) Remittitur or reinstatement
(3) Appeal

(8) Nature of Action:
(1) Contract
(2) Tort
(7) Real estate
(8) Personal property
(10) Tax appeal
(11) 60-1507
(12) Habeas corpus
(13) Worker’s comp.
(14) Other

### CASE TITLE:

### ATTORNEYS:

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Trial Docket

APPROVED BY STATE OF KANSAS
Chart 4. Kansas Civil Docket and Reporting Form  
(Back of Part 2)

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</tbody>
</table>
### Chart 5. Kansas Civil Docket and Reporting Form
(Front of Part 3)—Forwarded When Case Is Filed

#### Civil Statistical Filing Information

<table>
<thead>
<tr>
<th>OFFICE OF JUDICIAL ADMINISTRATION</th>
<th>Case No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Judicial District</td>
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<tr>
<td>Case Description:</td>
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</tbody>
</table>

(A) Source:
1. ☐ Original
2. ☐ Retrial or reinstatement
3. ☐ Appeal

(B) Nature of Action:
1. ☐ Contract
2. ☐ Tort
3. ☐ Real estate
4. ☐ Personal property
5. ☐ Tax appeal
6. ☐ 60-1507
7. ☐ Habeas corpus
8. ☐ Worker’s comp.
9. ☐ Other

CASE TITLE: 

ATTORNEYS:

APPROVED BY STATE OF KANSAS

### Chart 6. Kansas Civil Docket and Reporting Form
(Front of Part 4)—Forwarded When Case Is Filed

#### Civil Statistical Termination Information

<table>
<thead>
<tr>
<th>OFFICE OF JUDICIAL ADMINISTRATION</th>
<th>Case No.</th>
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<tbody>
<tr>
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<td>Case Description:</td>
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</table>

(A) Source:
1. ☐ Original
2. ☐ Retrial or reinstatement
3. ☐ Appeal

(B) Nature of Action:
1. ☐ Contract
2. ☐ Tort
3. ☐ Real estate
4. ☐ Personal property
5. ☐ Tax appeal
6. ☐ 60-1507
7. ☐ Habeas corpus
8. ☐ Worker’s comp.
9. ☐ Other

C. _/__/ Date of Discovery Conference
D. _/__/ Date of pretrial conference
E. _/__/ Date of trial start
F. _/__/ Date trial ended
G. _/__/ Date of termination
H. Termination type:
   1. ☐ Dismissed
   2. ☐ Contested—settled
   3. Trial—court
   4. Jury trial
   5. Default
   6. Other
I. _/__/ Judge—ID, at termination

APPROVED BY STATE OF KANSAS
Chart 7. Kansas Civil Docket and Reporting Form
(Front of Part 5)—Retained at Local Court

<table>
<thead>
<tr>
<th>Judicial District</th>
<th>County</th>
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<td>(B) Nature of Action:</td>
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<td>(3) Appeal</td>
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<td>(14) Other</td>
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</table>

CASE TITLE:

ATTORNEYS:

Note: Back of Part 5 has adhesive applied.

Civil Appearance Docket and Report Form Instructions

The multipart Civil Appearance Docket and Statistical Information Form is to be used to report regular civil cases filed under Chapter 60 procedure as an original case and all cases appealed to a law-trained judge, or any case appealed under the provisions of the small claims procedure act. A new case number should be assigned and the full docket fee for a regular civil case should be charged for appeals. Domestic relations, probate proceedings, Chapter 61, and small claims procedure cases are not to be reported on this form.

Completing the Filing Information

Case Identification:

Enter the case number in the upper right corner, e.g., 88C567.
Enter the judicial district number and county designation.
Enter the date filed by using month, day and year format (01/01/83). For retrials, use the effective date the retrial is ordered. For reinstatements, use the effective date of the reinstatement.

Judge ID—(Div. or ID)
Enter the identification code of the judge hearing the case. If no judge has been assigned, leave blank.

Case Description
This line is for clerk’s use only.
A. Source (Mark one box only.)

Indicate the source of the case by placing an "X" in the appropriate square. If the case is a retrial or reinstatement you must mark square at (2). The edit programs will accept a duplicate case number only if the square at (2) is marked. Box (3) is for cases which appeal a decision of an administrative agency, such as the Board of Tax Appeals, or for an appeal in a small claims case or from the decision of a district magistrate judge in any civil case.

A case coming into your county as a result of a change of venue should be reported as "original," using the date of transfer as the filing date.

Note: If the case is a retrial or reinstatement, enter the effective date of the reinstatement as the "date filed." The "filing" date of a reinstatement (or new trial) is the date the reinstatement is ordered to be effective by the judge. Do not use the original filing date.

B. Nature of Action (Mark only one box.)

Indicate the nature of action in the case by placing an "X" in the appropriate box.

(1) If an action is contractual in nature, mark this square. This includes actions for recovery of money (sometimes called debt collection cases) filed under Chapter 60, Code of Civil Procedure.

(2) If the case involves a tort, mark this square. All personal injury cases, including those involving medical negligence, should be placed in this category.

(7) If the case involves real estate, mark this square. This includes foreclosures, eminent domain or condemnation cases, partitions, quiet title action, and forcible entry and detainer cases.

(8) If the case is a dispute over personal property, mark this square.

(10) If the case is an appeal of a decision of a tax board, mark this square.

(11) If the case is an action brought under K.S.A. 60-1507, mark this square.

(12) If the case is a habeas corpus action, mark this square.

(13) If the case involves a worker's compensation claim, mark this square.

(14) Mark this square if the case does not fit into one of the preceding categories and is not a domestic relations case or a Chapter 61 case.

Note: If the case involves more than one of the above categories, mark only the one square which indicates the category of action having the highest dollar value.

Once the filing information has been completed, the statistical filing information sheet should be forwarded to the Office of Judicial Administration. Statistical information sheets should be mailed in at least once a week, and the envelope should be marked for the attention of the Statistics Section.
Completing the Termination Information

The following information is to be completed when a case is terminated. A case is considered statistically terminated when the judge hands down a decision in the case from the bench.

C. Date of Discovery Conference

Enter the date of the discovery conference. If no discovery conference was held, leave blank. If more than one meeting was held, give the date of the latest meeting.

D. Date of Pretrial Conference

Enter the date that the pretrial conference was held. If no pretrial conference was held, leave blank. If more than one meeting was held, give the date of the earliest (first) meeting.

E. Date of Trial Start

If the case went to trial, enter the date the trial started. If not tried, leave blank. (Trial means formal trial—an adversary proceeding before the judge or the judge and a jury in which both sides are offered the opportunity to present evidence or testimony, after which a decision is made favoring either the plaintiff or the defendant.) A case can be contested without going to trial. If there was no trial, leave blank.

F. Date of Trial Ended

If the case was tried, enter the date that the trial was terminated. If a date of trial start, (E) above, is listed there must be a date of trial ended entered or the edit program will reject your information. If there was no trial, leave blank.

G. Date of Termination

Enter the date judgment was made in the case. In most cases for statistical purposes this will be the date that judgment is delivered from the bench by the judge. In some courts, however, this may be the date that the journal entry of judgment is approved by the judge and filed in the case. If the termination is "dismissed" or "other," enter the effective date of that termination. If the case has become inactive because of the action of another court as, for example, your court received a stay issued by a federal bankruptcy court, you should administratively terminate the case as of the date you received the stay. If the stay is later removed, the case may be reinstated.

H. Termination Type (Mark only one box.)

Enter an "X" in the box which best describes the manner of termination of the case.

(1) If the case was dismissed, mark this square.
(9) If the case was contested—settled, an answer to the plaintiff’s petition was filed—but did not go to a formal trial, enter an “X” in the box. Do not use this block if the case was dismissed before or after an answer was filed.

If the case went to trial (see item E above), enter an “X” in the square which indicated the type of trial—court trial (4) or jury trial (6). If the case was terminated by other means (e.g., dismissal) after the start of the trial, do not mark (4) or (6); rather, mark the appropriate termination. A jury trial does not commence until jurors have been selected and have been sworn in.

(7) If no answer was filed or the defendant failed to appear for trial, and judgment for the plaintiff was granted, mark this square.

(8) If the case is being disposed of administratively or for some other reason not listed above, mark this square. (For example, this square would be marked in cases for which there is a change of venue from your court.)

I. Judge ID at Termination

Enter the judge identification code of the judge who presided over the termination of the case. Enter the code for the judge who carried the case, not merely the judge who signed the journal entry which terminated the case.
APPENDIX B

South Carolina Docket and Report Form

Introduction

The South Carolina form is similar to the Kansas form contained in Appendix A. Like the Kansas form, South Carolina’s is prepared as a by-product of the normal clerk’s office function, with the corresponding increased probability of accurate preparation. The information gained from the form is primarily used for the assignment of judges. For this reason, much less information is required or collected. The form is an excellent example of allowing the input design decisions to be dictated by the informational needs.

Charts 1 through 4 are copies of the pages which make up the South Carolina Civil Docket and Report Form. Reverse sides of the pages have been reproduced if they are not blank. The chart number sequence is from top to bottom of the form as it would be received by a Clerk of Court.

Page 2 of the form, Chart 3, is mailed to the Office of Court Administration in a weekly batch. Page 3 of the form, Chart 4, is mailed following termination. Page 1 of the form, Charts 1 and 2, remain permanently with the local courts.

Pages 1 and 3 are printed on light card stock while Page 2 is printed on paper. Carbon paper is included in the assembled form. The left margin is drilled for a two-ring binder. The actual size of this form is 10” x 11”.

Instructions for Completing the Common Pleas File Sheet

General Instructions

The new file sheet consists of a three-page snap-apart form. Information written on the first page is carbonized onto the second and third sheets. This is a new form. Read these instructions carefully, and be sure any member of your staff who works with the Common Pleas File Books also reads these instructions. Additional copies of the instructions are available upon request.
Chart 2. South Carolina Docket and Report Form
(Back of Part 1)

<table>
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<th>Date Filed</th>
<th>Document Filed By Defendants</th>
<th>Date Filed</th>
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Chart 3. South Carolina Docket and Report Form
(Front of Part 2)—Forwarded When Case Is Filed*

COMMON PLEAS

Filing Date
01 02 03 04 05 06

Fees Paid
19 20 21 22 23

Nature of Action
25 26 27

Case Number
07 08 09 10 11 12 13 14 15 16 17 18

Jury(1) Non Jury(2)
24

Referred to Master Date
28 29 30 31 32 33

Masters Report Filed Date
34 35 36 37 38 39

Final Disposition Date
40 41 42 43 44 45

Judge at Disposition
46 47

CASE NAME

13 14 15 16 17 18 19 20 21 22 23 24 25 26

VS.

27 28 29 30 31 32 33 34 35 36 37 38 39 40

Plaintiffs

Defendants

41 42 43 44 45 46 47 48 49 50 51 52 53 54

55 56 57 58 59 60 61 62 63 64 65 66 67 68

Attorney

Attorney

*Actual size is 10” x 7”.*
Chart 4. South Carolina Docket and Report Form  
(Front of Part 3)—Forwarded When Case Is Terminated 

COMMON PLEAS

Filing Date 01 02 03 04 05 06

Fees Paid 19 20 21 22 23

Nature of Action 25 26 27

Case Number CP

Jury(1) Non Jury(2) 24

Referred to Master Date 28 29 30 31 32 33

Masters Report Filed Date 34 35 36 37 38 39

Final Disposition Date 40 41 42 43 44 45

Judge at Disposition 46 47

CASE NAME

Plaintiffs

Defendants

Attorney

I. PROCEDURAL PROGRESS AT TERMINATION

1. Termination Before Trial 48

2. Terminated During or After Non Jury Trial 48

3. Terminated During or After Jury Trial 48

Date Trial Began 50 51 52 53 54 55

Date Trial Ended 56 57 58 59 60 61

II. DISPOSITION

1. Transferred to Other Court 49

2. Dismissed or Purged by Court or Clerk 49

3. Discontinued, settled, withdrawn, etc. by parties

STATUS NOTES (For Court Use)
The front page of this three-part form is the Court’s copy, and will be retained as part of the clerk’s permanent court record. Two Common Pleas Files will be maintained. One for pending cases, and another for ended cases.

Begin using the file sheet at the time a new civil case is initiated. This is most often when the Summons and Complaint are filed. It should be remembered that many different types of papers are filed with your office which are not related with the starting of a case. This file will not take the place of a miscellaneous civil file book.

When a new case is filed, the following information must be placed on the file sheet:

a) Filing Date
b) Case Number
c) Fees Paid
The following may be known, and if so, should be recorded:
   a) Case to be tried as a jury or nonjury matter;
   b) Plaintiff’s name, and Attorneys;
   c) Defendant’s name, and Attorneys;
   d) Date the case was referred to the master.

The more information initially provided, the better.

When the case is filed and the filing date, case number and fees have been recorded, the yellow sheet is torn off and is mailed to Court Administration weekly. The Court’s copy of the file sheet is placed in the pending file numerically, by case number, with the most recent case in front, and the oldest case at the end. All other documents or pleadings pertaining to the case are recorded along with their date of filing according to which party is filing the documents, plaintiff or defendant.

Any information not available when the case was originally filed should be recorded in the space provided as it becomes available. An update sheet should be used for changing or adding information if not provided at the time a case was filed. Changes could involve a case going from nonjury to jury roster. Additions could include the case being sent to the master or referee. By using the update sheet, we will update our information and stay current. By the end of the year a file is concluded, all of the information should be provided. When the case is disposed and the final order recorded, the disposition date and judge at disposition should be recorded. A list of Judge Codes is found in Attachment 2. The additional information on “Procedural Progress at Termination” and “Disposition” should be recorded on the last page. If the case was “Terminated Before Trial,” also show how: “Transferred to Other Court,” “Dismissed or Purged by Court” (that is by the Clerk of Court or the Judge), or “Discontinued, Settled, Withdrawn by Parties.”

This last page is then removed and mailed to Court Administration weekly. The Court’s copy of the sheet is then placed in the disposed book numerically, by case number, with the oldest case at the end and the most recent case number in front.

These are general instructions on how this form is used. The definitions of each item on the form are next. If you have any questions concerning the use
of this form, please feel free to contact our office (758-2961). We are extremely interested and dependent upon the information provided by these sheets.

Filing Date

The date the case was filed with the Clerk of Court. Most often this is when the summons and complaint are filed. Use the numerical date with zeros where applicable. The first two blocks are for the month, blocks 03 and 04 are for the day, with blocks 05 and 06 for the last two digits of the year; i.e., a case filed on September 4, 1979 would be shown as:

\[
\begin{array}{cccc}
0 & 9 & 0 & 4 \\
01 & 02 & 03 & 04 & 05 & 06 \\
\end{array}
\]

Case Number

The case number is the number used to identify the case. Each new case filed during the year receives an individual case number. Each year the numbers start over. The Block 18 is used only when a case number which was previously used is being used again. The use of Block 18 is discussed below.

Blocks 07 and 08 show the year in which the case was filed. Blocks 09 and 10 are preprinted with CP designating the case as one filed in the Court of Common Pleas. Blocks 11 and 12 are for the two digit county code. The County codes are found in Attachment 1. Blocks 13 through 17 should show the number of Common Pleas cases filed during the year; i.e., the first Common Pleas case filed in Aiken County during 1979 would receive the number

\[
\begin{array}{cccc}
7 & 9 & C & P \\
07 & 08 & 09 & 10 & 11 & 12 & 13 & 14 & 15 & 16 & 17 & 18 \\
\end{array}
\]

the second case would receive the number

\[
\begin{array}{cccc}
7 & 9 & C & P \\
07 & 08 & 09 & 10 & 11 & 12 & 13 & 14 & 15 & 16 & 17 & 18 \\
\end{array}
\]

and so on.

*Block 18—This space is for case numbers which were previously used, but for one reason or another, must be used again. Special codes are used to distinguish the type of cases. These codes are as follows:

Use Code 1—For cases transferred from another Court of Common Pleas and ordered renumbered so as to retain their place on the Docket. This does not apply if the case goes to the bottom of the Docket.

Use Code 2—The case was previously shown as disposed and ordered reinstated to its original place on the Docket. There are many types of dispositions which apply to this, such as case concluded by Circuit Court and was appealed and the case sent back to the Circuit
Court; the case was purged or stricken and now ordered placed back on the Docket at its original place.

Use Code 3—When there is a circumstance not mentioned above and a case which was previously reported to be disposed is now placed back on the Docket with its original case number.

The key to using Block 18 is: a case number that has already been used is being used again for some reason. If old cases are reinstated after being purged, stricken, appealed or transferred from another court and go to the bottom of the Docket, then Block 18 is not used and a new case number is assigned and a new filing fee paid. If you have any questions on when to use Block 18, please contact our office (758-2961).

Fee Paid

Blocks 19 through 23 are for the cost of filing a new case. These are only those fees for which the State receives a portion. Blocks 22 and 23 are for cents while 19 through 21 are for dollars. A filing fee of $12.15 would be shown as:

Jury(1) Non Jury(2) Post-Conviction Relief(3)

Block 24 indicates the case is to be tried either as a jury or nonjury matter, or Post-Conviction Relief. If a jury trial is requested, use Code 1; if a nonjury trial is requested, use Code 2; if the case is Post-Conviction Relief, use Code 3. Should this change before trial, you can use the update sheet to record the change. Our office will be able to provide you with a list of jury matters or a separate list of nonjury matters which could be helpful when preparing the roster.

Nature of Action

At this time, we will not be concerned with the different types of Civil Cases being filed. Lines are provided should the clerk wish to use the space for their own means of identifying the different types of cases or for any notes you wish to make.

Referred to Master Date

Should a case be referred to the master or special referee, record the date the case was ordered. Should this referral take place at some time after the case was filed, use the update sheet to show this action. The date is recorded
numerically like the filing date. Blocks 28 and 29 are for the month, 30 and 31 for the day, and 32 and 33 for the year. A case ordered referred to the master or referee on September 4, 1979, would show the date

\[\begin{array}{c}
0 & 9 \\
28 & 29
\end{array} \begin{array}{c}
0 & 4 \\
30 & 31
\end{array} \begin{array}{c}
7 & 9 \\
32 & 33
\end{array}
\]

Masters Report Filed Date

\[\begin{array}{c}
34 & 35 \\
36 & 37 \\
38 & 39
\end{array}\]

When the report of the master or special referee is filed, show the date the report was filed (not signed). The same numerical date is used as above. A report filed on October 4, 1979, would show the date

\[\begin{array}{c}
1 & 0 \\
34 & 35
\end{array} \begin{array}{c}
0 & 4 \\
36 & 37
\end{array} \begin{array}{c}
7 & 9 \\
38 & 39
\end{array}
\]

Final Disposition Date

\[\begin{array}{c}
40 & 41 \\
42 & 43 \\
44 & 45
\end{array}\]

This is the date the final order is filed, stating a case is disposed. A case must remain pending until such time as an order is filed with the Clerk of Court. The information requested on the last page should be completed and sent to Court Administration. The Clerk's copy of this file sheet is removed and placed in the Disposition Book numerically by case number. The date is recorded in the same manner as described above, Blocks 40 and 41 are for the month, Blocks 42 and 43 are for the day, and Blocks 44 and 45 are for the last two digits of the year. A case disposed on November 4, 1979, would be shown as

\[\begin{array}{c}
1 & 1 \\
40 & 41
\end{array} \begin{array}{c}
0 & 4 \\
42 & 43
\end{array} \begin{array}{c}
7 & 9 \\
44 & 45
\end{array}\]

Judge at Disposition

\[\begin{array}{c}
46 & 47
\end{array}\]

Blocks 46 and 47 are for the Judge who signed the order ending the case. This will help determine the number of cases each Judge disposes of. The Judge Codes are listed in Attachment 2. Also, a code is provided for the Clerk of Court for those instances when the Clerk removes cases.

CASE NAME

\[\begin{array}{c}
\end{array}\]

vs.

\[\begin{array}{c}
27 & 28 & 29 & 30 & 31 & 32 & 33 & 34 & 35 & 36 & 37 & 38 & 39 & 40
\end{array}\]

Plaintiffs


Defendants
Blocks 13 through 26 are for the plaintiff's name. Record the name as last, first, then middle initial. We want to provide the Clerk of Court with printouts which can be used for preliminary rosters. The case name should be whatever you want to call the case to help you identify whose case it is. Blocks 27 through 40 are for the defendant. If you have room, you can put more than one name in a space. In the sample, Acme Bank has filed against G.A. Surles and Louis Rosen.

ACME BANK
13 14 15 16 17 18 19 20 21 22 23 24 25 26

VS.

SURLES / ROSEN
27 28 29 30 31 32 33 34 35 36 37 38 39 40

This would identify the case for use on a preliminary roster. Any additional plaintiffs or defendants can be added on the lines provided if desired.

41 42 43 44 45 46 47 48 49 50 51 52 53 54

Attorney


Attorney


The attorney's names go in the spaces 41 through 54 for the plaintiff and 55 through 68 for the defendant. Start with last name, first, then middle initial. Again, if space is available, you can add as many names as desired, or just one.

JONES / SMITH
41 42 43 44 45 46 47 48 49 50 51 52 53 54

WINSALL
55 56 57 58 59 60 61 62 63 64 65 66 67 68

The preliminary roster printout will show which attorney or firm is handling the case.

<table>
<thead>
<tr>
<th>Document Filed By</th>
<th>Date Filed</th>
<th>Document Filed By</th>
<th>Date Filed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Plaintiffs</td>
<td></td>
<td>Defendants</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td></td>
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<td></td>
</tr>
</tbody>
</table>

This space is used to record the documents pertaining to the case and the date filed. The Docket Sheet is the official court record, therefore, all documents filed in a case must be recorded on the Docket Sheet when "clocked" in.
Appendix B

Do not transpose from a Docket Book after case has been ended. If additional space is needed, use the back or another card, if desired.

I. PROCEDURAL PROGRESS AT TERMINATION

☐ 1. Termination Before Trial

☐ 2. Terminated During or After Non Jury Trial

☐ 3. Terminated During or After Jury Trial

II. DISPOSITION

☐ 1. Transferred to Other Court

☐ 2. Dismissed or Purged by Court or Clerk

☐ 3. Discontinued, settled, withdrawn, etc. by parties

By putting a check mark in the appropriate block, it indicates how far the case went before being terminated.

If the case was Terminated Before Trial, also show the Disposition: i.e., Transferred to Other Court; Dismissed or Purged by Court or Clerk; Discontinued, Settled, Withdrawn, etc. by parties.

If the case is ended during or after a nonjury trial, check the appropriate block and show the dates the trial began and the date the trial ended.

If the case is ended during or after a jury trial, check the appropriate block and show the dates the trial began and the date the trial ended.

Status Notes (for Court use)

Status Notes are for the Clerks use in making notes or for the attention of our office regarding the case.

These instructions should provide any person using this form with an explanation of what each space is for. There will, of course, be times when questions will arise. Please do not hesitate to contact our office when problems or questions occur.
APPENDIX C

Minnesota State Judicial Information System (S.J.I.S.) Transaction Report Form for Civil, Probate and Family Cases

Introduction

The Minnesota S.J.I.S. form, unlike the Kansas and South Carolina examples contained in Appendices A and B, is used only for case reporting. It allows collection of more complete data relating to intervals along the case processing path. In so doing, it holds the potential to provide the local court and the central administration with more specific information about the progress of individual cases as well as overall trends. However, since this form is not prepared for any other purpose, it would impose an additional time burden on the court personnel of any jurisdiction using it. Thus, the form illustrates the decisions which the design team must make; whether to seek more information or use fewer resources.

Charts 1 through 5 are copies of the pages which make up the Minnesota State Judicial Information System (S.J.I.S.) Transaction Report Form for Civil, Probate and Family Cases. The chart sequence is from top to bottom of the form. It is printed on chemical carbon paper. The size of the form is 8½" × 11¾".

Detailed instructions for completing this form are on Chart 5. The top of the form is completed when the case is filed. Chart 1, containing the original information, is forwarded to the S.J.I.S. As additional activity occurs, the information is placed on the form and the top copy forwarded. After Charts 1, 2, and 3 have been forwarded for data entry, Chart 4 is kept for the court's files. More than one form may be used on a case if needed.
## Chart 1. Minnesota Transaction Report
(Front of Part 1)—Forwarded When Case is Filed

<table>
<thead>
<tr>
<th>Court Case Number</th>
<th>Court Type</th>
<th>MINNESOTA S.J.I.S. Transaction Report</th>
<th>S.J.I.S. Number</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Civil—Probate—Family</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Date Filed</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Trans. #</th>
<th>Correct</th>
<th>Cancel</th>
<th>Trans. #</th>
<th>Person Preparing Report</th>
<th>Current Judge I.D. #</th>
<th>Next Judge I.D. #</th>
<th>Activity Date</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### CASE TYPE (check only one)
- A General Civil
- B Transcript Judgment
- C Default Judgment
- D Trust
- E Appeal
- F Supervised Administration
- G Unsupervised Administration
- H Guardianship/Conservatorship
- I Commitment
- J Other Probate
- K Dissolution
- L Support
- M Adoption
- N Other Family

### ACTIVITY TYPE (check only one)
- A General Clerical
- B Periodic Accounting
- C Registrar Review
- D Hearing
- E Default Hearing
- F Preliminary Conference
- G Court Trial Session
- H Jury Trial Session

### NEW STATUS
- A Active
- B Case Filed
- C Request for Hearing
- D Stay
- E Motion
- F Adjourned
- G Stricken
- H Dormant
- I Closed
- J Settled
- K Change Of Venue
- L Abated
- M Merge

### Activity Date
- AM START
- PM TIME
- AM END
- PM TIME

### Date Filed
- 1-612-296-1370
- 1-800-852-9747

**DO NOT WRITE IN SHADED AREAS**
### Chart 2. Minnesota Transaction Report

(Front of Part 2)—Forwarded to Report Activity

**DO NOT WRITE IN SHADED AREAS**

<table>
<thead>
<tr>
<th>Court Case Number</th>
<th>Court Type</th>
<th>MINNESOTA S.J.S.</th>
<th>S.J.S. Number</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Transaction Report</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Civil—Probate—Family</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Case Title</th>
<th>Date Filed</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Trans. #</th>
<th>Correct</th>
<th>Trans. #</th>
<th>Person Preparing Report</th>
<th>Current Judge I.D. #</th>
<th>Next Judge I.D. #</th>
<th>Activity Date</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**CASE TYPE**

(check only one)

- A General Civil
- B Transcript Judgment
- C Default Judgment
- D Trust
- E Appeal
- F Supervised Administration
- G Unsupervised Administration
- H Formal
- I 3 Informal
- J Other Probate
- K Guardianship/Conservatorship
- L Commitment
- M Dissolution
- N Support
- O Adoption
- P Other Family

**ACTIVITY TYPE**

(check only one)

- A General Clerical
- D Periodic Accounting
- F Registrar Review
- G Hearing
- H Default Hearing
- I Pretrial Conference
- J Court Trial Session
- K Jury Trial Session

**NEW STATUS**

(check only one)

- A Active
- B Case Filed
- C Request for Hearing
- D Party Ready For Court Trial
- E Party Ready For Jury Trial
- F Scheduled For Trial
- G Trial Concluded
- H Adjudicated
- I Stricken
- J M Dormant
- K P Closed
- L Q Dismissed
- M R Settled
- N S Change Of Venue
- O T Abated
- P XMerge | New S J/S #
Chart 3. Minnesota Transaction Report
(Front of Part 3)—Forwarded to Report Activity

<table>
<thead>
<tr>
<th>Court Case Number</th>
<th>Court Type</th>
<th>MINNESOTA S.J.I.S. Transaction Report</th>
<th>S.J.I.S. Number</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Civil—Probate—Family</td>
<td></td>
</tr>
<tr>
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<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**DO NOT WRITE IN SHADY AREAS**

<table>
<thead>
<tr>
<th>Trans. #</th>
<th>Correct</th>
<th>Cancel</th>
<th>Person Preparing Report</th>
<th>Current Judge I.D. #</th>
<th>Next Judge I.D. #</th>
<th>Activity Date</th>
</tr>
</thead>
</table>

**CASE TYPE**
(check only one)
- A General Civil
- B Transcript Judgment
- C Default Judgment
- D Trust
- E Appeal
- F Supervised Administration
- G Unsupervised Administration
  - 2 Formal
  - 3 Informal
- J Other Probate
- H Guardianship/Conservatorship
- I Commitment
- K Dissolution
- L Support
- M Adoption
- N Other Family

**ACTIVITY TYPE**
(check only one)
- A General Clerical
- D Periodic Accounting
- F Registrar Review
- G Hearing
- H Default Hearing
- I Pretrial Conference
- J Court Trial Session
- K Jury Trial Session

**NEW STATUS**
- A Active
- B Case Filed
- C Request for Hearing
- J Party Ready For Court Trial
- K Party Ready For Jury Trial
- L Scheduled For Trial
- M Trial Concluded
- N Adjudicated
- G Stricken
- M Dormant
- P Closed
- Q Dismissed
- R Settled
- S Change Of Venue
- T Abated
- X Merge | New S.J.I.S. #

---

<table>
<thead>
<tr>
<th>AM</th>
<th>PM</th>
<th>TIME</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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<table>
<thead>
<tr>
<th>AM</th>
<th>PM</th>
<th>TIME</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

---
# Chart 4. Minnesota Transaction Report

**(Front of Part 4)—Retained by Court**

<table>
<thead>
<tr>
<th>Court Case Number</th>
<th>Court Type</th>
<th>MINNESOTA S.J.I.S. Transaction Report Civil—Probate—Family</th>
<th>S.J.I.S. Number</th>
<th>Date Filed</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>DO NOT WRITE IN SHADED AREAS</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Trans. #</th>
<th>Correct</th>
<th>Cancel</th>
</tr>
</thead>
<tbody>
<tr>
<td>Trans. #</td>
<td>Person Preparing Report</td>
<td>Current Judge I.D. #</td>
</tr>
</tbody>
</table>

**CASE TYPE**  
(check only one)
- A General Civil
- B Transcript Judgment
- C Default Judgment
- D Trust
- E Appeal
- F Supervised Administration
- G Unsupervised Administration
- H 2 Formal
- J Other Probate
- K Guardianship/Conservatorship
- L Support
- M Adoption
- N Other Family
- O Merge [ New SJJS # ]

**ACTIVITY TYPE**  
(check only one)
- A General Clerical
- D Periodic Accounting
- F Registrar Review
- G Hearing
- H Default Hearing
- J Pretrial Conference
- K Court Trial Session
- L Scheduled For Trial
- M Deferred
- N Settled
- O Request for Hearing

**NEW STATUS**
- A Active
- B Case Filed
- C Pending
- D Adjuncted
- E Rejected
- F Dismissed

**Amendment**
- AM START PM END

<table>
<thead>
<tr>
<th>Trans. #</th>
<th>Correct</th>
<th>Cancel</th>
</tr>
</thead>
<tbody>
<tr>
<td>Trans. #</td>
<td>Person Preparing Report</td>
<td>Current Judge I.D. #</td>
</tr>
</tbody>
</table>

**CASE TYPE**  
(check only one)
- A General Civil
- B Transcript Judgment
- C Default Judgment
- D Trust
- E Appeal
- F Supervised Administration
- G Unsupervised Administration
- H 2 Formal
- J Other Probate
- K Guardianship/Conservatorship
- L Support
- M Adoption
- N Other Family
- O Merge [ New SJJS # ]

**ACTIVITY TYPE**  
(check only one)
- A General Clerical
- D Periodic Accounting
- F Registrar Review
- G Hearing
- H Default Hearing
- J Pretrial Conference
- K Court Trial Session
- L Scheduled For Trial
- M Deferred
- N Settled
- O Request for Hearing

**NEW STATUS**
- A Active
- B Case Filed
- C Pending
- D Adjuncted
- E Rejected
- F Dismissed

**Amendment**
- AM START PM END

<table>
<thead>
<tr>
<th>Trans. #</th>
<th>Correct</th>
<th>Cancel</th>
</tr>
</thead>
<tbody>
<tr>
<td>Trans. #</td>
<td>Person Preparing Report</td>
<td>Current Judge I.D. #</td>
</tr>
</tbody>
</table>

**CASE TYPE**  
(check only one)
- A General Civil
- B Transcript Judgment
- C Default Judgment
- D Trust
- E Appeal
- F Supervised Administration
- G Unsupervised Administration
- H 2 Formal
- J Other Probate
- K Guardianship/Conservatorship
- L Support
- M Adoption
- N Other Family
- O Merge [ New SJJS # ]

**ACTIVITY TYPE**  
(check only one)
- A General Clerical
- D Periodic Accounting
- F Registrar Review
- G Hearing
- H Default Hearing
- J Pretrial Conference
- K Court Trial Session
- L Scheduled For Trial
- M Deferred
- N Settled
- O Request for Hearing

**NEW STATUS**
- A Active
- B Case Filed
- C Pending
- D Adjuncted
- E Rejected
- F Dismissed

**Amendment**
- AM START PM END
Chart 5. Minnesota Transaction Report

(Back of Part 4)

TRANSACTION REPORT

The following are quick-reference instructions for the S.J.I.S. form on the reverse side of this paper. For further details, please refer to the S.J.I.S. User’s Manual or call the S.J.I.S. Office.

WHEN TO COMPLETE: You should complete one (1) page of the S.J.I.S. form whenever a Significant Occurrence takes place on a case. A Significant Occurrence is defined as either:

a) The occurrence of any of the activities listed under Activity Type EXCEPT ‘A1—General Clerical’;

b) The change in a case as to any status(es) listed under New Status.

The form should be completed noting reportable occurrences and forwarded DAILY to: Suite 304, 40 N. Milton St., St. Paul, MN 55104.

TERM DEFINITION:

Court Case Number: The docket or case number assigned to a case by your court.

Court Type: District—D; County—C; Municipal—M;

SJIS Number: Number assigned by SJIS to identify case.

Case Title: The caption identifying the name of the case.

Date Filed: Date the case was filed and number was assigned.

Trans. #: Indicates which report this is for the case (1st, 2nd, . . .).

Correct: Check here if you want to correct a previously submitted report.

Trans. #: Indicate number of transaction you want to correct or cancel.

Current Judge I.D.: Enter the I.D. number of Judge who has presided over the activity being reported.

Next Judge I.D.: Enter the I.D. number of the Judge who has been assigned continuing responsibility for the case.

Person Preparing Report: Enter your name, phone number or other identifying information.

Activity Date: Date of the activity you are reporting.

Case Type: Check the appropriate box. Check one only.

Activity Type: Check the appropriate box. Check one only.

New Status: Check the appropriate box(es). If more than one, number them in order of their sequence of occurrence.

CASE TYPE

A—General Civil — All civil cases not covered by the other categories.

B—Transaction Judgment — Filing of evidence of judgment in county to secure satisfaction of indebtedness. Transcript judgments should not change to other Case Types.

C—Default Judgment — Case involving contract for payment wherein defendant has failed to respond. Default dissolutions not included. Default Judgment should only change Case Type if the judgment is vacated.

D—Trust — Initiated by a petition for appointment of trustee.

E—Appeal — Application for review of another court’s decision. Conclusion court appeals are General Civil, not Appeal.

F—Supervised Administration — Court supervised estate, usually characterized by size or conflict.

G—Unsupervised Administration — routinely administered estate, usually involving little property which is not expected to require court supervision.

G2—Formal — optional designation to indicate formal unsupervised proceeding.

G3—Informal — optional designation to indicate informal unsupervised proceeding.

H—Guardianship/Conservator — Case involving appointment of a guardian or conservator of person or property.

I—Commitment — detention of an individual for reason of chemical dependency or mental incompetence.

J—Support — a petition for support external to a dissolution, including paternity actions.

K—Dissolution — all activity relating to the termination of a marriage through the final decree.

M—Aetion — a judicial act creating a family relationship between persons.

N—Other Family — Post decree motions on dissolution cases, and domestic abuse actions.

ACTIVITY TYPE

The following activities may include a Judge’s participation. If so, please supply the Judge’s I.D. # in the appropriate box.

A—General Civil — all paperwork reflecting a change of status. EXCEPT: periodic accounting.

B—Periodic Accounting — initial process of cases not involving a hearing in which agent has been assigned who must report status of case to Court.

F—Review Report — Review process of a case before the wrong registry.

The following activities REQUIRE a Judge’s participation. Therefore, you MUST supply the Judge’s I.D. # in the appropriate box.

G—Hearing — proceeding before a Judge or Judicial Agent that does not constitute a trial.

H—Default hearing — hearing before a Judge or Judicial Agent for final disposition of a case in default.

I—Remand Conference — activity before a Judge or Judicial Agent prior to a trial where principals gather to resolve procedural differences. (Includes settlement conferences.)

J—Court Trial Session—each day the principal in a case assembled before a Judge.

K—Court Trial Session—each day the principal in a case assembled for a trial session before a jury.

NEW STATUS

A—Active—Although a reportable activity has occurred OTHER than General Clerical, the status of the case has NOT changed. The case is awaiting further action from the court.

B—Case Filed—Number has been assigned to the case.

C—Request for Hearing — Court receives notice that a hearing is in a case as requested.

D—Request for Hearing — Court receives notice that a hearing in a case is requested.

E—Party ready for Court Trial — Plaintiff and/or defendant has notified the Court of their readiness for a Court Trial of a case.

F—Court Trial — Plaintiff and/or defendant has notified the Court of their readiness for a Court Trial of a case.

G—Scheduled for Trial — Case has been assigned a specific trial date.

H—Trial — Case has terminated, either by presentation of all evidence or final argument.

I—Adjudicated — Either the Judge or jury has made a decision in the case. Resulting from a trial or a settlement.

J—Proceedings — Case has been removed from active trial status. Use only with case on trial calendar.

M—Pending — Case is present not active in jurisdiction, however, the case has not been closed or terminated.

The following activities may include a Judge’s participation. If so, please supply the Judge’s I.D. # in the appropriate box.

P—Closed — Case has been closed, barring appeal, in a jurisdiction (includes termination of agent, docketing of judgments, etc.)

Q—Dismissed — A final disposition of a case, by a judicial order. Dismissal status closes a case.

R—Merged — Two or more cases have been physically combined into one case file.
Civil/Probate/Family Input Form Instructions

The Civil/Probate/Family Transaction report is a green/blue multiple part carbonless form packet consisting of four pages. As each reportable activity occurs on a case, the clerk should complete and submit one of the report forms, leaving the fourth (bottom) page in your court file as the court file permanent record.

A transaction report should be submitted whenever a courtroom activity or significant occurrence takes place with respect to a case. SJJS defines a significant occurrence as either:

a) the occurrence of any of the activities listed under Activity Type EXCEPT A—General Clerical, or
b) the change in a case as to any status(es) listed under New Status EXCEPT A—Active.

When three reports have been completed on a case, using up the original packet of forms, the next activity will be reported on a gold form. The gold forms are identical to the green/blue forms, except for the color and the absence of the SJJS Number in the upper right-hand corner. While this number is pre-printed in its entirety on the green packets, the SJJS number is not printed on the gold packets. The SJJS number, which is assigned to the case upon filing, remains the same for the life of the case. Each time an unnumbered transaction form is used, the SJJS number should be carefully transcribed onto the unnumbered form.

The following page shows the form as it appears on the copy that will remain in your court file.

The form is divided into three parts as follows:
A. Case Identification
B. Transaction Identification
C. Activity Identification

A. Case Identification

See Chart 1.

The first two lines of the form request information that identifies a specific case. This information need be supplied only once for every three transaction reports on a particular case. The identification section must be completely filled out regardless of the reason for submitting the report.

Court Case Number:

In this box enter the file or docket number assigned to the case at the time of the initial filing. This can be any number your court uses to identify the case as long as it is unique within your jurisdiction. Either alphabetic letters or numbers may be used. The length of this case number should not exceed ten digits, and/or letters with punctuation marks included. General Civil cases must include an identifying prefix as described subsequently on page two of the section entitled "Case Type Definitions."

Example: Court Case Number = PI 815692
Note: The number assigned when a case is filed should be the same number used to report any activity on this case through its final disposition (unless merged with another).

Court Type:
In this small boxed area, enter the letter that corresponds to the court having jurisdiction over the case as follows:

District Court = ENTER ‘D’
County Court = ENTER ‘C’
Municipal Court = ENTER ‘M’ (Hennepin and Ramsey Municipal Courts only)
Probate Court = ENTER ‘P’ (Hennepin and Ramsey County Probate Courts only)

All court cases should fit into one of these four categories and should be appropriately noted. Minnesota probate court is under the jurisdiction of county court in all counties except Hennepin County and Ramsey County. Therefore, the clerk filing reports for a probate court which functions under the jurisdiction of the county court would mark all transaction reports filed as Court Type = C. Hennepin and Ramsey County Probate Court filings should report a Court Type = P.

Minnesota county courts have, by Minnesota Statute § 487.19, concurrent jurisdiction in some cases with district court. These cases include the following:

a. administration of trust estates and actions relating thereto;
b. dissolution, annulment, separate maintenance actions, as prescribed by Ch. 518;
c. reciprocal support enforcement;
d. adoption and change of name, Ch. 259;
e. proceedings to quiet title in real estate and mortgage foreclosure actions.

When reporting your court activity as it relates to any of the above, please be careful to indicate under which courts’ jurisdiction you are reporting in the particular case.

SJIS Number:
This is an eleven digit number, the composition of which uniquely identifies a case in the SJIS system and will remain with the case from initiation to termination. The number will be pre-printed on the first set of forms used in each case. It is important when copying the SJIS number on subsequent transaction forms that care is taken to transcribe this number accurately. Transposition of numbers or other errors in writing the SJIS number may result in errors which take considerable time to correct.

It is essential that all transaction reports for a case bear the same SJIS number.

The first four digits of the SJIS number indicate your county, the SJIS
subsystem and city location and should be the same on all civil/probate/family forms submitted by your court.

The fifth digit of the SJIS number is called the "check" digit. It is by this number or letter that the computer can determine if the SJIS number has been transcribed accurately.

The last six digits are a sequential number of the reports within your county court location.

SJIS #
X X - X X - X - X X X X X
county subsystem city check sequential
digit number

It is not necessary to submit reports sequentially in order of SJIS number.

Case Title:

In this boxed area, please legibly print or type the caption, heading or sentence by which the case is known. If you desire to utilize the indexing function that SJIS will provide on request, you must adhere to very specific titling requirements which will be established by the SJIS Office. For further information about automated indexing, contact the SJIS Office. If you choose not to make use of that service, you may wish to standardize the manner in which you identify specific types of cases for your own ease in referencing cases. Some common examples of case titles include:

Case Type   Title
Dissolution . . . Jones, Mary vs. Jones, Tom
Probate . . . . . . IN the Matter of the Estate of Tom Smith
Commitment . . . . . IN RE Involuntary Commitment of John Doe

A maximum of 141 characters may be used for the case title. What this means is that the total number of letters, numbers, punctuation and spaces used to describe a case by its title CANNOT exceed 141. For example:

Mary Jones vs. Tom Jones = 24 characters

The reasons that being aware of the character limitation is important is that if the title exceeds 141 characters, YOU will want to abbreviate the title so that it is meaningful to your court rather than forcing SJIS to abbreviate it. Any abbreviation (et al, et ux, etc.) is acceptable as long as your court recognizes and understands its use.

For example, if the title of a civil case is: John Doe, and Mary Doe vs. Tom Smith, Bill Smith and Lloyd Smith, individually and doing business as The Smith Brothers, a Minnesota corporation, you will want to abbreviate the title so that you can recognize the case. An abbreviated example might be: John Doe vs. The Smith Brothers, et al.

B. Transaction Identification
The third line of the transaction form contains information identifying the transaction. See Chart 1.

Transaction 

This box should be completed with the sequential number of the report being submitted on this case (1st, 2nd, 3rd . . . . 99th). When you use forms to report case activity beyond the first three reports, you will fill in this box with the next sequential number each time a transaction form is submitted. In other words, once you have used the first three forms provided in the original form package, the next report that you complete will be Trans. # 4 (followed by 5, 6, 7 . . . . until all activity for the case is completed). If for some reason a report has been voided, continue the sequence with the next number when another report is required. Do not repeat the number that was voided.

Correct or Cancel:

ONLY in the event that a clerical error has been made in a previous report should this area be completed. Correct preceded by a [✓] indicates that you wish to change information on a previously submitted report. Cancel preceded by a [X] denotes that you wish to delete a previously submitted report. Enter the number of the report that you wish to change or delete in the small box marked Trans. #.

Error Correction Procedure

All transaction forms submitted to SJIS will be processed through several steps. It is possible to detect an error on the report at any point in the procedure. However, the two basic methods of error detection are as follows:

1. visual review of transaction reports by SJIS staff;
2. computer processing of data.

When a transaction form arrives at the SJIS Office, a member of the staff will review the form to check for completeness, legibility and invalid coding (bad dates, indeterminable selection of category, etc.). In the event that an error is detected at this point, the form will be flagged, set aside and accumulated by court location. A member of the SJIS Staff will take the incorrect or unacceptable forms and contact the originating agency in order to correct the data. SJIS will always try to reach the person who prepared the report to verify or correct the report, as this person will most likely be familiar with the reason for a specific notation.

Once the corrected or verified information is obtained by phone and corrected on the report, the form will be forwarded to the next processing step. It is advisable that the originating agency correct the court’s copy of the transaction form to reflect the proper information; thereby, facilitating subsequent reporting. Accuracy throughout the system is essential.

The second point at which an error may be detected is during the computer processing of the transaction reports. The information supplied to State
Court Administration on the SJD form will be entered into a computer system from terminals located at the SJD Office. Data entry personnel will enter the information into the computer daily as the transaction forms are received. The system is designed to detect errors so that no modification or update to SJD records can be completed unless all information on a transaction form is determined to be correct. Correction procedures for computer detected errors are identical to those previously described for manually detected errors. SJD personnel will contact the person who prepared the report to obtain correct information or to verify the information that was transmitted. Again, it is recommended that the clerk from the originating agency update the court copy of the form at this time.

Another important place where an error may be detected is at the originating agency. In the event that an error is detected by your office, the correction can be made by using the same transaction forms designed to submit the original information. The type of error which would most likely be detected within your office falls into one of the following types:

1. incorrect information;
2. mistakenly submitted transaction reports.

The first type of error occurs when inaccurate information about a case is submitted on a transaction report.

Examples: Incorrect date filed, judge identification number, or activity selection, etc.

To remedy this type of error, another transaction report should be submitted to correct the inaccurate data. In the Transaction Identification portion of the form, enter the next sequential transaction number, check the box preceding Correct and indicate the transaction number of the report to be corrected. Complete the remaining Transaction Identification fields indicating the correct or corrected data. The Person Preparing Report field should always contain the name of the person completing the form.

When submitting a correction report, the activity date should always indicate the date that the original activity took place.

For noting changes in the Activity Identification section of the form, it is only necessary to check the Case Type, Activity Type, or New Status that is being corrected. That makes it easier for the data entry technician to identify the information that is being changed.

Note: If there is a correction required in the case identification section of the form, include the incorrect data with the correct information immediately above it.

Original Report
See Chart 1.

Form Submitted to Correct Previous Transaction
See Chart 1.
The other type of error which will be most easily recognized by the originating agency is where the transaction report has been submitted by mistake.

Example: An activity report has been submitted reporting activity on the wrong case.

In order to cancel a previously submitted report, it is necessary to submit a separate transaction form with the same SJS number as the one to be canceled. The remainder of the information in the Case Identification section should be transcribed as noted on the transaction report being canceled. There is no need to fill in the Activity Identification section for a cancellation report. Complete the Transaction Identification section to appear the same as the one being canceled except for Person Preparing Report.

It is important that errors are detected and corrected as soon as possible since they have a 'snowballing' effect on the accuracy of the data. If a new case filing is rejected, all transaction forms submitted regarding the case that follow will also be rejected until the original report is correctly submitted. Therefore, correcting errors will be given priority in processing and court personnel should make every effort to clear them up as soon as possible. Of course, the optimum situation is where no errors are made; however, errors are anticipated on our part and yours. Therefore, every effort must be made to be as accurate as possible in our data reporting procedures and to deal with error correction expeditiously.

While the computer system attempts to determine all possible errors in each transaction, it is possible that there will be situations where an error may be corrected and resubmitted only to have another error detected. Before resubmitting corrected error transaction information, it would be advisable to verify as much of the data as possible—to prevent multiple rejection of the same report.

Finally, two points should be emphasized:

1. If you have a question about how to report an activity or filing or whether an activity is reportable, please call! Answering your questions in a case specific manner will help you understand the system and unique ways that activities can occur. There will always be someone available to answer your questions—and if we do not know the answer, you have our assurances that we will find the answer quickly.

2. If you start to complete a transaction form and find that you have made mistakes that cannot be legibly rectified on the form, please write 'VOID' across the form and submit the transaction form to SJS with the other forms from your court.

Person Preparing Report:

Legibly print or type your name in this box. This person will be the individual contacted by a member of the SJS Staff for information if there is any problem or error identified during processing of the report. It is helpful if you
enter a full first name rather than an initial, and a last name if necessary to distinguish between employees with the same name.

Current Judge Identification Number:

Enter in this box the identifying code number assigned to the judge or other judicial agent who participated in the activity you are reporting. It is required that this number be filled in whenever courtroom activity is being reported. You may also wish to use an identifying number when you are reporting clerical activity that involves the judge.

See the "Judge Identification Numbers" section for a list of the current judges and judicial agents and their assigned code identification numbers. A new list will be mailed to you whenever additions or changes are made.

If you do not know, or cannot find the number of a judge or judicial agent listed, please call the SJS Office and a number will be assigned.

All judges, referees, commissioners, or other judicial agents are assigned a unique number. This number represents the person rather than the office the person holds. Therefore, these numbers are never transferred from one judge to another.

When a judge or judicial agent from another county is temporarily sitting in your court or jurisdiction, please become familiar with his/her identification number and report activity accordingly.

Note: If a retired judge or a judge from another county hears cases in your court, it is your responsibility to report the activities or dispositions over which he presides. Likewise, you are NOT responsible for reporting judicial activity performed by a local judge if he/she is on assignment to another jurisdiction. The "host" clerk will report those activities.

If you are reporting activity on a case involving an appellate panel, report the judge identification number of the judge who is chairperson of the panel in the space provided for that number, and identify the other two judges in the extra space at the bottom of the "Activity Type" box.

See Chart 1.

Next Judge I.D. #:

Enter in this area the identification number of the judge who has been assigned continuing responsibility for the case at the conclusion of a reportable activity. If no assignment has been made, please draw a line through this area.

Activity Date:

Enter in this area the date on which the reported activity occurred. Since reporting is done as the activities occur, this date should be the same date as the date on which the transaction form is completed, except for the submission of cancel or correction reports. If for some reason there is a delay in filling out the transaction, it should be backdated to reflect the actual date of the activity being reported. In the case of reporting cancel or correct transactions, the activity date will be the date on which the original transaction form was submitted, unless the activity date is the information being corrected.
C. Activity Information

The third section of the transaction form supplies information regarding the type of activity that is being reported. This section is divided into three parts:

1. Case Type
2. Activity Type, and
3. New Status.

1. Case Type (check only one)

See Chart 1.
Under the category of Case Type, place a [ ] before ONE of the types of cases listed. See manual section "Case Type Definitions" for further explanation of the specific Case Type categories.

Note: If at a later date during the pendency of a case the case type should change, you would report the new case type only when an activity occurs.

For example: If an Unsupervised Administration changed to a Supervised Administration at the conclusion of a hearing, this activity or change in status would be reported.

See Chart 1.
For SJIS purposes, the prevailing case type would be that associated with the case at the end of the day.

2. Activity Type (check only one)

See Chart 1.
Under the category of Activity Type, you will be expected to check one of the eight choices for each transaction. If more than one activity occurs in one day, please note only the most "important" activity. For example, if a pretrial conference immediately precedes a Court Trial Session (same day), check only the box noting the Court Trial Session. As a general rule for the purpose of reporting case activity, the activity becomes more important progressing down the list. A trial session, either court or jury, will always be considered the most important activity of one day.

Activity Types generally fall into two categories: those involving a judge's participation and those not necessarily involving a judge. You may indicate the judge's identification number for any activity type; however, you MUST indicate his/her identification number if the activity was any of the following:

G1 Hearing
H1 Default Hearing
I1 Pretrial Conference
J1 Court Trial Session
K1 Jury Trial Session

By SJIS definition, these five types of activities require the participation of a judge, referee, commissioner or other judicial agent and therefore the
identification number must be supplied in the appropriate box on the transaction form. As always, if you have a question or comment in regard to a specific case or procedures in general, please call the SIJS Office for assistance.

See section entitled “Activity Type Definitions” for further explanation of the various types of activities.

3. New Status (check as many as apply)

See Chart 1.

Under the third category, New Status, check the proper entry to indicate the condition or standing of the case resulting from the activity which has just occurred. Multiple selections may be made if more than one status results during a day.

When more than one status is indicated, please note the sequence of their occurrence.

**Case Type Definitions (check only one)**

See Chart 1.

*General Civil:*

This term refers to the majority of civil cases filed within a jurisdiction—but specifically to those cases NOT covered in one of the other case type categories.

Included in this category would be the following case types, for example:

1. change of name;
2. conciliation court appeals to county court or county municipal court;
3. condemnation;
4. contract;
5. corporate dissolutions;
6. declaratory judgments;
7. discrimination;
8. implied consent cases;
9. malpractice;
10. minor settlements;
11. mortgage foreclosure;
12. personal injury;
13. property damage;
14. real estate tax petitions, (tax court cases are reported if they are venued in district court; however, hearings before a tax court judge are not reported);
15. real property;
16. receiverships;
17. replevin;
18. torrens;
19. unlawful detainer;
20. writs of attachment, certiorari, habeas corpus, mandamus, and prohibition;
21. wrongful death;
22. any other civil cases not covered in other case types. This list is not all-inclusive.

During the course of the weighted caseload study, clerks of court were requested to affix a prefix to the case or docket number for identifying the type of case beyond the general civil denotation. The prefix allows SJIS to acknowledge differences in processing time required for specific case types. Special programs were written to use the prefix data and continue to be available for future analysis. The prefixes must be reported on a permanent basis to enable re-calculations of judicial caseload indications developed from the weighted caseload study. In addition to being necessary for future weighted caseload calculations, prefixes will enable SJIS to provide clerk’s offices with more specific caseload analysis upon request.

The case type prefixes for general civil cases are as follows:

<table>
<thead>
<tr>
<th>Prefix</th>
<th>Specific Case Type</th>
</tr>
</thead>
<tbody>
<tr>
<td>PI</td>
<td>Personal Injury</td>
</tr>
<tr>
<td>CT</td>
<td>Contract</td>
</tr>
<tr>
<td>WD</td>
<td>Wrongful Death</td>
</tr>
<tr>
<td>MP</td>
<td>Malpractice</td>
</tr>
<tr>
<td>PD</td>
<td>Property Damage</td>
</tr>
<tr>
<td>CD</td>
<td>Condemnation</td>
</tr>
<tr>
<td>UD</td>
<td>Unlawful Detainer</td>
</tr>
<tr>
<td>IC</td>
<td>Implied Consent</td>
</tr>
<tr>
<td>OT</td>
<td>All Other General Civil</td>
</tr>
</tbody>
</table>

All reports on cases of the General Civil type must contain an identifying prefix in the docket number.

Transcript Judgment:

This term refers to a document which is issued by a county wherein a judgment is recorded in order to transcribe the matter to another jurisdiction for satisfaction of the indebtedness.

A judgment may be entered in a particular county where it cannot be satisfied due to the judgment debtor’s lack of property against which an execution could be levied. Under those circumstances, the judgment creditor could file a transcript of judgment in other counties in which he believes the debtor owns property. In doing so, the property can be made subject to levy and execution. In the majority of cases, reporting a transcript of judgment to SJIS will involve only one transaction form. However, in some instances supplementary proceedings and/or an order to show cause are filed in a transcript of judgment case. The case should continue to be identified as a Transcript Judgment, even though there may now be a hearing scheduled before the court. Foreign judgments should be reported as Transcript Judgment cases, and continue as
such through supplementary proceedings and order to show cause hearings. Transcript Judgment cases should not change to General Civil Case Type.

Default Judgment:

This term refers most frequently to those money judgments which are processed administratively in the clerk's office. This type of case occurs primarily when the plaintiff refrains from filing until the period for answering the complaint has run out and there has been a default. Also included in this category are confessions of judgment.

M.R.C.P. 55.01 (1)
When the plaintiff's claim against a defendant is upon a contract for payment of money only, or for the payment of taxes and penalties and interest there owing to the state, the clerk . . . shall enter judgment for the amount due and costs against the defendant.

This category does NOT include any marital dissolutions or separate maintenance cases.

A General Civil case can become a default judgment when the plaintiff files the summons and complaint immediately after service. A transaction report would be submitted at this time noting Case Type = General Civil; Activity Type = General Clerical; and New Status = Case Filed. After the statutory waiting period has expired, the plaintiff may file the necessary affidavits of identification, non-military, and costs and disbursements which allow the clerk to enter the matter as a default judgment. Upon entry of judgment, the clerk would report the following case activity: Case Type = Default Judgment; Activity Type = General Clerical; and New Status = Closed. You will note that the Case Type has changed from General Civil to Default Judgment. A case which begins as a Default Judgment should only change to a General Civil case when the judgment is vacated.

Trust:

A trust is defined as a right of property, real or personal, held by one party for the benefit of another.

Trust cases are typically opened when a petition for the appointment of a trustee is filed. Hearings are required periodically for the approval of annual accounts. In terms of reportable activity, trust matters are generally inactive until a periodic accounting is filed, a hearing takes place, final disposition of the estate is made and the trustee is discharged or until some formal court action has taken place to terminate the trust.

Upon the filing of each annual account a report should be submitted indicating: Case Type = Trust; Activity Type = Periodic Accounting; New Status = Dormant.

Appeal:

This case type refers to all civil and criminal county or municipal court
cases that are appealed to the district court under Minnesota Statutes § 487.39 and § 484.63. This category should be used by district court only.

Minnesota Statute § 487.39 provides:

1. that an aggrieved party can appeal from county court or county municipal court to district court;
2. that the appeal be confined to a typewritten record which may be shortened by stipulation;
3. that the district court shall, upon request, hear oral arguments and receive written briefs;
4. that the district court may affirm, modify or reverse, etc., a judgment or order on appeal.

Minnesota Statute § 484.63 provides:

1. that the appeal, as provided in Section 487.39, shall be heard by a panel of three judges who shall be assigned by the chief judge of the judicial district;
2. that the chief judge may schedule terms for the hearing of appeals with three weeks' notice given to the clerks in the counties in which the appeals arose;
3. that pleading, practice, procedure and forms in appellate actions shall be governed by rules of procedure adopted by the supreme court for appeal from county to district court.

All cases which are appealed to district court under either of the above mentioned statutes should be identified as a case type Appeal.

For SJIS purposes, the case being appealed from county court should be noted as Adjudicated and Closed in county court when it is initially completed since the occurrence of an appeal is not necessarily foreknown. When the appeal is received in district court, it should be counted as a new case filing on a new SJIS form.

Also included in the Appeal category are matters which may be appealed to the district court from other agencies, such as welfare appeals, administrative appeals, ditch appeals, and similar matters which do not originate in the lower court.

**Supervised Administration:**

This term refers to a completely formal procedure under continuous supervision of the court. The case opens with the filing of an estate for probate. The petitioner requests court supervision which may be required for a number of reasons: conflicts or controversies which may exist or be expected in the estate; possible disputes among heirs; cases where the estate is large and complex. With the filing of a petition in a supervised administration, a hearing is required for the appointment of a representative. After the representative is appointed, the estate is subject to continuous court supervision either on the court's own motion or on motion of an interested party. Interim orders of distribution may be made by the court throughout the administration on notice as required. The court’s administration is terminated upon the
entry of an order discharging the personal representative or administrator of the estate.

**Unsupervised Administration:**

An unsupervised administration is a proceeding where the formally or informally appointed personal representative has authority to handle all matters in the estate without further authority from the court. This type of probate matter usually occurs when an estate is relatively small or is expected to be routinely handled. An unsupervised estate is initiated on application to the registrar. A representative is appointed by the registrar on notice to interested parties. Further informal proceedings may be had before the registrar without notice. No formal hearings are required, although such hearings may be had before the court at any time upon petition and notice. This category includes both informal and formal unsupervised estates.

An unsupervised administration is normally terminated by filing a sworn statement subject to a six-month limitation. The court appointed representative is then discharged one year after such filing without any formal closing or hearing. Alternatively, a representative can proceed with a formal closing if any real property is involved. This type of formal termination of the estate is often requested by title companies to facilitate the future sale of property.

**Formal/Informal:**

Within the case type category of unsupervised administration, SJIS allows for a more specific delineation of whether the probate procedures are informal or formal in nature.

The request for formal or informal administration is noted on the petition which opens the case. Formal administration denotes some judicial involvement in the probate of the estate. A request for informal administration of an estate requires no judicial involvement and usually the estate can be administered by the personal representative with guidance given by the county’s probate registrar.

An unsupervised administration of an estate may change from formal to informal or vice versa during its pendency. This might happen when the personal representative petitions the court for help in answering questions that arise in administering the estate. This is allowed under Minnesota Statute § 524.3-401. Once the question has been answered, after notice has been given, the proceeding may once again resume on an informal basis. Changes between formal and informal unsupervised administration are noted by those designations on the transaction form. You may indicate whether the administration is currently proceeding formally or informally by checking the appropriate box under the Unsupervised Administration Case Type.

**Other Probate:**

Cases such as disclaimers, decrees of descent, special administrations, and summary proceedings do not by strict definition fit into either the Supervised or Unsupervised Administration case type. These are proceedings which
are governed by unique circumstances and, therefore, should be reported as Other Probate cases.

Guardian/Conservatorship:

This type of case is initiated upon the filing of a petition for appointment of a guardian or conservator for an incompetent and/or minor. The guardian/conservator may be appointed as guardian of a person or property. In guardianship cases, there may be hearings for approval of a final accounting, hearings on annual accounts, as well as hearings on extraordinary matters such as a change of guardian.

When there no longer is a need for any guardianship, the court may terminate the same upon notice. A guardianship may also terminate upon filing of a final account in the following:

1. If the ward dies, guardianship terminates and will sometimes be followed by an estate case.
2. If ward reaches age of majority, a petition may be filed for discharge of guardian.
3. If a ward has been restored to capacity and there is no further need for said guardianship, a final account will be filed and the case terminated.

Commitment:

This term refers to a case where a person is committed to an institution by reason of chemical dependency or mental incompetency. A commitment proceeding is initiated by the filing of a petition. Several types of hearings may follow including probable cause hearings, the actual commitment proceeding, requests for review of a commitment order by the party committed or a third person, as well as orders discharging the committed person where the institution fails to certify the need of hospitalization. For SJJS purposes, the case would normally be closed when a judge dismisses the original petition, or when the committed person is released from the institution.

Dissolution:

This term refers to all cases requesting the termination of a marriage. A case is typically opened when a petition for dissolution is filed and closed when a final decree is granted. During the pendency of the dissolution action, all changes in status should be reported as a Dissolution case type. Motions may involve custody or support matters, but as long as they are part of the dissolution proceedings, they should be identified as such. Any activity which takes place on a dissolution case through the final decree should be identified as Dissolution, with the exception of county attorney initiated support motions which should be identified as Support.

Included in this case type are cases terminating a marriage by annulment.

Once the final Findings of Fact, Conclusions of Law and Order for Judgment has been filed, and the case has been closed, any subsequent activity
involving the case should be identified as an Other Family case type. This encompasses motions for amendment of the original decree and enforcement of the provisions of the decree, including motions to enforce support payments which are based on the original decree, and not filed as a separate action.

Support:

This term refers to cases in which a petition is filed with the court for allowance for support.

This category of case type includes the filing of petitions for support under the Uniform Reciprocal Support Enforcement Act. Additionally included in this category are separate maintenance petitions and paternity actions.

If county initiated support actions are filed in a dissolution file, they should be reported as Support case type.

Paternity cases are to be categorized as Support actions for the entire time that they are pending, from the filing of the complaint through final disposition of the case.

The court may, among other things, order the parties to separate in terms of residence and designate the provisions of support for either party and minor children. It is not uncommon for a petition for support to change into a proceeding for dissolution. Such a change in case type is anticipated in the SJIS system and should be reported on a transaction form.

Motions to enforce support provisions in a dissolution case should be reported as Dissolution if they occur during the pendency of the action, or Other Family if they are post-decree.

Adoption:

This term refers to cases in which a petition is filed with the court for an order allowing a person to take a child or person into his/her family by legal process and thereby assume all the rights and duties as if between natural parents and legitimate child.

Other Family:

The Other Family case type encompasses a number of situations: post-decree motions in dissolution cases; domestic abuse cases; cases involving parental notice for abortions; petitions for review of foster care; and any other family court matter that does not fall into the Dissolution or Support Case Types.

Following the closing of a dissolution (the filing of the judgment), all activities which take place on that case should be reported as Other Family. All motions to enforce or amend the decree are reported with a case type of Other Family and an OF prefix once the dissolution has been reported closed. An exception to this reporting rule involves county attorney initiated support actions which are filed in the original dissolution file; these should be reported as Support matters.
The Domestic Dispute or Abuse Act, from the 1979 Laws, Chapter 214, enables a family member to seek an order for protection directly from the court, in cases of abuse or sexual assault. The law provides that there must be a hearing within 14 days providing such relief as the court may order. Actions allowed by this statute should be designated as Other Family cases, with a DA prefix preceding the court case number.

Cases filed regarding parental notice for abortions are to be reported as Other Family with a docket number prefix of PN. Parental notice was established by Chapter 228 of the 1981 Session, 144.343, subd. 6.

The review of foster care status of certain children under MS 257.071 and 260.131 should be reported on a civil transaction form with a case type of Other Family and a docket number prefix of FC. Although revisions to the law have placed these cases under the jurisdiction of the juvenile court, they are to be reported as Other Family cases because SJJS does not have an Other Juvenile case type on the juvenile transaction form.

All Other Family cases should include a specified prefix to identify the type of action being reported.

The case type prefixes for Other Family cases are:

- Prefix: Specific Case Type
- DA: Domestic Abuse
- PN: Parental Notification—Abortions
- FC: Foster Care Review
- OF: Post Decree Motions, all other

**Activity Type Definitions (check only one)**

**General Clerical:**

This category is designed to be a catch-all for clerical work which results in a status change in a case without courtroom activity. One of the purposes of the system is to trace the progress of cases in the court system. Therefore, clerks will not be required to report case activity of a clerical nature unless the activity changes the status of the case. General Clerical is the only category for reporting solely clerical activity.

Example: In a personal injury case, the plaintiff decides that he no longer desires to pursue the action and files a dismissal with or without prejudice. When the clerk’s office receives this dismissal document, a transaction report should be completed indicating the following information: Case Type = General Civil; Activity Type = General Clerical; and New Status = Dismissed.

See Chart 1.

A transaction report is submitted reporting a General Clerical activity only if the status of the case is changed. The combination of a General Clerical Activity Type and a New Status of Active is NOT acceptable, as it does not reflect any significant change in status.
Periodic Accounting:

This activity refers to the review process of cases in which an agent, trustee, etc., (who has been appointed), must report on the status of the case to the court. This process is reported only in Trust or Guardian/Conservatorship cases which require court supervision over a period of time, and require the filing of annual accounts.

If the accounting takes place at a hearing, that activity should be reported as hearing rather than periodic accounting.

Example: It is anticipated that an Activity Type of Periodic Accounting would be reported annually in Trust matters when the trustee petitions the court for approval of the year’s accounting of funds. The clerk would complete the transaction report.

See Chart 1.

Dormant, as defined in a subsequent section of this manual, notes that the case, although open in a jurisdiction, is not awaiting court initiated activity.

Note: Periodic Accounting should not be reported in reference to estate cases.

Registrar Review:

Registrar review may be noted when the probate registrar meets with the principals in an estate to make a determination regarding the status of the case. The designation of this activity type may involve a determination as to the suitability of the matter to proceed unsupervised, a review of the progress of the case, or the registrar acting in an advisory capacity. There will be no judge identification number associated with Registrar Review.

Hearing:

Hearings are defined as court proceedings before a judge or judicial agent that do not constitute a trial.

The term encompasses a wide range of matters, including, but not limited to the following examples:

1. change of name;
2. garnishments and replevin;
3. temporary support and custody;
4. writs and injunctions;
5. hearings to consider modification or review of a previous order or disposition;
6. hearings to determine jurisdiction of a matter;
7. hearings on motions prior to or after trial, for discovery, suppression of evidence, vacation of judgment, temporary orders, continuance requests, or special term matters, etc.;
8. adoptions;
9. unlawful detainers.
In some instances, there may not be a clear distinction between a hearing and a court trial. If doubt exists regarding which to report, one of the factors to consider is whether sworn testimony has been taken. Although there are many hearing situations where testimony is taken, this rule may help you to decide which activity type to report in those cases which are questionable. Another guideline is that a hearing is often held to consider partial issues in a case, while the final disposition of a case generally involves a trial, with the exception of matters which are established to be in default.

SJS further defines a hearing to be a proceeding of relative formality, generally open to the public, involving issues of fact or law to be decided by the presiding judge or judicial officer.

A hearing is characterized by the following:

a. One or more of the attorneys or parties to the matter must be present;
b. The event will usually be scheduled in advance as opposed to a "drop by" ex parte matter;
c. Notice must have been given to any party proceeded against;
d. Typically is accompanied by motion papers including but not limited to:
   1. Notice of motion;
   2. Motion;
   3. Affidavit;
   4. Affidavit of service.

Expressly excluded are ex parte hearings or occasions when a hearing was scheduled and in the absence of an appearance by any of the parties, the judge signs an order deciding the issue.

Default Hearing:

This term indicates that a hearing has been held before a judge, referee, commissioner or judicial agent in a matter which has established itself to be in default. The term includes hearings in default dissolutions, separate maintenance actions, unlawful detainers or other civil cases where evidence is taken to establish a right to relief or amount of relief. Expressly EXCLUDED from this category are default money judgments where the clerk enters judgment without court order.

Example: A common situation where the reporting of a default hearing would be required is the case of a marriage dissolution where the respondent has stipulated to allow the petitioner to proceed with the matter as a default case. The petitioner would then request a default hearing of the court at which time he/she would appear (having previously filed a stipulation) and present final papers to the court to sign after entering certain information into the court’s record. The courtroom clerk would complete a transaction report noting the default hearing and whether or not final disposition occurred.
Pretrial Conference:

Under Minnesota Rules of Civil Procedure, Rule 16, the court may, at its discretion, direct the attorneys for the parties to appear before the court for a conference. In this conference setting, the court may consider any or all of the following:

1. simplification of the issues;
2. necessity or desirability of amendments to the pleadings;
3. possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof;
4. limitation of the number of expert witnesses;
5. advisability of a preliminary reference of issues to a referee;
6. such other matters as may aid in the disposition of the case; and finally,
7. possibilities for settlement prior to trial.

A report of pretrial conference should be typically followed with one of the following New Statuses depending on the circumstances: [✓] Active (indicating that future judicial activity is to take place soon); [✓] Scheduled for Court or Jury Trial (if the scheduling is a result of that pretrial); [✓] Adjudicated (if the judge is asked to make some sort of decision on the issues discussed in the pretrial and has done so); or [✓] Stricken (should the previous report of [✓] Party Ready for Trial or [✓] Scheduled for Trial no longer apply).

If a pretrial conference immediately precedes the trial (on the same day), the courtroom clerk should report only the major activity of the day in the column Activity Type. Under such circumstances the report should indicate [✓] Court Trial Session or [✓] Jury Trial Session rather than [✓] Pretrial Conference.

Court Trial Session:

This term will indicate EACH day the principals in a case assemble before a judge without a jury for trial of the issues. A court trial begins with opening statements by counsel. The term does NOT include default cases where evidence is taken solely to establish the right to relief or amount of relief. (See definitions for Hearing and Default Hearing earlier in this section.) A Court Trial Session has ended when the matter is submitted for determination. At that time the transaction report should indicate a New Status of [✓] Trial Concluded, whether the matter is decided or taken under advisement.

Note: A courtroom activity regarding an unlawful detainer matter should be reported as a hearing, not as a court trial session, unless a trial is requested at the initial hearing.

Jury Trial Session:

A jury trial is the trial of a case to a jury which is summoned and impaneled to consider the issues and facts of that case. A jury trial session is considered to have begun when a case is called for trial and the preliminary oath has been administered to the jury. Voir dire is included as part of the jury trial. [✓] Jury
Trial Session should be marked noting EACH day that the principals in a case assemble in court from the preliminary oath through submission of the case. The term includes cases disposed of by any method (settlement, dismissal) which occurs after the jury has been given the preliminary oath.

**New Status Definitions**

The New Status Definitions are broken down into three general areas which describe the case status level: active; dormant and closed. The new status categories have been grouped on the transaction form to coincide with those three activity levels as follows:

- **Active**
  - A Active
  - B Case Filed
  - J Party Ready for Court Trial
  - K Party Ready for Jury Trial
  - L Scheduled for Trial
  - H Trial Concluded
  - I Adjudicated

- **Dormant**
  - G Stricken
  - M Dormant
  - P Closed
  - Q Dismissed

- **Closed**
  - R Settled
  - S Change of Venue
  - T Abated
  - X Merge

When SJIS refers to a case by the general term of active, as opposed to the specific choice of Active under the New Status column, it means that the court has the ability and/or responsibility to move the case through the system. The court has that responsibility whenever it has received notice that the parties are ready for trial. The case would also be active if it were under advisement following courtroom activity or awaiting submission of documents. There may be times when it does not seem as though the court has any control over a case, but in actuality it does have a responsibility to see that the case progresses.

Dormant is a sleeping, or inactive status. Although the case has not been terminated in your jurisdiction, the court does not have the ability to do anything about moving the case any faster through the system. The court has no responsibility to move the case until it receives notification from the litigants. In other words, the case is still pending even though it is not considered to be active at this point.

Closed, in general, means that a case is presumed to be terminated in your jurisdiction. Any of the last six statuses under the New Status column indicate a closing of the case. However, the fact that you have reported a closing does not necessarily preclude reopening the case at a later time. The case could have further activities and subsequent closings reported.
There are some case types which, upon filing, are assumed by the computer to be active, pending cases. You will remember that by active SJJS means that the court has control, i.e., the ability to move the case through the system. Those case types which are assumed to be active upon filing include the following:

- Transcript Judgment
- Default Judgment
- Trust
- Appeal
- Supervised Administration and Unsupervised Administration
- Other Probate
- Guardianship/Conservatorship
- Commitment

If the clerk determines that a case of one of these types is actually in a dormant status at filing, (i.e., it is not within the court’s power to move the case to the next milestone), this must be indicated on the report by checking Dormant.

Note: All probate cases are considered to be either settled or unsettled in the system. Consequently, probate cases will appear on the pending report at all times after the filing until a closing report is received.

By the same token, certain cases are automatically designated by the system as dormant upon filing. Dormant indicates that although the case is still pending in your jurisdiction, the court does not at this point have the ability to move it any faster through the system. The following case types are assumed to be dormant upon filing:

- General Civil
- Support
- Dissolution
- Adoption
- Other Family

Consequently, when one of these cases is filed, you do not need to check Active or Dormant in addition to Case Filed. These statuses will be automatically assigned by the computer until a report is received which changes the status.

**Active:**

This term is used to describe the status of a case as it awaits further action from the court. This status should be reported whenever an Activity Type occurs (other than General Clerical) but the status of the case remains unchanged. In other words, a reportable activity has occurred, but there has been no subsequent change in case status. *When you are indicating Active on the form, you should not check any other New Status. Active is a designation which is used only when no other choice in the New Status column applies.*
Example: When a General Civil matter is being tried to the court and the trial takes two days, the courtroom clerk should complete a transaction report for each day of the trial as follows:

Day One: Case Type = General Civil; Activity Type = Court Trial Session; and New Status = Active.

See Chart 1.

Day Two: Upon the conclusion of the trial on the second day, the transaction form submitted would read: Case Type = General Civil; Activity Type = Court Trial Session; and New Status = Trial Concluded, Adjudicated and Closed (if final papers were submitted and signed.)

See Chart 1.
The New Status of Active should be reported for each day of the trial until a new status is assigned to a case. There is no limit on the number of days that Active can be reported. Care should be taken, however, not to report activity on a case when in fact the court has been adjourned for the day. For example, if a trial has begun in your courtroom and then is adjourned for three days, you would report a trial session for the first day; nothing for the following three days; and then a report for each subsequent day of trial activity.

Case Filed:

A case filing occurs when a case is formally registered and assigned a docket or file number by the clerk of court. Generally, the status of Case Filed will be the first notice to SJJS of a case in your court. The filing of the case should correspond to the date that the court case number is assigned to the matter. It is anticipated that often a report of Case Filed will also indicate other New Statuses such as: Party Ready for Trial (multiple New Statuses), etc.

Example: In the filing of a default judgment, the transaction report would typically read: Case Type = Default Judgment; Activity Type = General Clerical; and New Status = Case Filed, Closed.

See Chart 1.
When the only activity that occurs is a filing of the original pleadings, thereby opening the case, the transaction report would indicate the following: Case Type = check one; Activity Type = General Clerical; and New Status = Case Filed.

Request for Hearing:
The Request for Hearing status should only be used when reporting implied consent cases. It is necessary to report Request for Hearing on implied consent matters to cause their appearance on the Civil Case Pending Analysis.
report. When the case is filed, the first transaction should have Request for Hearing checked in addition to Case Filed. Each subsequent continuance of the review hearing should be reported by checking Request for Hearing; if the continuance is requested by phone or mail, the activity type should be General Clerical and the new status Request for Hearing.

Do not check Request for Hearing with any cases other than implied consents. This status is used only with implied consent cases in order to utilize the pending report as a means of monitoring them.

**Party Ready for Court Trial:**

This status should be reported when either the plaintiff or defendant, or both parties to an action, notify the court of their demand for a court trial. Although the procedures vary throughout the state, the readiness of a party for trial is usually noted by the filing of a note of issue and/or a certificate of readiness for trial. Minnesota Rules of Civil Procedure, Rule 38.03 superseding a part of Minnesota Statute 546.05, requires that:

"...the party desiring to have an action placed on the calendar for trial shall, after issue is joined, prepare a note of issue setting forth the title of the action, whether the issue is one of fact or of law, and if an issue of fact, whether it is triable by court or by jury, and the names and addresses and the telephone numbers or the respective counsel, and shall serve the same on counsel for all parties not in default and file it, with proof of service, with the clerk.

The clerk, upon receipt of such notice, shall report this activity to SJIS. It is possible that the readiness for trial of parties to an action could be determined during a hearing and, therefore, noted on the basis of verbal remarks. There need to be, for SJIS purposes, any corresponding document on file, such as the note of issue, to generate a report of Party Ready for Court Trial. This status report will trigger an automated mechanism for statistical purposes which will calculate the length of the court calendar in a particular jurisdiction. Placing a case on a trial calendar status is one of the most important statuses or milestones that a case achieves in its progress through the court. Therefore, accurate reporting of a party's readiness for trial is important and should be handled accordingly.

Another somewhat unusual situation which would require the reporting of this New Status is the receipt by the local clerk of court of a mandate from the Supreme Court remanding a case to the court for a new trial. If the case in question were a civil matter, the transaction form would read as follows: Case Type = General Civil; Activity Type = General Clerical; and New Status = Party Ready for Court Trial.

See Chart 1.

**Party Ready for Jury Trial:**

This status should be reported when either the plaintiff or defendant, or both parties to an action, notify the court of their demand for a jury trial as stated in Minnesota Rules of Civil Procedure, Rule 38.03. As in the instance of a
court trial, Party Ready for Jury Trial may be reported whenever the court places a case on the general term (trial) calendar, regardless of the means of notification of readiness. The number of cases on your jury calendar report is triggered by this notification to SJIS. A transaction report noting Party Ready for Jury Trial should be reported whenever the court places a case on the jury trial calendar.

Scheduled for Trial:

This category should be noted when the court assigns a specific trial date to a case. Again, it is acknowledged that procedures vary as to the method by which a trial date is assigned. This New Status is meant to denote the point in time at which the court schedule has been completed noting a trial date for a specific case. Any reference to "trial date" is defined to include day certain trial settings or general alert assignments.

Notice of the trial setting may be given to interested parties in several ways. Scheduled for Trial as a New Status should be reported to SJIS on the day that one of the following happens:

1. The clerk sends written notice to the parties attorneys that a trial date has been assigned to a particular case;
2. The judge signs an order setting the trial date of a case;
3. A notice is posted, according to the court's procedure, notifying the parties of upcoming trials; or
4. Any other method that the court employs to notify parties of an imminent trial.

If then, for example, your court posts a list of all cases that it expects to reach in the next month, etc., you, as the court deputy, should report on individual transaction forms all cases on that list that have been Scheduled for Trial.

Trial Concluded:

This New Status should be noted whenever a trial, either to the court or to a jury, finishes its courtroom activity. Trial Concluded should be reported when all evidence has been introduced and final arguments have been presented. Trial Concluded in no way implies that a decision has necessarily been reached by either the presiding judge or the jury. (The point at which the decision is reached or the verdict is reported as a New Status = Adjudicated—See definition of Adjudicated.) As previously stated, several new statuses commonly occur in one day and should be reported on ONE transaction report in sequence of their occurrence. Do not indicate Trial Concluded if the case settles out mid-trial, or if a mistrial is declared.

Note: Do not use Trial Concluded in combination with an Activity Type of Hearing.

Example: If a trial concludes and the judge indicates that he/she is taking the matter under advisement, the transaction form would report:
Case Type = check one; Activity Type = Court Trial Session; and New Status = Trial Concluded.

Adjudicated:

This status denotes the day on which a case or issue is determined or decided by the judge or jury. An adjudication results from a hearing or trial and represents a decision by a judge or jury. This does not necessarily mean there has been a final determination of a case. There should be an adjudication reported any time there is a hearing or trial followed by a decision. A trial to a jury is most often adjudicated by the rendering of a verdict.

Example: In reporting the conclusion of a trial immediately followed by the judge rendering a verdict from the bench, the transaction report would appear as follows: Case Type = check one; Activity Type = Court Trial Session; and New Status = Trial Concluded, Adjudicated, and Closed—(if final papers are signed.)

Example: If in a personal injury case, a trial is concluded and the jury begins deliberations which continue until the judge sends the jurors home for the night, the courtroom clerk reports a transaction as follows: Case Type = General Civil; Activity Type = Jury Trial Session; and New Status = Trial Concluded.

On the following morning the jurors assemble to resume their deliberations and shortly thereafter reach a verdict. The clerk would, if the verdict was received by the clerk, submit an additional transaction form indicating the following: Case Type = General Civil; Activity Type = General Clerical; New Status = Adjudicated, Closed (if a verdict was signed or other final papers were submitted and signed by the judge.)

If the parties assemble in the courtroom and the verdict is read, the report should reflect the following: Case Type = General Civil; Activity Type = Hearing; New Status = Adjudicated, and Closed if appropriate.

There may be more than one reporting of Adjudicated on any particular case. Any time the judge makes a ruling on an issue in the case resulting from courtroom activity, it should be reported as Adjudicated.

Stricken:

This term denotes the fact that a case has been removed from the active trial calendar. It would be reported only in cases where there has been a note of issue filed and the case has been placed on the general term calendar. If you do not require a note of issue, Stricken would be indicated only after there has been a Party Ready for Court or Jury Trial reported or the case has been scheduled on the active trial calendar. Striking a matter from the calendar does
not in itself constitute a termination of the action. Often, a case that has been stricken can be reinstated by filing a new note of issue or upon motion for reinstatement.

A court may strike a case for a variety of reasons. A common example of a reason to strike a case would be the situation where a party has noted his/her readiness for trial when in fact, further discovery needs to be undertaken. Depending on court procedures, the case could then be stricken until readiness for trial was achieved. As noted above, when the party(ies) achieved the readiness for trial status, a new note of issue might be filed and appropriately reported, or a motion might be made to reinstate the case on the active trial calendar. Statistically, a stricken case is considered inactive until the court or the parties take some action to reactivate the matter.

Another circumstance which would cause a case to be stricken would be when the parties believe a settlement will be reached (although the settlement has not been perfected) and they want to relieve the pressure of an imminent trial to facilitate settlement negotiations.

Example: In a civil case, if the above circumstances existed, a transaction form would be submitted to SJIS to note that the case has been stricken as follows: Case Type = General Civil; Activity Type = General Clerical; and New Status = Stricken.

See Chart 1.

In the above example, if a settlement subsequently was reached, an additional transaction form would be submitted noting the following: Case Type = General Civil; Activity Type = General Clerical; and New Status = Settled.

See Chart 1.

It is important to remember that Stricken should be used only with reference to the trial calendar. Do not report as stricken a case which is not on the trial calendar.

Dormant:

This term is used to describe a case which is inactive in a jurisdiction. Dormant indicates that the case is at a stage where the court actually has no control over its progress. However, a report of dormant does not close the case permanently. Dormant will often be used to report the status of a trust or probate case which after being filed will experience many periods of inactivity. Dormant should also be reported between activities on civil or family case files which have not been noted at issue. Although a case is inactive or dormant, it is not closed or terminated.

Example: In a trust case, a petition for appointment of trustee is filed. Annual accounts are filed every year and after five years, the trustee
petitions the court for approval of the accounts. The periodic approval of the accounts would be reported as follows: Case Type = [✓] Trust; Activity Type = [✓] Periodic Accounting; and New Status = [✓] Dormant.

See Chart 1.

Generally, a Trust case continues to be considered open. However, the status of the case is dormant until termination of the trust.

A transaction report noting the appropriate Case Type and Activity Type, and [✓] Adjudicated, [✓] Dormant, should be submitted for a case following a hearing if the case is not on the trial calendar. In this manner, the report of Dormant will remove the case from the active status it achieved when the hearing was reported.

It is very important that a case be designated as [✓] Dormant when appropriate. If [✓] Dormant is not reported on a case which the court does not have responsibility for, it will continue to appear as an active case on the pending reports, indicating that the file is awaiting some action from the court.

The following New Statuses indicate that a case is closed. After case closure, any subsequent reports would require a reopening or reinstatement of the case. When one of these statuses is reported, the case is finished in your jurisdiction. Any subsequent action that should take place regarding that case would require a reopening of the case, and the submission of a report indicating same. There should not be two consecutive reports of new statuses indicating closed unless there is a corresponding activity. Once a case is closed there would have to be a report of some activity which reopens the case before you would indicate another closing. You may have more than one closing on a case, but only if an activity has taken place to reactivate or reopen the case.

Closed:

With this designation, the system will be able to isolate those activities that result in the formal closing of a case. This category should be used to report a final order, decree, or other document when it is received by the clerk officially terminating or otherwise disposing of the case. Expressly NOT included in this category would be any intermediate order that might be rendered on a motion which does not determine the final outcome of a case.

Note: A case remains closed even though an appeal has been filed.

Dismissed:

This category includes the dismissal of a case by order of the court on its own motion, or on a motion of a party to the case, or other dismissal by which the clerk is notified that the case has been finalized. A partial dismissal would not be included in this category as it would be thought of as an intermediary disposition of the case pending a final determination. Once again, there need not be any corresponding document in the court file to indicate a status of dismissal. If a judge dismisses a case verbally from the bench, a transaction report of Dismissed would be required.
Settled:

A report of [☑] Settled indicates that all parties to an action have reached an agreement and no longer wish to continue court proceedings in the case. This agreement can be reached either prior to or during trial. For SJJS purposes, both formal and informal settlement acknowledgments should be reported. If an attorney calls the clerk to report a matter as having been settled, the clerk should complete the SJJS transaction form at that time rather than waiting for the submission of settlement documentation. Similarly, if the clerk receives notice of a settlement in the form of a written notice or stipulation, the clerk should complete the transaction form indicating settlement of the case.

It is important that any notice of case termination to the clerk is immediately reported to SJJS so that the record of a case is terminated for statistical purposes and is no longer “pending” in a jurisdiction.

Change of Venue:

This category under New Status refers to the situation where the venue of a case has been changed to a jurisdiction other than that in which it was originally filed. [☑] Change of Venue is a closing in and of itself. The case is actually transferred to another court for determination. Most often a [☑] Change of Venue would occur where there was a finding by the court that it lacks jurisdiction to hear the matter. Often the court will sign a formal order changing the venue of the matter, although this formal documentation is not essential for reporting this New Status. Under Chapter 542 of the Minnesota Statutes the court can automatically transfer the venue or jurisdiction of a civil case upon demand of one of the parties to the case. In any case, a report of [☑] Change of Venue would indicate that the matter has been concluded in your court.

A typical situation where venue would be changed to another jurisdiction would be the filing of a summons and complaint in county court. Subsequently, a counterclaim is filed which requests a monetary recovery outside of the statutory jurisdiction of county court, and the case will be heard in district court. The county court case must now be reported to SJJS.

See Chart 1.

When the case which was originally venued as a county court action is transferred to district court and is opened in district court, it should be reported on a new SJJS form as [☑] Case Filed. Even if the district court does not assign a different docket number, it must be reported as a new case at the district court level. The date filed should reflect the date that the case is opened in district court.

The District Court, upon receipt of the case from the county court, would report.

See Chart 1.

Note: Cases which are on appeal should not be reported as [☑] Change of Venue.

Note: A New Status of [☑] Change of Venue should NOT be used to report a change in Case Type. This status should NOT be used in reference to a
Transcript of Judgment when the judgment is transcribed to another court. Change of Venue should also NOT be indicated when a URESA case is being transferred to another location by reason of the defendant’s residence.

Abated
Do NOT use this New Status category.
Abated is reserved for future use. When adopted, it will note cases that have been filed with the court and have shown no evidence of activity for a specified period of time so as to allow the court to terminate the matter by judicial order. More will be said about this category when the necessary legislation or judicial activity has been initiated to allow its use. Prior to its implementation, an update of this section will be distributed.

Merge:
The New Status of Merge should be reported to SJIS only when two or more cases are being physically consolidated into one file, resulting in one docket number which will continue in use. The SJIS number of the case being assimilated into the other is the one that should be submitted with Merge identified. The SJIS number of the report that identifies the combined file should be placed in the brackets provided after the Merge status.

When a case is reported as Merge it is closed on the system and any further activity on the case will now be combined with the records of the dominant case. Since two cases being merged together do not necessarily have identical case histories, you must remember that any status that was reported on the merged case prior to and including the Merge report will no longer be reflected unless it is the same as the status of the dominant case.

We encourage you to examine the previous transaction reports on each of the cases involved in the merge so that the dominant case appears as active, dormant or closed when appropriate. For instance, a single transaction report indicating Scheduled for Trial, Merge would not leave the case in a status indicating the case was awaiting a trial. The Merge status would close the case and cancel that scheduled status.

When you merge a case, make sure that the status indicated on the dominant case appropriately reflects the standing of the entire case following the merger.

The following list should give you some typical examples of the types of closings that would be indicated for different case types under various circumstances:

<table>
<thead>
<tr>
<th>Case Type</th>
<th>Document</th>
<th>Report</th>
</tr>
</thead>
<tbody>
<tr>
<td>General Civil</td>
<td>Findings of facts</td>
<td>Closed</td>
</tr>
<tr>
<td></td>
<td>Verdict</td>
<td>Closed</td>
</tr>
<tr>
<td></td>
<td>Stipulation of dismissal resulting from settlement</td>
<td>Settled</td>
</tr>
<tr>
<td></td>
<td>Order for dismissal</td>
<td>Dismissed</td>
</tr>
<tr>
<td></td>
<td>Order for change of venue</td>
<td>Change of Venue</td>
</tr>
<tr>
<td>Category</td>
<td>Description</td>
<td>Status</td>
</tr>
<tr>
<td>--------------------------------</td>
<td>-----------------------------------------------------------------------------</td>
<td>----------</td>
</tr>
<tr>
<td>Transcript of Judgment</td>
<td>Transcript</td>
<td>Closed</td>
</tr>
<tr>
<td>Default Judgment Trust</td>
<td>Judgment</td>
<td>Closed</td>
</tr>
<tr>
<td>Appeal from County Court</td>
<td>Order discharging trustee</td>
<td>Closed</td>
</tr>
<tr>
<td>Supervised Administration</td>
<td>Order affirming or remanding</td>
<td>Closed</td>
</tr>
<tr>
<td>Unsupervised Administration</td>
<td>Order discharging personal representative</td>
<td>Closed</td>
</tr>
<tr>
<td>Guardianship/Conservatorship</td>
<td>Personal representative’s sworn statement to close estate</td>
<td>Closed</td>
</tr>
<tr>
<td>Commitment</td>
<td>Order discharging guardian</td>
<td>Closed</td>
</tr>
<tr>
<td>Dissolution</td>
<td>Hospital report—indicating release of patient</td>
<td>Closed</td>
</tr>
<tr>
<td></td>
<td>Dismissal of petition</td>
<td>Dismissed</td>
</tr>
<tr>
<td></td>
<td>Findings of facts, conclusions of law and order for judgment</td>
<td>Closed</td>
</tr>
<tr>
<td></td>
<td>Notification of reconciliation</td>
<td>Closed</td>
</tr>
<tr>
<td>Support</td>
<td>Order and decree (Those reciprocals which are opened in your county and sent to another jurisdiction are closed upon filing.)</td>
<td>Closed</td>
</tr>
<tr>
<td>Adoption</td>
<td>Order and decree of adoption</td>
<td>Closed</td>
</tr>
<tr>
<td>Other Family</td>
<td>Order adjudicating issue</td>
<td>Closed</td>
</tr>
</tbody>
</table>
APPENDIX D

Examples of Delay Reduction Plans

1. Vermont Experimental Plan

Introduction

The Vermont delay reduction experiments have been extensively documented. They are included as an example both because of these studies and because the five documents which follow are illustrative of many of the concepts mentioned in this text.

Because the plan required modification of existing statewide policies and procedures, it was implemented from the state level. Thus, Administrative Order 22, which is the first item included, is a program authorization and a program description written at the State Supreme Court level.

The plan which is presented by Administrative Order 22 is very similar to the provisions of the Court Delay Reduction Standards. The Vermont program is an example of one form of incremental implementation, implementing a whole program in less than the whole jurisdiction (state).

The press release from the Supreme Court of Vermont and the letter from Judge Martin to the trial lawyers are examples of two techniques for bringing the delay reduction plan to the attention of the public and the "local legal culture."

The memo to the Supreme Court Justices from Administrator Suskin not only shows the success of the plan, but also demonstrates how modifications were made to the original plan to meet problems which were identified after implementation had begun.

Judge Martin’s letter to the Chief Justice illustrates one method of "spreading the ownership" by acknowledging the contributions to success made by many people. This letter also illustrates the technique of implementation by the adoption and completion of successive sets of interim goals.

The following are authors and titles of two articles on the Vermont program which are included in the Selected Bibliography of this book:

133
Connolly & Smith, "The Litigant's Perspective on Delay: Waiting for the Dough"

Smith & Connolly, "Achieving and Maintaining Currency: A First-Year Examination of Vermont's Trial Court Program"

Complete citations for these articles are contained in the Selected Bibliography.
Administrative Order No. 22

Supreme Court
June Term, 1981

Special Procedures for Washington Superior
Court—September, 1981 and March, 1982 Terms

Pursuant to the Vermont Constitution, Chapter II, § 37 and to promote the just, speedy, and inexpensive determination of civil actions in the Vermont trial courts, the Supreme Court authorized for one year the implementation of certain special procedures in the Washington Superior Court. The procedures shall be as follows:

§1. Policy and Goals.

The goals of the procedures established shall be to:

a) Dispose of 80% of all civil cases, covered under this order and filed on or after July 1, 1981, within one year from date of filing;

b) Dispose of 80% of all civil cases covered under this order and filed before July 1, 1981 by July 1, 1982; and

c) Dispose of 50% of all civil cases which go to jury trial within the periods established in (a) or (b) whichever applies.

The special procedures are authorized as an experiment to determine whether more flexible scheduling rules, accompanied by court control of the progress of a case, will produce more speedy and effective justice for litigants in Vermont courts. The procedures should be implemented with reasonable accommodation to litigants and their counsel.

§2. Applicability. These procedures provided herein shall apply to cases entered upon the civil and miscellaneous parts of the civil docket. They shall not apply to those entered upon the divorce part of the civil docket or upon the criminal docket. The presiding judge of the Washington Superior Court may exempt additional categories of cases from the operation of the procedures by written order, a copy of which shall be distributed pursuant to § 9 of this order.

§3. Cases Filed After the Effective Date of this Order. Cases filed after the effective date of this order shall be governed by the following procedures:

a) Scheduling Conference. After all pleadings are filed in an action, the court will hold a scheduling conference. At the conference, the court will evaluate the complexity of the action and the time necessary to prepare the case for trial. Based on its evaluation, the court shall:

(i) Set a date or dates by which all pretrial motions must be filed. Excepted are those motions based on circumstances that arise after the cut-off date or a motion to dismiss for lack of subject matter jurisdiction;
(ii) Set a date by which third parties may be brought into the action pursuant to V.R.C.P. 14;
(iii) Set a date by which all discovery will be complete;
(iv) Set a date for a pretrial conference; and
(v) If possible, set a date after which the case will be considered ready for trial.

The court may hold individual scheduling conferences or a combined scheduling conference where a group of cases is considered, except that on request of any party, the court shall hold an individual scheduling conference on a case.

b) Pretrial Conference. The court shall hold a pretrial conference pursuant to Rule 16 in each case where the court believes it is necessary. In addition to the subject matter specified in Rule 16, the court may determine at the pretrial conference whether the scheduling conference order has been complied with and may set a date after which a case is considered ready for trial.

c) Notice of Conferences. The court shall provide the parties at least two weeks notice of a scheduling or pretrial conference.

d) Effect of Conference Orders. Orders issued after a conference provided for in this order shall have the effect of a pretrial conference order under V.R.C.P. 16.

e) Trial Date. At a scheduling or pretrial conference provided for in this order, the court shall set a date after which a case shall be considered ready for trial. In determining this date, the court shall consider the following factors:
   (i) The time necessary to complete discovery;
   (ii) The time necessary to hear and dispose of pretrial motions;
   (iii) The availability of witnesses and other sources of evidence;
   (iv) Commitments of counsel; and
   (v) Other factors that bear on the ability of the court to offer speedy justice consistent with the protection of the rights and interests of the parties.

Cases considered ready for trial shall appear on the hearing calendar and, thereafter, shall be governed by V.R.C.P. 40(a). Except by consent of the parties or where the court makes a specific finding on the record that discovery is unnecessary or can be abbreviated and no other substantial pretrial action is necessary, a case shall not be set for trial earlier than six months after the date of filing.

f) Continuances. An action may be continued only by order of the court, on the court’s motion or on motion of a party and a showing of good cause. Actions may not be continued solely by agreement of the parties. The date of a conference or action of a party as ordered by the court may be extended only by order of the court, on the court’s motion or on motion of a party for good
cause shown. The court shall act on continuance motions consistent with the policy of reasonable accommodation to the litigants and their counsel.

g) Sanctions. The court may impose sanctions for failure of a party to appear for a trial or conference or to obey a scheduling, pretrial or other order pursuant to this Administrative Order, as follows:

(i) For failure to appear for trial when directed, the court may dismiss the action or enter a default;

(ii) The court may refuse to allow any discovery, motions or joinder of a party after properly ordered cut-off dates;

(iii) If a party fails to appear at a pretrial or scheduling conference, the court may conduct the conference without the party's presence; and

(iv) As an alternative, the court may treat any failure to obey its order or intentional failure to appear for a conference or trial as a contempt of court by a party or his attorney and impose a penalty for that contempt.

(v) An order provided in Rule 37(b)(2)(B) or (C) or the last paragraph of Rule 37(b)(2).

These sanctions shall be supplemental to, and shall not supersede those otherwise provided in the Vermont Rules of Civil Procedure.

§4. Cases Filed before the Effective Date of this Order. Cases filed before the effective date of this order shall be subject to §3 as of the date of the scheduling conference except that the court may dispense with a scheduling or pretrial conference and set a case on the trial list pursuant to V.R.C.P. 40(a)(2). A case that appears on a trial list without a scheduling or pretrial conference, shall be governed by V.R.C.P. 40(c).

§5. Appeals to the Administrative Judge for Trial Courts. A party or attorney, adversely affected by an order of the court, issued pursuant to power granted by this Administrative Order, may appeal to the Administrative Judge for Trial Courts who shall render a decision upon the record. The decision of the Administrative Judge for Trial Courts shall constitute the decision of the Washington Superior Court.

§6. Suspension of Rules. Any provision of the Vermont Rules of Civil Procedure inconsistent with the procedure provided herein is hereby suspended in the Washington Superior Court for the duration of this order. In all other respects, the Vermont Rules of Civil Procedure shall apply to proceedings in that court.

§7. Suspension of Administrative Order No. 12. The Administrative Judge for Trial Courts shall designate one Superior Judge to be presiding judge in the Washington Superior Court for the September, 1981
and March, 1982 terms of that court, and the judge assigned shall not rotate to any other court during these terms. Any provision of Administrative Order No. 12 inconsistent with the procedure provided by this paragraph is hereby suspended during the effective period of this order.

§8. Effective Period. This order shall be effective for the period September 1, 1981 through August 31, 1982.

§9. Publication. The Clerk of the Washington Superior Court shall distribute a copy of this order, and any order of the presiding judge pursuant to § 2, to each attorney having a case pending on the docket of the Washington Superior Court on July 1, 1981, and to each attorney appearing in a case after July 1, 1981 if he has not otherwise received a copy of this order pursuant to this rule.

Done in Chambers, at Montpelier, Vermont, this 13th day of August, 1981.

Albert W. Barney, Chief Justice
Franklin S. Billings, Jr., Associate Justice
William C. Hill, Associate Justice
Wynn Underwood, Associate Justice

Dissenting:
Robert W. Larrow, Associate Justice
Chief Justice Albert W. Barney announced today the commencement of a pilot project to reduce delay in the trial of cases in the Superior Courts. In announcing the special project which will take place at the Washington Superior Court, the Chief Justice stated, "The Supreme Court has been concerned about the length of time that it takes cases to be processed in our Superior Courts. In the past ten years, Vermont's court system has experienced a significant increase in the number of cases filed. Although the Legislature has provided us with additional judges to cope with this workload, the public, judges, and attorneys have expressed their concern that cases cannot be handled as quickly as desired even though our Superior Judges are each disposing on the average of over 850 cases each year. In 1980, the Supreme Court appointed an Administrative Judge for Trial Courts, created a Division of Trial Court Administration in the Office of The Court Administrator, and with the authorization by the Legislature of additional professional staff positions, for the first time the Supreme Court has been able to closely study the workings of our trial courts to evaluate the factors which influence the processing of cases."

This spring the Director and a staff member of the prestigious Institute for Court Management held a workshop in Burlington for Vermont's Superior and District Court Clerks to discuss the operation of our trial courts. After that workshop, a team composed of a Superior and District Court Judge and Clerk and members of the Court Administrator's staff went to Providence, Rhode Island in June for a follow up session with the Institute and similar judicial personnel for other selected states. From these sessions evolved the plan and pilot project being implemented today.

Barney emphasized, "Considerable evaluation and planning have gone into this project. We are extremely fortunate that Senior Superior Judge Stephen B. Martin has kept careful statistics of his personal workload as a Superior Judge for the past twelve years and coupled with an in-depth analysis of the Washington Superior Court docket by Mrs. Josephine Alexander, Washington Superior Court Clerk, we were able to establish for example, that the typical jury case takes more than two years from filing to completion, a statistic unchanged over the past dozen years. Indeed, some cases take as long as five years to process."

"We believe that two years is too long an interval and for this project the Supreme Court has established a new standard that 80% of all civil cases be completed within one year of filing."

"Our efforts will be directed not only to treating all newly filed cases under the new standard but to accelerate case processing of those previously filed to make them current with the standard. To achieve this goal, the Supreme Court, pursuant to its constitutional authority to administer the courts
of Vermont, has authorized for a one year period the implementation of special procedural rules for the Washington Superior Court and has assigned Judge Martin to serve as Presiding Judge for the duration of the project."

Barney went on to explain, "The techniques we are employing are not necessarily new to Vermont, some having been tried by other Superior Judges and Clerks in other courts. What is new, is the application of all these procedures together, coupled with necessary procedural rule suspensions and amendments. Moreover, the Supreme Court has directed Administrative Judge Edward J. Costello to specially assign additional judges to Washington Superior Court and has directed the Court Administrator to provide technical and clerical assistance to the Clerk to make the court docket current under the new standards."

"On Monday, August 31st, a luncheon will be held at the Tavern Motor Inn Restaurant in Montpelier to explain the pilot project to attorneys who now have cases on the docket of the Washington Superior Court and for other interested attorneys." Barney added, "It is my firm conviction that we can effect a lasting improvement in our case flow management. It is our purpose with this pilot project to evaluate the effectiveness of these recommended techniques in one of our busiest trial courts. This project is one facet of the Supreme Court’s commitment to provide to the citizens of Vermont fair and expeditious justice in the resolution of their disputes."
Superior Court of Vermont

August 20, 1981

Dear Counselor:

Everyone receiving this letter has at least one civil case on the docket that has been sitting there too long. When I became a lawyer 21 years ago, I couldn’t understand why it took so long to get a case heard. It didn’t take me long to discover the reasons for delay, but no one seemed willing or able to do anything about it.

In recent years, attitudes have begun to change and I am convinced that the time has arrived for a meaningful trial delay reduction program. The basic concepts of good court management have been around for a long time and are simple, down-to-earth, and make a lot of sense:

1. Early judicial control
2. Continuous judicial control
3. Short scheduling
4. Reasonable accommodations of attorneys
5. An expectation that events will occur when scheduled

The trick is to implement them!

I hope you agree the effort is worthwhile and I hope you will attend the luncheon sponsored by the Washington County Bar Association on Monday, August 31, 1981 at the Tavern Motor Inn. Jo and I will present our game plan for the coming year. We need your encouragement, understanding, cooperation and suggestions. With that, the success of our delay reduction program is assured.

Sincerely yours,

Stephen B. Martin
Presiding Judge
MEMORANDUM

To: Supreme Court Justices
From: Lee Suskin
       Director, Trial Court Administration
Date: June 29, 1982
Subject: Administrative Order Number 22—Washington County Project

Supreme Court Administration Order Number 22 set out three goals for the Washington Superior Court project:

   a) Dispose of 80% of all civil cases, covered under this order and filed on or after July 1, 1981, within one year from the date of filing;
   b) Dispose of 80% of all civil cases covered under this order and filed before July 1, 1981 by July 1, 1982; and
   c) Dispose of 50% of all civil cases which go to jury trial within the periods established in (a) or (b) whichever applies.

Section (b) of the goals statement has been met. As of June 24, 1982, only 124 of the 587 civil and miscellaneous cases pending on 6/30/81 were pending. 463 cases were disposed of in 11 3/4 months. To meet the goal, 7 cases need to be disposed of by 6/30/82. Only 350 civil and miscellaneous cases will be pending on 6/30/82, 237 fewer cases than a year ago.

The goals set forth in sections 7(a) and (c) of the Administrative Order need to be met this coming year.

Section (a): Cases filed since July 1, 1981 have not been given substantial attention by the court except for those cases in which motions have been filed, conferences requested or other matters called to the attention of the court. Routine early pre-trial conferences were held on those cases the early part of the September 1981 term but then discontinued when the court had no more trial time available that term to assign to cases. Now that the court is over the hump on the major backlog, attention can be given to these cases.

Section (c): The median time to trial for all jury cases which went to verdict in the March term was 1 year 11 months. Many old cases were tried this past year. As newer cases come up for trial, the median time will be reduced.

Judge Martin has written a letter to Chief Justice Barney proposing a continuation of the project (a copy of his letter is attached). He recommends that Administrative Order Number 22 be extended for one year in Washington County and expanded for one year to Windsor County.
Superior Court of Vermont

Honorable Albert W. Barney
Chief Justice
Vermont Supreme Court
111 State Street
Montpelier, Vermont 05602

June 25, 1982

Dear Chief:

I am pleased to report that we expect to reach our goal of disposing of 80% of all civil cases filed before July 1, 1981, by July 1, 1982.

I attribute our success to the following factors:

1. The setting of goals at our workshop in Providence.
2. The Supreme Court's Administrative Order No. 22.
3. The assignment of the Presiding Judge for a full year.
4. The encouragement and support of the Administrative Judge.
5. The assistance of Lee Suskin and his staff in providing second judges when we needed them.
6. The cooperation and support of the Assistant Judges.
8. Suggestions and insight provided by Harvey Solomon, Maury Geiger, Paul Connally and the staff at the Court Administrator's Office.
9. The herculean effort made by Josephine Alexander and her staff in putting it all together and making it work.

However, we are only part way there, and I suggest that we adopt new goals and I would recommend the following:

A. *Extension of Administrative Rule No. 22 for another 12 months.*

B. *Civil and Miscellaneous Docket*

1. Set trial dates or discovery schedule within 90 days of filing.
2. Dispose of all property tax appeals, zoning appeals and appeals from Administrative Agencies within 6 months of filing.
3. Dispose of all other court cases within 9 months of filing.
4. Dispose of all jury cases within 1 year of filing.
5. Dispose of 80% of all civil cases pending on July 1, 1982 by July 1, 1983.
6. Decide all motions taken under advisement within 30 days of hearing.
7. Decide all matters heard on the merits within 60 days of the hearing, or within 60 days of the date requests to find are filed.
8. Dispose of all motions to vacate sentence within 90 days from date of filing.
C. Divorce Docket

1. Adopt standards for divorce cases similar to the following:

<table>
<thead>
<tr>
<th>Matter</th>
<th>Notice</th>
<th>Hearing Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ex Parte Orders &amp; Emergency</td>
<td>2-5 days</td>
<td>(From day matter is ready for hearing)</td>
</tr>
<tr>
<td>Matters Involving Custody &amp; Physical Abuse</td>
<td>Within 5 days</td>
<td></td>
</tr>
<tr>
<td>Habeas Corpus--Child Snatching</td>
<td>2-5 days</td>
<td>Within 10 days</td>
</tr>
<tr>
<td>Temporary Hearings</td>
<td>5-10 days</td>
<td>Within 10 days</td>
</tr>
<tr>
<td>Uncontested Divorce Hearings</td>
<td>5-10 days</td>
<td>Within 30 days</td>
</tr>
<tr>
<td>Requests to Modify Orders</td>
<td>5-10 days</td>
<td>Within 30 days</td>
</tr>
<tr>
<td>Contempt Actions</td>
<td>5-10 days</td>
<td>Within 30 days</td>
</tr>
<tr>
<td>Contested Divorce Hearings</td>
<td>10-30 days</td>
<td>Within 60 days</td>
</tr>
</tbody>
</table>

2. A matter will be considered ready for hearing when the litigants or counsel advise the Court it is ready, or when the Court determines it is ready after a pre-trial conference or review of the pleadings.

The cooperation and support I have received has made this year the most enjoyable year I’ve had since becoming a judge. I hope we will be able to keep the momentum going.

Cordially yours,

Stephen B. Martin, Superior Judge
2. Hennepin County (Minneapolis),
Minnesota Individual Assignment
(Block Assignment) Plan

Introduction

The Hennepin County (Minneapolis) plan is an example of a locally de-
veloped and implemented delay reduction program. Rather than being a com-
prehensive program, the plan consists of two parts: the establishment of an
individual assignment system, which they call the block system, and the estab-
ishment of a court-annexed nonbinding arbitration program.

Included in this Appendix are the orders establishing the program and
the modified local rules and forms which are the basis of the two delay reduc-
tion techniques.

This program provides examples of the internal case processing
changes and management checklists which were developed to implement the
plan. Note that the processing descriptions specifically deal with handling ex-
isting cases as well as new filings.

While the Vermont information included above illustrates the imple-
mentation of a plan from an overview perspective, the Hennepin County infor-
mation shows the detail of what must be prepared during the process of plan-
ning for implementation.
FOURTH JUDICIAL DISTRICT

ORDER

WHEREAS, the District Court of the Fourth Judicial District has adopted a block assignment system for civil cases, and
WHEREAS, the block assignment system will be implemented on July 1, 1985, and
WHEREAS, all new cases filed after July 1, 1985 will be subject to the Fourth Judicial District rules, as amended, and
WHEREAS, the conversion to a block assignment system causes the need for transition procedures effecting civil cases filed with the Court prior to July 1, 1985.

THEREFORE, IT IS ORDERED:

1. All existing cases certified ready for trial and not resolved prior to July 1, 1985, will be assigned under the block system on a random basis.
2. Cases filed with the Court prior to July 1, 1985, but not certified ready for trial, will be assigned to a judges’ block at the time of the next filing activity.
3. Cases filed with the Court prior to July 1, 1985, but not certified ready for trial, will be activated effective July 1, 1985, for the purposes of the initial filing date. All cases activated on this date will be dismissed on July 1, 1986, unless a Note of Issue/Certificate of Readiness has been filed or the case has been continued prior to the expiration of 12 months, under Rule 41.02, Rules of Civil Procedure.
4. The amended rules of the Fourth Judicial District will apply to all cases effective July 1, 1985, with the exception that the cases activated by the Court on its own motion will be dismissed under Rule 41.02, rather than Rule 41.01.

Dated: April 10, 1985

By the Court:

Patrick W. Fitzgerald
Chief Judge
STATE OF MINNESOTA
COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

ORDER

WHEREAS, the District Court of the Fourth Judicial District has adopted a system of mandatory non-binding arbitration for civil cases, and
WHEREAS, the arbitration program will be implemented on July 1, 1985, and
WHEREAS, the implementation of an arbitration program causes the need for procedures effecting cases filed prior to July 1, 1985.

THEREFORE, IT IS ORDERED:
1. All existing cases certified ready for trial prior to July 1, 1985 will not be submitted to arbitration.
2. All other civil actions filed prior to or after July 1, 1985, are subject to arbitration pursuant to Rule 5.02 of the arbitration rules.

Dated: April 10, 1985

By the Court:

Patrick W. Fitzgerald
Chief Judge
RULE 2. DISCOVERY
RULE 2.01. After Certificate of Readiness

After a Certificate of Readiness has been filed and any asserted period of non-readiness has expired, further discovery will be permitted only upon order of the judge to whom the case has been assigned.

RULE 2.02. Discovery Motions

No motion relating to interrogatories, requests for admissions or any other discovery matter shall be heard unless it affirmatively appears that counsel have met and attempted to resolve their differences. Counsel for the discovering party shall call for such conference which shall be held within three days thereafter. Prior to the hearing on such motion, the parties shall file a statement setting forth the matters upon which they have been unable to agree, together with briefs in support or in opposition to their respective contentions.

RULE 3. CASE ASSIGNMENT

RULE 3.01. Assignment Upon Filing

New cases filed will be assigned to judges automatically at the time of initial filing on a pre-determined random basis.

RULE 3.02. Notification

The filing party will be immediately notified of the case number and the new Fourth Judicial District Rules governing civil case procedures. The filing party will also receive a certificate of representation and parties form for listing other parties and attorneys involved in the case. The filing party must file this form with the Court Administrator’s Office within thirty days after the initial filing date. Failure to file the form within the 30-day period from initial filing will result in the case being automatically dismissed under Rule 41.01. Upon receipt of the timely filed form, the Court will immediately notify all parties and attorneys of the judge assigned to the case.

RULE 3.03. Notice to Remove

Upon receipt of the notice as to which judge has been assigned to the case, the parties and attorneys may make and serve on opposing parties and file with the Court Administrator’s Office a Notice to Remove. The filing of a Notice to Remove must be within ten days after the party receives notice of judge assignment.

RULE 3.04. Recusal

As soon as possible following assignment of a case, the judge will screen each case assigned to his or her block to determine if judicial conflict exists. If it is determined by the judge that a conflict does exist, the case will be assigned to a different judge pursuant to Rule 3.01.
RULE 3.05. Scheduling of Motions

Motions will be scheduled for hearing by arrangement with the judge to whom the case has been assigned or that judge’s clerk.

RULE 3.06. Default, Trust and Minor Settlement Matters

Hearings on default and trust matters will be before a referee of the District Court. Minor settlements in cases not previously assigned, will be heard by the Chief Judge.

RULE 4. CERTIFICATE OF READINESS

RULE 4.01. Requirement

Every General Term Note of Issue shall be combined with a Certificate of Readiness. No case will be assigned for trial until a Note of Issue/Certificate of Readiness has been filed. The Note of Issue/Certificate of Readiness will indicate the full title, venue and file number of the case and will contain a statement signed by counsel that all essential parties have been served with process or appeared therein, that the case is at issue as to all parties, that serious settlement negotiations have been conducted, that all necessary discovery has been completed, and that a copy of the Note of Issue/Certificate of Readiness has been served on all counsel having an interest in the case.

RULE 4.02. Consolidated Case

When two or more cases are consolidated for trial prior to the filing of all Notes of Issue/Certificates of Readiness, upon subsequent filing of the same a copy of the consolidation order shall be attached to each Note of Issue/Certificate of Readiness. A separate Note of Issue/Certificate of Readiness shall be filed for each case regardless of consolidation.

RULE 4.03. Setting for Trial

A case may be called for trial ten days after the Note of Issue/Certificate of Readiness has been filed, unless within such ten days a Certificate of Non-Readiness is filed, in which case the case shall not be called for trial within 90 days after such filing. The judge to whom the case is assigned, on motion, may extend or shorten the 90-day period. It is anticipated that all cases will be ready for trial 12 months after filing. All cases will be automatically dismissed under Rule 41.01 after 12 months from initial filing, unless a Note of Issue/Certificate of Readiness has been filed or the case has been continued. If a case is certified ready for trial prior to the 12-month deadline, a case may be called for trial ten days after the Note of Issue/Certificate of Readiness has been filed, unless within such ten days a Certificate of Non-Readiness is filed, in which situation the case shall not be called for trial within 90 days or for a period of time that would bring the case to the 12-month deadline, whichever time is less.

RULE 4.04. Statement of the Case

A party filing a Note of Issue/Certificate of Readiness shall serve and file therewith a Statement of the Case. Every other party shall serve a Statement of the Case within ten days after the filing of a Note of Issue/Certificate of
Readiness, unless such party has filed a Certificate of Non-Readiness as herein provided. Every party that has not already filed a Statement of the Case shall do so within 30 days after the expiration of any period of non-readiness. The Statement of the Case shall contain the following information to which the party will be bound and limited unless a modification is allowed by the court:

(a) Name, address and occupation of the client.
(b) Name, address, and phone number of attorney who will try the case.
(c) Name of insurance carriers involved, if any.
(d) Names and addresses of all witnesses known to attorney or client who may be called at the trial by the party, including expert witnesses and the particular area of expertise each expert will be addressing.
(e) A concise statement of the party’s version of the facts.
(f) A statement of probable length of trial.
(g) The legal basis for all claims and all defenses.
(h) In accident cases, a statement by each claimant, whether by complaint or counterclaims, of the following:
   1. Names and addresses of doctors not listed above who have examined the injured party.
   2. A detailed description of claimed injuries, including claims of permanent injury. If permanent injuries are claimed, the name of the doctor or doctors who will so testify.
   3. Whether party will exchange medical reports. (See R.C.P. 35.04).
   4. An itemized list of all special damages including, but not limited to, (a) car damage and method of proof thereof, (b) x-ray charges, hospital bills and other doctor and medical bills to date, and (c) loss of earnings to date fully itemized.
   5. A description of vehicles and other instrumentalities involved with information as to ownership or other relevant facts.

RULE 4.05. Cases Ready for Trial

Cases certified for trial are considered ready for trial. Cases set for trial shall be tried no later than 18 months from initial filing, except in unusual circumstances.

RULE 5. ARBITRATION

RULE 5.01. Authority

Pursuant to Minn. Stat. §484.73, the Fourth Judicial District has authorized the establishment of a system of arbitration for civil cases.

RULE 5.02. Actions Subject to Arbitration

(a) All civil actions are subject to arbitration except:
   1. Actions for money damages in excess of $50,000.00;
2. Actions for money damages within the jurisdictional limit of the Hennepin County Conciliation Court;
3. Actions that include a claim for equitable relief that is neither insubstantial nor frivolous;
4. Actions removed from the Hennepin County Conciliation Court for trial de novo;
5. Class actions;
6. Actions involving family law matters;
7. Unlawful detainer actions; or
8. Actions involving the title to real estate.

(b) The Chief Judge or the judge that the case is assigned to shall have authority to order that particular actions otherwise excluded above shall be submitted to arbitration.

(c) Any action otherwise excluded above may be submitted to arbitration by agreement of all parties.

RULE 5.03 Qualifications of Arbitrator

Unless otherwise ordered by the Chief Judge or his/her designee or agreed to by all parties, an arbitrator must be admitted to practice in the State of Minnesota for a minimum of five years and must sign and file an Oath of Office with the Chief Judge of the District Court.

RULE 5.04. Selection of Arbitrators

(a) Arbitrators shall be selected from members of the Bar who reside or practice in Hennepin County and who are qualified in accordance with Rule 5.03.

(b) The Court Administrator shall randomly assign arbitrators from a list of qualified arbitrators maintained by the Court.

(c) Any party or his attorney may file with the Court Administrator within five days of the notice of appointment and serve on the opposing party a notice to remove. Upon receipt of a notice to remove, the Court Administrator shall immediately assign another arbitrator. After a party has once disqualified an arbitrator as a matter of right, a substitute arbitrator may be disqualified by that party only by making an affirmative showing of prejudice to the Chief Judge or his/her designee.

RULE 5.05. Arbitrator’s Fees

(a) The arbitrator’s award or a notice of settlement signed by the parties or their counsel, must be timely filed with the Court Administrator before a fee may be paid to the arbitrator.

(b) On the arbitrator’s verified ex parte application, the court may for good cause authorize payment of a fee when the award was not timely filed.

(c) The arbitrator’s fee statement shall be submitted to the Court Administrator promptly upon the completion of the arbitrator’s duties, and shall set forth the title and number of the cause arbitrated, the date of the arbitration hearing, and the date the award or settlement was filed.

(d) The arbitrator’s fee will be set by the court with a maximum of $150.00 per day.
RULE 5.06. Communication with the Arbitrator

No disclosure of any offers of settlement by any party, other than contained in the court file, shall be made to the arbitrator prior to the filing of the award. There shall be no ex parte communication by counsel or the parties with the arbitrator or a potential arbitrator except for the purpose of scheduling the arbitration hearing or requesting a continuance.

RULE 5.07. Arbitration Hearing

(a) Thirty (30) days after filing of a Note of Issue/Certificate of Readiness, or 120 days after the filing of a Certificate of Non-Readiness, the Court Administrator shall schedule an arbitration hearing, which hearing shall be set for not more than 60 days thereafter at a specified time and place. No further extensions for discovery shall be allowed unless granted by the Chief Judge or his/her designee on motion.

(b) By agreement of all parties, an action may be submitted to arbitration before the filing of the Note of Issue/Certificate of Readiness.

RULE 5.08. Continuances

(a) The parties may stipulate to a continuance in the case, with the consent of the assigned arbitrator. Notice of the continuance must be sent to the Court Administrator at least 20 days before the assigned date.

(b) On the refusal of a party to stipulate to a continuance, or if the arbitrator declines to give consent to a continuance, upon the motion of a party and for good cause shown, the Chief Judge or his/her designee may grant a continuance of the arbitration hearing. In the event the court grants the motion, the party who requested the continuance shall notify the arbitrator and the arbitrator shall reschedule the hearing, with the concurrence of the Court Administrator, giving notice to all parties to the arbitration proceeding.

RULE 5.09. Rules of Evidence at Hearing

(a) All evidence shall be taken in the presence of the arbitrator and all parties, except where any of the parties has waived the right to be present or is absent after due notice of the hearing.

(b) The Rules of Evidence, construed liberally in favor of admission, apply to the conduct of the arbitration hearing, except:

1. Any party may offer, and the arbitrator shall receive in evidence written medical and hospital reports, records and bills (including physiotherapy, nursing and prescription bills), documentary evidence of loss of income, property damage, repair bills or estimates, and police reports concerning an accident which gave rise to the case, if copies have been delivered to all opposing parties at least 20 days prior to the hearing. Any other party may subpoena the author of a report, bill or estimate as a witness and examine that person as if under cross-examination. Any repair estimate offered as an exhibit, and the copies delivered to opposing parties, shall be accompanied by a statement indicating whether or not the property was repaired and if it was, whether the estimated repairs were made in full or in
part, and by a copy of the receipted bill showing the items of repair made and the amount paid. The arbitrator shall not consider any opinion expressed in a police report as to ultimate fault.

2. The written statement of any other witness, including written reports of expert witnesses not enumerated above, and including statements of opinion which the witness would be qualified to express if testifying in person, may be offered and shall be received in evidence if: (i) they are made by affidavit or by declaration under penalty of perjury; (ii) copies have been delivered to all opposing parties at least 20 days prior to the hearing; and (iii) no opposing party has, at least 10 days before the hearing, delivered to the proponent of the evidence a written demand that the witness be produced in person to testify at the hearing. The arbitrator shall disregard any portion of a statement received pursuant to this rule that would be inadmissible if the witness were testifying in person, but the inclusion of inadmissible matter does not render the entire statement inadmissible.

3. The deposition of any witness may be offered by any party and shall be received in evidence, subject to objections, notwithstanding that the deponent is not "unavailable as a witness" and no exceptional circumstances exist, if: (i) the deposition was taken in the manner provided for by law or by stipulation of the parties and within the time provided for in these rules; and (ii) not less than 20 days prior to the hearing the proponent of the deposition serves on all opposing parties notice of his intention to offer the deposition in evidence. The opposing party, upon receiving the notice, may subpoena the deponent and if he does so, at the discretion of the arbitrator, either the deposition may be excluded from evidence or the deposition may be admitted and the deponent may be further cross-examined by the party who subpoenaed him. These limitations are not applicable to a deposition admissible under the terms of Minn.R.Civ.P. 32.01.

(c) Subpoenas shall issue for the attendance of witnesses at arbitration hearings as provided in Minn.R.Civ.P.45. It shall be the duty of the party requesting the subpoena to modify the form of subpoena to show that the appearance is before an arbitrator, and to give the time and place set for the arbitration hearing. At the discretion of the arbitrator, nonappearance of a properly subpoenaed witness may be a ground for an adjournment or continuance of the hearing. If any witness properly served with a subpoena fails to appear at the arbitration hearing or, having appeared, refuses to be sworn or to answer, proceedings to compel compliance with the subpoena on penalty of contempt may be had before the court.

(d) Notwithstanding any other provisions in these rules, a party offering opinion testimony in the form of an affidavit or other statement, or a deposition, shall have the right to withdraw such testimony, whereupon the attendance of the witness at the hearing shall not be required.
RULE 5.10. Conduct of the Hearing

(a) The arbitrator shall have the following powers:
   1. To administer oaths or affirmations to witnesses;
   2. To take adjournments upon the request of a party or upon his
      own initiative when deemed necessary;
   3. To permit testimony to be offered by deposition;
   4. To permit evidence to be offered and introduced as provided in
      these rules;
   5. To rule upon the admissibility and relevancy of evidence of-
      fered;
   6. To invite the parties, on reasonable notice, to submit pre-
      hearing or post-hearing briefs or pre-hearing statements of evi-
      dence;
   7. To decide the law and facts of the case and make an award ac-
      cordingly;
   8. To award costs, not to exceed the statutory costs of the action;
   9. To view any site or object relevant to the case; and
   10. Any other powers agreed upon by the parties.

(b) The arbitrator may, but is not required to, make a record of the pro-
    ceedings. Any records of the proceedings made by or at the direction of the
    arbitrator shall be deemed the arbitrator’s personal notes and are not subject to
    discovery, and the arbitrator shall not deliver them to any party to the case or to
    any other person, except to an employee using the records under the arbitra-
    tor’s supervision or pursuant to a subpoena issued in a criminal investigation
    or prosecution for perjury. No other record shall be made, and the arbitrator
    shall not permit the presence of a stenographer or court reporter or the use of
    any recording device at the hearing, except as expressly permitted by this rule.

RULE 5.11. The Award

(a) The award shall be in writing and signed by the arbitrator. It shall
determine all issues properly raised by the pleadings, including a determina-
tion of any damages and an award of costs if appropriate. The arbitrator is not
required to make findings of fact or conclusions of law.

(b) Within ten (10) days after the conclusion of the arbitration hearing,
the arbitrator shall file his award with the Court Administrator, with proof of
service on each party to the arbitration. On the arbitrator’s application in cases
of unusual length or complexity, the court may allow up to 20 additional days
for the filing and service of the award. Within the time for filing the award, the
arbitrator may file and serve an amended award.

(c) The Court Administrator shall enter the award as a judgment forth-
with upon the expiration of twenty (20) days after the award is filed if no party
has, during that period, served and filed a request for trial as provided in these
rules. Promptly upon entry of the award as a judgment, the Court Administra-
tor shall mail notice of entry of judgment to all parties who have appeared in
the case and shall execute a certificate of mailing and place it in the court’s file
in the case. The judgment so entered shall have the same force and effect in all
respects as, and is subject to all provisions of law relating to, a judgment in a
civil action or proceeding, except that it is not subject to appeal and it may not be attacked or set aside except as provided in subdivision d. The judgment so entered may be enforced as if it has been rendered by the court in which it is entered.

(d) A party against whom a judgment is entered pursuant to an arbitration award may, within six months after its entry, move to vacate the judgment on the ground that the arbitrator was subject to a disqualification not disclosed before the hearing and of which the arbitrator was then aware, or upon one of the grounds set forth in the Uniform Arbitration Act, Chapter 572, Minnesota Statutes, and upon no other grounds. The motion shall be heard by the court upon notice to the adverse parties and to the arbitrator, and may be granted only upon clear and convincing evidence that the grounds alleged are true, and that the motion was made as soon as practicable after the moving party learned of the existence of those grounds.

RULE 5.12. Trial after Arbitration

(a) Within 20 days after the arbitration award is filed with the Court Administrator, any party may request a trial by filing with the Court Administrator a request for trial, with proof of service of a copy upon all other parties appearing in the case. The 20-day period within which to request trial may not be extended.

(b) The case shall be restored to the civil calendar in the same position on the list it would have had if there had been no arbitration in the case, unless the court orders otherwise for good cause.

(c) The case shall be tried as though no arbitration proceedings had occurred. No reference may be made during the trial to the arbitration award, to the fact that there had been arbitration proceedings, to the evidence adduced at the arbitration hearing, or to any other aspect of the arbitration proceedings, and none of the foregoing may be used as affirmative evidence, or by way of impeachment, or for any other purpose at the trial.
State of Minnesota
County of Hennepin

District Court
Fourth Judicial District

Date ______________________

Notice to Filing Attorney/Party

__________________________________________
Plaintiff

vs.

__________________________________________
Defendant

Date Case Filed ______________________

File Number _______________ has been assigned to the above case. All future papers must include this file number or they will be returned pursuant to Rule 1.01(c) of Special Rules of the Fourth Judicial District.

Pursuant to Rule 4.03 (New Rules of Fourth Judicial District), all cases will be automatically dismissed under Rule 41.01 (Rules of Civil Procedure) after 12 months from initial filing, unless a Note of Issue/Certificate of Readiness has been filed or a continuance has been granted.

Pursuant to Rule 3.02 (New Rules of Fourth Judicial District), the enclosed Certificate of Representation and Parties Form must be completed and filed with the Court Administrator’s Office within thirty days after the initial filing date. Failure to file the form within the 30 day period from initial filing WILL result in the case being automatically dismissed under Rule 41.01 (Rules of Civil Procedure).

__________________________
Notice/Attorney/Block

Jack M. Provo
Court Administrator

HC 3886
Hennepin County Courts
Certificate of Representation and Parties

Date Case Filed ___________________ File Number ___________________

_________________________________ vs. __________________________________

Pursuant to Rule 3.02 (New Rules of Fourth Judicial District), this form must be completed and filed with the Court Administrator's Office within thirty days after the initial filing date. Failure to file this form within the 30 day period from initial filing WILL result in the case being automatically dismissed under Rule 41.01 (Rules of Civil Procedure).

List all attorneys/pro se parties involved in this case.

Attorney for Plaintiff Attorney for Defendant

Name
Address
Phone Number
MN Att'y ID No.

(Please use other side for additional attorneys/parties.)

Date

Filing Attorney/Party

Send Certificate to:
District Court Assignment Office
1253-C Government Center
Minneapolis, MN 55487
(612) 348-3542

Certificate
HC 3881—Page 1
State of Minnesota
County of Hennepin

District Court
Fourth Judicial District

Date _______________________

Notice of Judge Assignment

Plaintiff vs. Defendant

Date Case Filed _______________________

File Number ____________ has been assigned to the above case. All future papers must include this file number or they will be returned pursuant to Rule 1.01(c) of Special Rules of the Fourth Judicial District.

This case has been assigned to JUDGE ________________________ for all proceedings.

Pursuant to the Rule 4.03 (New Rules of Fourth Judicial District), all cases will be automatically dismissed under Rule 41.01 (Rules of Civil Procedure) after 12 months from initial filing, unless a Note of Issue/Certificate of Readiness has been filed or a continuance has been granted.

Jack M. Provo
Court Administrator
Hennepin County Courts

cc: File Copy

Notice/Judge
HC 3883
State of Minnesota
County of Hennepin

District Court
Fourth Judicial District

Date __________________________

Notice of Judge Assignment

File Number _____________________

Plaintiff _________________________ vs. _________ Defendant

The above case has been reassigned to JUDGE __________________________.

Pursuant to Rule 4.03 (New Rules of Fourth Judicial District), all cases will be automatically dismissed under Rule 41.01 (Rules of Civil Procedure) after 12 months from initial filing, unless a Note of Issue/Certificate of Readiness has been filed or a continuance has been granted.

_______________________________
Jack M. Provo
Court Administrator
Hennepin County Courts

cc: File Copy

Notice/Reassignment
HC 3885
Plaintiff,  

Order For Dismissal  

vs.  

File No.__________________________  

Defendant.  

IT IS HEREBY ORDERED THAT the above-entitled case is dismissed pursuant to Rule 3.02 of the Amended Rules of the Fourth Judicial District:  

Rule 3.02.  
‘The filing party must file this form (Certificate of Representation and Parties) with the Court Administrator’s Office within thirty days after the initial filing date. Failure to file the form within the 30-day period from initial filing will result in the case being automatically dismissed without prejudice under Rule 41.02.’”  

A copy of this Order must be served upon all parties not in default pursuant to Rule 5.01 (Minnesota Rules of Civil Procedure).  

IT IS FURTHER ORDERED THAT the above Order of Dismissal is stayed for a period of ten (10) days. File the Certificate of Representation directly with the Assignment Office of District Court.  

______________________________  
Jack M. Provo  
Court Administrator  
Hennepin County Courts  

Ord/Dismissal/30 day  

Rev 9/17/85
Implementation of Block Assignment System for Civil Cases

1. Purpose and objectives of the block system.
2. Judicial structure for the block system.
3. Procedures for block system.
4. Transition procedures for conversion to block system.
5. Rule changes.

The Purpose and Objectives of Block Assignment System Are:

1. To bring civil cases under the scrutiny of the court from initial filing to the disposition of the case;
2. To reduce the total case processing time of civil cases in the Hennepin County District Court;
3. To set time parameters on the stages of civil case processing in order to expedite the processing of civil cases;
4. To facilitate a system with greater certainty and clarity to the processing of civil cases;
5. To provide a system of one judge responsibility for a civil case from initial filing to disposition; and
6. To eliminate the present Special Term system.

Judicial Structure for Processing Civil Cases

Under the Block Assignment System

1. All District Court judges will be involved in the block assignment of civil cases with the following exceptions:
   a. Juvenile Court Judges
   b. Family Court Judges
   c. Probate Court Judge
   d. Chief Judge

2. All civil matters will be subject to assignment under the block system with the following exceptions:
   a. Family Court cases
   b. Administrative judgments
   c. Change of name
   d. Trusts
   e. Forfeitures of property
   f. Unlawful detainers
   g. Implied consent cases
   h. Minor settlements.

3. All judges involved in civil block assignment will be assigned to the criminal division on a rotating basis except for the judge assigned to the commitment division. Six judges will be assigned to the criminal division for a period of six weeks.
4. Use of judges (Municipal, Retired, etc.) other than the regular civil division judges will be for trials only.

5. Judges assigned to the civil block system will be responsible for scheduling, maintenance and all matters pertaining to the civil cases assigned to their block.

6. The Administrator's Office will be responsible for:
   a. Case tracking
   b. Statistics
   c. Assisting judges in case scheduling and monitoring of civil case-load
   d. Coordinating arbitration program
   e. Providing judges with pertinent case information.

Procedures for Case Processing Under the Block System

STEP 1 New cases filed after July 1, 1985 will be assigned to judges automatically at the time of initial filing on a pre-determined random basis.

STEP 2 The filing party will be immediately notified of the case number and the new Fourth Judicial District Rules governing civil case procedures. The filing party will also receive a notification form for listing other parties involved in the case.

STEP 3 The filing party must file with the Court Administrator's Office the notification form listing other parties and attorneys involved in the case within thirty days after the initial filing date.

STEP 4 Failure to file the notification form listing all other parties/attorneys within the 30-day period from initial filing will result in the case being automatically dismissed under Rule 41.01.

STEP 5 Upon receipt of a timely filed notification form, the Court will immediately notify all parties/attorneys of the judge assigned to the case.

STEP 6 Upon receipt of the notice as to which judge has been assigned to the case, the parties and attorneys may make and serve on opposing parties and file with the Court Administrator's Office a Notice to Remove. The filing of a Notice to Remove must be within ten days after the party receives notice of judge assignment.

STEP 7 After ninety days from the initial filing of a case, each judge should screen the cases assigned to his or her block to determine if judicial conflict exists.

STEP 8 It is anticipated that all cases will be ready for trial 12 months after filing. All cases will be automatically dismissed under Rule 41.01 after 12 months from initial filing, unless a Note of Issue/Certificate of Readiness has been filed or the case has been continued for a period not to exceed 90 days. If a case is certified ready for trial prior to the 12-month deadline, a case may be called for trial ten days after the Note of Issue/Certificate of Readiness has been filed, unless within such ten days a Certificate of Non-Readiness is filed, in which situation the case shall not be called for trial within 90 days or for a period of time that
would bring the case to the 12-month deadline, whichever time is less. The assigned judge on motion may extend or shorten the 90-day period.

**STEP 9** After a case has been certified ready for trial, the judge to which the case has been assigned will conduct a calendar call or file review to determine which cases are automatically subject to arbitration, and further to determine which cases, not subject to arbitration under Rule 4A.02 of the arbitration rules, should be submitted to arbitration by judicial directive. All cases scheduled for arbitration must be submitted within 30 days after the filing of a Note of Issue/Certificate of Readiness pursuant to Rule 4A.07 of the arbitration rules.

**STEP 10** Cases not settled, dismissed or in arbitration proceedings are considered ready for trial. Cases not disposed of by means of arbitration are considered ready for trial. Cases set for trial should be tried not later than 18 months from initial filing.

**STEP 11** Administration will notify each judge of that judge's cases that are pending more than 17 months from filing.

---

**Transition Procedures for Converting to Block System**

1. *Master calendar system* will be in effect until June 14, 1985.
2. *Block assignment of existing cases ready for trial* will commence the week of May 6, 1985.
3. Cases scheduled for trial under the master system through June 14, 1985, but not reached, will be assigned under the block system during the week July 1, 1985.
4. Cases certified ready for trial prior to July 1, 1985, but not scheduled under the master system or previously assigned to a judges block, will be assigned to a judges block the week of July 1, 1985.
5. *All existing cases ready for trial prior to July 1, 1985*, subject to the block assignment system, will be manually assigned on a random basis.
6. Cases filed prior to July 1, 1985, but not certified ready for trial will be assigned to judges automatically at the time of the next filing activity.
7. Cases in the system on July 1, 1985, where a *Note of Issue/Certificate of Readiness has not been filed*, will be activated effective July 1, 1985 for purposes of the initial filing date. Cases activated on this date will be dismissed after 12 months under Rule 41.02 if no further action is taken pursuant to the new rules of the Fourth Judicial District.
8. *Notification to parties/attorneys* of existing cases ready for trial that are assigned to a judge under the block system will be the responsibility of the judges. Optional forms will be available for use by the judges.
9. Arbitration—Arbitration procedures will be used only with *new cases* filed after July 1, 1985, and those cases in the system but where a Note of Issue/Certificate of Readiness has not been filed.
Types of Cases
1. New Cases (filed after July 1, 1985)
2. Existing Cases (not certified ready for trial on July 1, 1985)
3. Transition Cases (certified ready for trial before July 1, 1985)

New Cases
(Filed after July 1, 1985)
- Cases filed (July 1, 1985)
  - First notice and Certificate of Representation form is sent out to filing party
  - Filing party has 30 days to return Certificate of Representation form
  - Failure to file Certificate of Representation form in 30 days—dismissal under 41.01
  - If file Certificate of Representation—second notice sent (notice of judge assignment) sent to all attorneys/parties
  - 10 days to file notice to remove
  - *Approximate period from date of filing to end of notice to remove period—about 50 days
  - Active/passive participation by judges up to 12th month
  - At end of 12 months
    - 1. Stipulation to dismissal
    - 2. Order of Continuance
    - 3. Note of Issue/Certificate of Readiness
  - If none, judicial dismissal—41.01
  - Once Note of Issue/Certificate of Readiness has been filed, quickly screen case for arbitration and send to arbitration calendar if qualifies
  - If case does not qualify, it is ready for trial
  - (If qualified for arbitration, arbitration hearing approximately 60 days after Note of Issue/Certificate of Readiness filed)
  - Once arbitration award is filed and no request for trial—case ends
  - If request for trial filed—back on judges block for trial
  - Case to be concluded in 18 months

Existing Cases
(Not certified ready for trial on July 1, 1985)
- All activated July 1, 1985
- Will be automatically dismissed 41.02 on July 1, 1986, if no Note of Issue/Certificate of Readiness or Order for Continuance
- Case assigned to judge's block by first moving paper filed after July 1, 1985
- Judge's clerk notified of assignment
- Quickly screen file for conflicts and send out notice of judge assignment (no Certificate of Representation form)
- Proceed same as new cases
Transition Cases

- About 50 cases have been assigned each judge
- Will have a computer report of these cases
- Handle in same manner as summer block
- Week of July 1, 1985, another group of cases

Areas of Concern

- Paperwork flow
- Criminal panel—no civil scheduling for that 7 week period
- Equipment (some type of filing system)
- Communication with assignment office on status of each case
- Clerk training in June
APPENDIX E

Court Delay
Reduction Standards

ABA NATIONAL CONFERENCE OF
STATE TRIAL JUDGES

STANDARDS RELATING TO
COURT DELAY REDUCTION

(Replacing Sections 2.50 through 2.56 of the ABA
Standards Relating to Trial Courts, 1976, except
former Section 2.54 which is renumbered as Section
2.79.)

Committee on Court Delay Reduction
Honorable Hilda R. Gage, Chairman
Honorable Robert C. Broomfield, NCSTJ Chairman
Honorable J. Patrick Brazil, Drafting Committee
Larry L. Sipes, Esq., Drafting Committee
Paul R. J. Connolly, Esq., Reporter
Stephen Goldspiel, Esq., NCSTJ Staff Director

1984
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Introduction

Delay can and must be banished from our trial courts to reinvigorate respect in the rule of law.

The public, litigants, lawyers and judges all will benefit from the elimination of elapsed time beyond what is necessary to prepare for and conclude a particular case. Delay devalues judgments, creates anxiety in litigants and uncertainty for lawyers, results in loss or deterioration of evidence, wastes court resources, needlessly increases the costs of litigation, and creates confusion and conflict in allocation of court resources.

Those portions of the ABA’s Standards Relating to Trial Courts, developed in the early 1970s and adopted in 1976, which treated delay issues have been proven valid by experimentation, research and implementation referenced in the commentary to these new Standards. These Standards will give more specific guidance, based on the past decade of experience, enabling court systems across the country to more effectively provide a fair and expeditious system of justice.

These Standards are timely, both because they capitalize on the work of the ABA Action Commission to Reduce Court Costs and Delay now being completed and because they present a coherent delay reduction strategy at a time when demands for solutions are being raised by the nation’s professional, business and public leadership.

The Standards maintain the principles of the earlier work while capturing the current state of the art of delay reduction in a form that will lead to ready implementation. They will substantially advance the ability of courts and bar groups to realistically achieve desired results with maximum utilization of available resources.

The Standards presented here begin with a new definition of delay and a reaffirmation of the courts’ responsibility for controlling the pace of litigation. The necessity for judicial commitment to delay reduction is a new and essential emphasis. It makes delay reduction both an important goal of the court system and of the individual judge. The Standards fix responsibility for implementation of modern management techniques squarely upon the court.

Progress in delay reduction is measured by the total elapsed time from filing to resolution of a case. In the previous ABA Standards and those developed by others, one figure is given, but ill-defined exceptions to the
standard are set forth. This has led to debate concerning whether the given figure is a median, average, or some other indicator, whether the exceptions always apply to a large segment of the civil docket and whether cases disposed without trial should be considered in determining the proportion of cases which meet the Standards. The new Standards recognize the varying time needs of cases within general categories but emphasize the need to focus on all cases. Thus, for most categories, a deadline is given for when 90 percent of all cases should be concluded; a second deadline for when 98 percent of the cases (all but those cases with special circumstances) should be concluded; and, for most categories, a time when all cases in the category should be disposed. This approach will give a clearer picture of the court’s performance. In actuality, the time given should produce a median case life similar to that of the former standard.

In the criminal category, times were selected after reference to the ABA Standards for Criminal Justice, 2nd Edition and investigation of controlling speedy trial acts in the several jurisdictions. The adoption of these Standards is not intended to modify the ABA Standards for Criminal Justice. The Juvenile standards are from ABA’s Standards Relating to Juvenile Justice. It is desirable to place all applicable time limitations in one document for ready reference.

The new Standards call for each court to have a program to reduce and prevent delay. However, the Standards do not choose from among numerous alternative techniques for delay reduction. Each jurisdiction is so different that a delay reduction plan must be tailored to its specific needs. However, the Standards do recommend that the jurisdiction consider certain key factors in designing a delay reduction program. Central to the program is a published case management plan detailing techniques to be used and ultimate time standards. This opens the courts’ goals, objectives and achievements to public scrutiny.

It is recognized that courts which are unacceptably backlogged will need special efforts to achieve a current calendar. Thus, there is provision for a published transition program to enable the court to catch up. By separating transition features from the continuing delay reduction program, the Standards ensure that emergency measures of the transition are not enshrined as standard operating procedure.

As contrasted with judicial branch judges, administrative law judges in the executive branch may have insufficient authority or resources to
manage their caseloads in an effective manner. To insure the independence of their adjudicative decisions, the requisite authority should be conferred on these courts and sufficient resources allocated to exercise that authority. In the absence of such control over the means of managing cases effectively, it is not intended that these standards apply to administrative law judges, and they should be deemed exempted from application of them.

Many of the efficiencies attendant to court delay reduction can be achieved through better utilization of existing resources. Where courts need more money, however, the delay reduction program will ensure that new funds are most effectively used.

Because "Managing Potentially Disruptive Cases" is not a delay reduction issue, Section 2.54 of the 1976 Standards should be renumbered as Section 2.79, keeping the new revised Standards in numerical order as Sections 2.50 through 2.56 of the ABA Standards Relating to Trial Courts which they replace.

The techniques of court delay reduction are no longer experimental. The American Bar Association has again asserted its leadership in the field of judicial administration by approving these second generation standards for the nation's trial courts and practitioners.

Robert C. Broomfield  
Chairman  
National Conference of State Trial Judges 1983-84

April, 1985
Standards Relating to Court Delay Reduction

(Replacing Sections 2.50 through 2.56 of the ABA Standards Relating to Trial Courts, 1976, except former Section 2.54 which is numbered as Section 2.79.)

Sec. 2.50—Caseflow Management and Delay Reduction: General Principle:

From the 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 lawyers or litigants, should control the pace of litigation. A strong judicial commitment is essential to reducing delay and, once achieved, maintaining a current docket.

Commentary

Justice delayed is justice denied. Delay devalues judgments, creates anxiety in litigants, and results in loss or deterioration of the evidence upon which rights are determined. Accumulated delay produces backlogs that waste court resources, needlessly increase lawyer fees, and create confusion and conflict in allocating judges’ time.

The public expects and deserves prompt and affordable justice. Delay signals a failure of justice and subjects the court system to public criticism and a loss of confidence in its fairness and utility as a public institution. As the steward of public trust in our legal system, the court

2. Delay invites extra motion activity, needless status conferences, aimless discovery, and false trial starts, all of which waste judge time and lawyers fees without benefiting litigants. See id.; Connolly and Plane, Controlling the Caseflow—Kentucky Style, 21 THE JUDGES JOURNAL 8, 55 (Fall, 1982) (Hereinafter Kentucky Study).
4. Id. at 21–26.
system is obliged to dispose of court business without delay. To do less is to compromise justice.

Eradicating delay depends on adherence to this one axiom: The court must take the initiative to eliminate the causes of delay. Since the American Bar Association enunciated this conclusion in its 1976 Trial Court Standards, a sizeable body of research has established that the leading cause of delay has been the failure of judges to maintain control over the pace of litigation. The American Bar Association here reiterates its policy that the courts must assume control over the docket and establish a schedule that ensures timely dispositions.

A timely disposition is defined as the elapsed time a case needs for consideration by the court. Research shows that the large majority of cases require little preparation for trial in the form of pleadings, motions, and discovery; cases which require considerable preparation by attorneys form a small minority of civil and criminal dockets. As a matter of principle, a case should be pending in court in proportion to the elapsed time the attorneys reasonably need for its preparation. In keeping with this concept of proportionality, delay is declared to be any elapsed time beyond that necessary to prepare and conclude a particular case.

Delay is not inevitable. Timeliness demands that each court system must have in place either a delay prevention system or, until the calendar is current, a delay reduction program. The premise underlying this


6. Connolly et al., Judicial Controls and the Civil Litigative Process: Discovery at 31 (1978) (the typical federal case going to trial totalled only five discovery requests; only 10 percent of federal cases totalled ten or more discovery requests); Connolly et al., Judicial Controls and the Civil Litigative Process: Motions, at 70 (1979) (federal cases averaged 2 motions and fewer motions than federal cases). The results of these studies comport with the findings of other such studies, e.g., Trubek et al., Civil Litigation Research Project Final Report, Part A at II-58–59 (1983).
concept is that the court and the judge possess the requisite authority to achieve and maintain a current docket. Whereas achieving a current docket may entail removing some statutory and regulatory impediments, no trial court or judge as part of the judicial branch so lacks authority as to not be able to begin reducing docket delay. Ultimately, the key to success will be a driving spirit committing the court or judge to a delay-free docket coupled with acceptance of the concept that management of the court is the ultimate responsibility not of the lawyers, but of its judges.

Sec. 2.51—Case Management:

Essential elements which the trial court should use to manage its cases are:

A. Court supervision and control of the movement of all cases from the time of filing of the first document invoking court jurisdiction through final disposition.

B. Promulgation and monitoring of time standards for the overall disposition of cases.

C. By rules, conferences or other techniques, establishment of times for conclusion of the critical steps in the litigation process, including the discovery phase.

D. Procedures for early identification of cases that may be protracted, and for giving them special administrative attention where appropriate.

E. Adoption of a trial setting policy which schedules a sufficient number of cases to ensure efficient use of judge time while minimizing resetting caused by overscheduling.

F. Commencement of trials on the original date scheduled with adequate advance notice.

G. A firm, consistent policy for minimizing continuances.

Commentary

The pathology of delay has been the subject of considerable scholarship. A consensus has emerged that a docket can be current only when a
judge supervises the scheduling and progress of all steps of the case with systematic case management. ¹

As the linchpin of its operation, the judge must be vested with the power and assume the responsibility to press the attorneys and litigants into resolving the case in no more than the time needed for full consideration by the court. Effective case management has been found to contain the following seven fundamental elements, inattention to any one of which can nullify the benefits derived from application of the others:

**A. Court Supervision.** Once a litigant invokes the jurisdiction of the judicial system, the court has the responsibility of pressing the attorneys and litigants to prepare the case for adjudication without delay. The court’s loss of control over the litigation invariably leads to procedural inactivity. This loss of court control can take many forms, such as failing to take charge of the case upon the filing of service of process by allowing the complaint to be filed at a later date, allowing counsel to waive the time proscriptions in filing an answer and/or responses to legitimate discovery, failing to assure that counsel conduct important discovery promptly, permitting counsel to place a case off-calendar or dictate when a case is ready for trial, or depending on the prosecutor to calendar trials. All such practices improperly delegate to counsel supervisory control over the pace of the case to the detriment of the litigants’ needs for a timely case disposition. Whether made the prime responsibility of the judge or of a competent court staff, every case must be supervised throughout its life with no unreasonable interruption in its procedural development tolerated.

**B. Time Standards.** Goal setting is a precondition to achievement of management results. ² Courts should adopt the standards of timely disposition in Section 2.52 as the model against which the state of the docket can be compared. By setting goals that are feasible and reasonable, the court will have announced the policy that the pro-

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¹ See authorities cited supra § 2.50 note 5.
² The Kansas Judiciary is the first state to have adopted overall time frames for civil and criminal case dispositions. Schwartz, *Delay: How Kansas [Is] Making it Disappear*, 23 *The Judges’ Journal* 22 (Winter, 1984). The U.S. Judicial Conference has established that civil cases pending longer than three years are to be deemed a judicial emergency and requires U.S. District Court judges to explain why such cases are still pending on their dockets. *Reports of the Judicial Conference of the United States*, September 1961, p. 62–63.
cedural needs of the case and the time used to exercise those procedural rights must be proportionate. Moreover, these standards permit the court to measure the extent to which the court docket is in a condition of delay and backlog.

C. Internal Standards. A case is divisible into identifiable phases bounded by critical events which can be subjected to deadlines. For example, civil pleadings can be defined by the filing of the complaint or petition (or the application to invoke the court’s jurisdiction) and the last responsive pleading, and state rulemakers have set time deadlines for the filing of intermediate pleadings. Except for a few states and the U.S. Courts, courts do not set time standards for major phases of civil or criminal cases. Setting an overall standard for disposition provides insufficient management control over cases; each court should consider the timeliness of its litigation according to interval time standards.

D. Protracted Complex Cases. Most cases on a court docket involve a modest investment of lawyer and judge time and can be managed presumptively because of their procedural homogeneity. Every court has pending cases, however, with complex substantive and procedural issues which generate considerable filing activity and consume substantial amounts of judge and lawyer time.

These complex cases often require special handling by the court. Once such a complex case is identified from its pleadings, a case management plan must be tailored by a judge to apply close and continuous supervision over its procedural progress and development. Their diversity and the demands on judge time to manage them effectively suggest the need to consider individual calendaring these complex cases.

Management of complex cases involves the judge learning about the issues and exerting control over the trial preparation by the attorneys. To discharge these duties, conferences with the attorneys may be conducted in complex cases to schedule and focus discovery, to streamline the evidentiary presentation at trial, and to facilitate the lawyers’ efforts to

3. Kentucky Rules of Civil Procedure 88–97 (1982). Many speedy trial statutes set standards for the intervals from arrest to first appearance and from first appearance to trial. See e.g., 18 U.S.C. § 3161 et seq. With the exception of pleading deadlines, only Kentucky sets such standards for civil cases.

reach settlement. Such conferences should be scheduled presumptively only for identifiable groups of cases in which the aggregate costs in terms of judge and lawyer time invested yields a net saving in which a more timely and affordable outcome results.

Ultimately, the judge must choose a case management plan for each case that best achieves proportionality among its procedural needs, its stakes, its case processing time, and its cost in terms of judge and lawyer time. Along these lines, recent research suggests there is merit to combining early and continuous judicial control over the timing and content of the discovery process and ongoing attempts to facilitate settlement. Courts must be sensitive to situations or kinds of cases where the court might expedite matters by focusing discovery and/or settlement discussions.

E. Trial Settings. Calendaring trials is a complex but manageable task. Setting too few cases for trial over a given period of time runs the risk of last-minute settlements leaving the judge with considerable down time. Setting too many cases for trial runs the risk of losing the confidence of lawyers in the firmness of the trial date due to court-initiated resetting or an overly permissive attorney-initiated resetting policy. No single calendaring system exactly strikes the balance between these extremes because trial dynamics differ from court to court, but experts believe that an occasional dark courtroom due to undersetting is preferable to rolling over masses of trials due to oversetting. Because the factors affecting trial rates change over time, a continuous study of trial rates, lengths, and dynamics is required to apply the appropriate mix of trial settings to a calendaring system designed specially for each court.

F. Trial Dates. The trial should commence on the first date scheduled. Unpredictable trial dates breed last minute continuances and settlements. When the court creates pervasive doubt about the firmness of trial dates, counsel tend to defer trial preparation and then seek a continuance when pressed for trial. With sufficient notice of a trial date and the beginning of the trial on the first day set, counsel learn that the court

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5. This research by Professor Wayne Brazil of the Hastings Law School was sponsored jointly by the National Conference of Federal Trial Judges and the Lawyers Conference of the ABA Judicial Administration Division. WAYNE D. BRAZIL, SETTLING CIVIL SUITS (1985) is available from ABA.

6. Dean Ernest Friesen of the California Western Law School and Executive Director of the Justice Institute is a staunch supporter of this concept.
means business, resulting in earlier settlements or pleas without an increase in the trial rate. 7

Settlements on the day of trial materially increase the cost of operating the court and wreak havoc with its calendaring system. Adoption of a policy of imposing jury and subpoena costs on lawyers who announce a settlement on or just prior to the first day of trial is reported to be an effective deterrent against last minute settlements.

G. Continuances. The backbone of a current docket is holding court matters, particularly trials, on the date when first set so that counsel expect that the court means what it says. Even the most effective calendar cannot eliminate all continuances, but continuances can be kept to a minimum by adhering to the firm enforcement standards in Section 2.55. Ultimately, a delay-free pace of litigation will reduce the demand for continuances by making counsel realize the inevitability of trial being held on the originally scheduled date, and that trial can only be avoided by negotiating a settlement.

Sec. 2.52—Standards of Timely Disposition:

The following time standards should be adopted and compliance monitored:

A. General Civil—90% of all civil cases should be settled, tried or otherwise concluded within 12 months of the date of case filing; 98% within 18 months of such filing; and the remainder within 24 months of such filing except for individual cases in which the Court determines exceptional circumstances exist and for which a continuing review should occur.

B. Summary Civil—Proceedings using summary hearing procedures, as in small claims, landlord-tenant and replevin actions, should be concluded within 30 days from filing.

C. Domestic Relations—90% of all domestic relations matters should be settled, tried or otherwise concluded within 3 months of the date of case filing; 98% within 6 months and 100% within 1 year.

7. Action Commission research into the Vermont Civil Delay Reduction program suggests that certainty in the trial date facilitates counsel reaching a settlement well before the trial date.
D. Criminal—

FELONY—90% of all felony cases should be adjudicated or otherwise concluded within 120 days from the date of arrest; 98% within 180 days and 100% within one year.

MISDEMEANOR—90% of all misdemeanors, infractions and other nonfelony cases should be adjudicated or otherwise concluded within 30 days from the date of arrest or citation and 100% within 90 days.

PERSONS IN PRETRIAL CUSTODY—Persons detained should have a determination of custodial status or bail set within 24 hours of arrest. Persons incarcerated before trial should be afforded priority for trial.

JUVENILE—Juvenile cases should be heard within the following time limits:

1. Detention and shelter hearings—not more than twenty-four hours following admission to any detention or shelter facility;

2. Adjudicatory or transfer (waiver) hearings—
   a. Concerning a juvenile in a detention or shelter facility: not later than fifteen days following admission to such facility;
   b. Concerning a juvenile who is not in a detention or shelter facility: not later than thirty days following the filing of the petition;

3. Disposition hearings—Not later than fifteen days following the adjudicatory hearing. The court may grant additional time in exceptional cases that require more complex evaluation. (ABA Standards Relating to Juvenile Justice: Court Org. and Adm. 3.3)

Commentary

These standards are goals that courts can and should reach and maintain. The adoption of standards of timely disposition provides the court system with ultimate and measurable objectives towards which planning must be directed. Expressly rejected is the notion that factors such as the
complexity of the docket excuses a jurisdiction from seeking compliance with the standards. The formulation process was based on research which demonstrates that the typical civil case involves a total of about ten filings or court proceedings and consumes approximately eighteen hours of each attorney’s time on a per case basis.¹ Typical criminal matters were assumed to involve less procedural activity and no more of an investment of attorney time. Putting into operation the general principle of delay reduction in Section 2.50 means that elapsed time should be proportionate to procedural activity. The standards are designed to strike a balance between allowing enough time for the litigants to exercise their procedural rights and barring delay due to neglect. Maintaining these standards eliminates the necessity of legislation giving priority to hearing specified types of cases. Such legislation complicates calendaring and can result in discrimination between cases where real urgency is the same.

The standards have been achieved in courts of all sizes that are adequately staffed and well managed.² Achieving them in other courts will require adoption of the Court Delay Reduction Program in Section 2.54. The administration of a system of time standards must, however, avoid becoming entirely mechanical. Judges have a duty to ensure justice is served by giving due consideration to matters having merit and taking sufficient time to develop complex issues. To do otherwise impairs the quality of justice.

The standards are expressed in terms that cover the whole docket, while other standards set a time only for the median or typical case. Not only is a median difficult to attain as a management objective, but the median time does not cover the one-half of all cases subject to most delay problems. These standards recognize that cases on a docket are not homogeneous, but instead reflect a few complex cases mixed in with a sizeable majority of relatively simple cases.³ Courts need standards which govern all cases, and the incremental time standards recognize the


². While few state Annual Reports report time statistics, it is apparent that some individual courts have achieved these standards. For example, Georgia reports several jurisdictions with median disposition times of well under one year. A study of the 1983 Management Statistics for the United States Courts reveals that several districts maintain a five-month median pace for its civil cases.

differing procedural complexity of caseloads. Thus, General Civil, Domestic Relations, Felony, and Misdemeanor cases are subject to time standards set for 90 percent, 98 percent, and 100 percent of the cases in each category. The remaining case categories were subjected to one time standard in recognition of the summary nature of the proceedings or a public policy calling for prompt adjudication without exception.

The specific times express a balance among several factors: facilitating vigorous enforcement of the criminal law while protecting individuals from prolonged pretrial detention; promptly resolving legal uncertainty in cases involving personal status while affording litigants adequate opportunity to reach negotiated settlement and adequate time to prepare for trial. The times reflect the varying weight of these considerations but should not be viewed as outside limits since many federal and state courts are resolving cases in less time. While the new civil standard of twelve months may appear to relax the former six-month standard, it actually tightens that standard by eliminating its broad exception in former Section 2.52 (a)(3)(iii).

The standard set for domestic relations cases will conflict with some divorce statutes requiring either a cooling off period prior to the court taking up the matter or an extended period or delay prior to the court acquiring jurisdiction to enter a final divorce decree. The wisdom of such statutes is the subject of some controversy, as there is a school of thought that delay in resolving custody and support disputes can increase tension between the spouses and harm the well-being of the children. Where a jurisdiction has established mediation and conciliation as preconditions to the issuance of a final decree, their invocation should be early enough after the filing of the case to enable compliance with the standard. A stipulation of conciliation should not exempt the case from the standard.

Sec. 2.53—Matters Submitted to the Judge:

Matters under submission to a judge or judicial officer should be promptly determined. Short deadlines should be set for party pre-

sentation of briefs and affidavits and for production of transcripts. Decisions where possible should be made from the bench or within a few days of submission; except in extraordinarily complicated cases, a decision should be rendered not later than 30 days after submission.

Commentary

Judges who are not consistently prompt in their decisions cannot expect attorneys to be prompt in their preparation. Lawyers should not be forced to protest delay in the decision of a submitted matter, and yet decisional delay is a major cause of docket delay. The thirty-day standard reflects a balance between the time needed for deliberation and necessary dispatch in decisionmaking. The American Arbitration Association Rules set a similar standard of timeliness for decision by arbitrators.¹

Case management can reduce some aspects of decisional delay.² Deadlines should be set for the submission of briefs, affidavits, and transcripts in forming a judicial decision. Once received by the court, the matter should be decided, if possible, on the papers and without a hearing. If a hearing is necessary, the court should set it promptly and be prepared to decide the matter from the bench or within a few days of submission. In any event, no decision should be rendered more than thirty-days after submission except in extremely complex cases or under extraordinary circumstances. Where decisional delay persists, the presiding judge should take corrective action.³

Sec. 2.54—Court Delay Reduction Program:
Each court should have a program to reduce and prevent delay.

¹ Unless otherwise agreed to by the parties or provided by law, the arbitrator is under a duty to render a decision within 30 days of the close of the hearing. AMERICAN ARBITRATION ASSOCIATION, CONSTRUCTION INDUSTRY ARBITRATION RULES 41 AND COMMERCIAL ARBITRATION RULE 41.
³ The U.S. Judicial Conference has adopted the policy that matters held under submission for longer than 60 days must be explained periodically by the responsible judge to the applicable judicial council. U.S. JUDICIAL CONFERENCE RESOLUTION, September, 1961.
A. Essential ingredients of the program are:
  1. A strong continuing judicial commitment to delay reduction, expressed in written goals and objectives to guide court operations.
  2. A published case management plan detailing the delay reduction techniques, ultimate time standards and a transition program for reaching those standards where there is a backlog problem.
  3. A system to furnish prompt and reliable information concerning the status of cases and case processing.

B. The program would be enhanced by:
  1. Bar support and lawyer cooperation.
  2. Adequate resources.
  3. Utilization of special expertise.
  4. Consideration of alternative methods of dispute resolution which should facilitate an earlier termination of actions.

C. Where unacceptable delay exists, there should be a published transition program designed to achieve these time standards. The transition program should include:
  1. Assessment of the current caseload including backlog identification.
  2. Analysis of productivity.
  3. A conscious effort to use internal resources.
  4. Utilization of special expertise.
  5. Revision of rules and practices to implement the transition program.
  6. A scheduled termination of the transition program with interim goals ultimately resulting in full implementation of Section 2.52 time standards.

Commentary

Maintaining a current docket is neither self-actuating nor self-sustaining. Just like any complex endeavor, delay reduction and prevention requires commitment, planning, and perseverance, each of which is an
essential ingredient of success. Without a lasting and purposeful commitment, the court system will fail to implement a durable delay prevention program because segments of the court system will work at cross-purposes and institutional inaction will lead to a reversion back to inefficient and unproductive practices. Commitment is maintained by accountability, and periodic reports (monthly or even weekly) should show the progress that individual courts and judges are making towards reducing delay. A plan and information are also essential. Without a comprehensive published plan, the court system will fail to neutralize the myriad causes of delay. Without information about the age and number of cases, neither a detailed plan setting forth objectives nor a test of compliance with the standards can be effected by the court.

Delay prevention can be assisted by other ingredients. The cooperation of lawyers and the support of the bar can help, but the absence of bar or lawyer support should not frustrate the implementation of a delay prevention program. Because technological changes may enhance the productivity of the judges and court staff, consideration should be given to such innovations as telephone conferencing, videotaped depositions and trials, electronic recording and transcriptions of court proceedings, word processing, and computer applications to jury management, calendaring, and statistical reporting. Besides technology, adequate resources in the form of judgeships, support staff, and facilities will help the court achieve its objectives, and the court system should strive to persuade the other branches of government to accept and implement a uniform staffing formula for each such resource.

Inadequate resources does not mean some elements of the plan cannot be implemented. Only common sense is needed to design an effective program, but special expertise can be useful in developing a case management plan.


3. Such expertise is available from the National Center for State Courts, one of whose missions is to assist state courts achieve current dockets.
Most courts have some form of case backlog, that is, more cases pending than the court is able to close out over a given period of time. With a backlog, a court will be unable to maintain the standards of Section 2.52. Reaching those standards can only be achieved by closing out more cases than are filed. This process of reducing backlogs has been studied, and certain ingredients have been identified as essential to its success.\(^4\)

Change must be incremental to be effective and durable. Interim goals of timeliness that are achievable but reasonable should be adopted; these interim goals should ultimately lead to adoption of the Section 2.52 standards. The transition program should be designed after measuring the size and age of the backlog and the productivity of the court given its available resources. The program should attempt to maximize use of internal court resources by delegating management tasks, but additional short-term judicial resources such as use of pro-tem judges may be needed to increase productivity to a level that permits dispositions to exceed filings until the backlog is erased. Alternative methods of court-annexed dispute resolution may facilitate earlier terminations of actions by reducing backlogs while conserving judge time.\(^5\)

Securing special expertise at the state and national level will insure the delay reduction plan is achievable and can provide an objective evaluation of sensitive issues like the utilization and adequacy of resources. Effective program implementation can be prevented by rules and practices; the applicable state or local rulemaking authority must cooperate by making changes needed to permit the program to operate.

Section 2.55—Firm Enforcement:

The court should firmly and uniformly enforce its caseflow management and delay reduction procedures.

A. Continuance of a hearing or trial should be granted only by a judge for good cause shown. Extension of time for compliance with

\(^4\) Ryan et al., Analyzing Court Delay-Reduction Programs: Why Some Succeed, 65 JUDICATURE 58 (1981). The authors identify several factors believed to contribute to successful introduction of delay reduction programs. See Demos, Speedy Trial Judges, 23 THE JUDGES’ JOURNAL 38 (Fall, 1983).

deadlines not involving a court hearing should be permitted only on
a showing to the court that the extension will not interrupt the
scheduled movement of the case.

B. Requests for continuances and extensions, and their disposi-
tion, should be recorded in the file of the case. Where continuances
and extensions are requested with excessive frequency or insubstan-
tial grounds, the court should adopt one or a combination of the
following procedures:

1. Cross-referencing all requests for continuances and extensions
   by the name of the lawyer requesting them.
2. Requiring that requests for continuances and stipulations for
   extensions be endorsed in writing by the litigants as well as the law-
   yer.
3. Summoning lawyers who persistently request continuances and
   extensions to warn them of the possibility of sanctions and to en-
   courage them to make necessary adjustment in management of
   their practice. Where such measures fail, restrictions may properly
   be imposed on the number of cases in which the lawyer may partic-
   iple at any one time.

C. Where a judge is persistently and unreasonably indulgent in
granting continuances or extensions, the presiding judge should
take appropriate corrective action.

Commentary

The importance attached to the firm enforcement of deadlines is empha-
sized by the specific guidance set forth in this standard. The section rec-
ognizes that firm enforcement of deadlines and settings breaks the cycle
in which lawyers expect continuances to be granted, leading them not to
be prepared for trial or hearings and in turn leading to further expecta-
tions of continuances.

Demand for continuances can be reduced by sound calendaring (see
Standard 2.51.E.) and requiring that good cause be the only basis for
continuing a trial or hearing. A lawyer has established good cause when
the underlying eventuality is unforeseen, is not due to lack of prepara-
tion, is relevant, is brought to the court's attention in a timely manner,
and does not prejudice the adversary. Deadlines not involving a court
hearing may be extended as long as later deadlines are unaffected by the extension. Good cause must be shown where such an extension would delay the outcome of the case.

Changing lawyer practices with regard to extensions of deadlines may require the measures set forth in Subsection B. One such measure which recognizes that extensions are often solely for the benefit of lawyers requires the client to sign the request. Another recognizes that lawyers often accept cases without considering the demand that their case inventory will place on them at a later date. Computerized case monitoring can yield information needed to detect patterns of abuse. Monetary sanctions, such as the assessment of the expense of court appearances, should be considered by the court as deterrents to requests for continuances; default and dismissal should be considered as reasonable sanctions for the egregious failure to meet court deadlines. Restrictions on the number of cases a lawyer may take is viewed as a stopgap measure courts should undertake when specific lawyers prove incapable of making court appearances due to the size of their practice.¹

Adopting a firm approach towards compliance with time standards may require a change in judicial habits. Leniency begets delay, and a judge who overindulges counsel in extending deadlines and continuing trials will undermine the integrity of a delay reduction or prevention plan. Moreover, such indulgence in master calendar courts often results in a maldistribution of work among judges. The presiding judges should possess the authority to take appropriate corrective action.

¹. See Model Rules of Professional Conduct, Rule 1.7 (b) and Comment. [The lawyer’s own interests should not be permitted to have an adverse effect on representation of a client. For example, a lawyer’s need for income should not lead the lawyer to undertake matters that cannot be handled competently and at a reasonable fee.]
Selected Bibliography


Summarizes the conclusions of the Action Commission’s five-year study.


Contains the individual reports, often reprinted from other sources, upon which the Action Commission’s conclusions were based.


Presents interesting insights on lawyers’ views of the judge’s role in settlement negotiations.


Observations on the difficulty of implementing change by the Staff Director for the Action Commission.


Excellent description of the development and implementation of the Sacramento program.

An important work in delay reduction thinking. The first published use of the phrase "local legal culture."


One of the few articles which approaches the delay problem from the perspective of the litigant.


Several excellent pieces are included pertaining to delay reduction and court management.


Description of the basic elements of a court caseflow management system from one of the acknowledged experts in the field.


Contains excellent observations on the process of implementing change in a court setting.


Study of the implementation of change in a professional, public sector setting.


Special issue devoted to delay reduction topics.


A special issue devoted to delay reduction issues.


Contains annotated bibliography on a wide range of delay reduction and court management topics.


Description of the Summary Jury Trial by its foremost recognized user. Also describes other ADR techniques.

Recently completed follow-up to Church’s 1978 study. Confirms many of the results of Justice Delayed (listed above). Also confirms many of the conclusions reached in this publication.


Standards, accompanying commentary, and footnotes are an excellent source of the current thinking on delay reduction.


A thought-provoking look at implementing change in the court setting.


One of the few published descriptions of the implementation techniques used in this jurisdiction.


Description of the Kentucky ELP project which is mentioned in the Action Commission’s Final Report.


Description of a multi-track case assignment system.


Special issue devoted to delay reduction topics.


Excellent article on items to consider when developing the implementation segment of a delay reduction plan.


The best description of this technique.

A follow-up to Church's 1978 study. Reports on attempts to implement the conclusions reached in *Justice Delayed.*


Many of the features of the Vermont program are included in the ABA's *Court Delay Reduction Standards,* 1985.


A seminal work in caseflow management.


Some disturbing conclusions concerning the public's perception of courts.
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