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## **Case Flow Management: A Format For Making Change**

**By Kerry M. Connelly**

At the International Association for Court Administration (IACA) Conference in 2008 in Dublin Barry Mahoney, President Emeritus, Justice Management Institute did an excellent job at presenting some of the major sources of delay in case processing. He identified both case-specific and systemic factors. He also identified the goals of case flow management. I was impressed by the thoroughness and succinctness of what he was presenting. On my way back home I thought about how I might present the same information to my judges and court staff and how the information might be used to make positive changes in one of my courts. The following is a description of what took place at our one-day workshop on felony case management, and the positive results we obtained in working with judges, court staff and our justice partners. The process described below identified specific barriers to case processing and resulted in the development of workable solutions to case delay.

### **Background Information:**

Kenosha County has 7 judges, 3 court commissioners and is a single level trial court of general jurisdiction. All judges can handle every case type. However, three judges handle only criminal and traffic cases and one judge is assigned a caseload of half criminal and half civil cases. The remaining two judges are assigned juvenile, family and probate cases. Judges do their own calendaring. Defendants are entitled to jury trials in all criminal and traffic case types.

In 2008 the criminal court judges were assigned 1361 new felony cases. The number of felony cases pending at the end of the year totaled 730. The judges conducted 62 felony jury trials (one lasted over 7 weeks). The median number of days the 730 cases were pending was at 119 days at the end of 2008. To illustrate the issue the number of pending felony cases in 2001 was only 344. So the number pending more than doubled by 2008. Lastly, in 2001 the median age in days was 88 compared to 119 days in 2008. This is an increase of 31 days.

In summary Kenosha has seen an increase in the number of cases being filed, the number of pending cases is increasing and the median age in days of those cases is also increasing. The number of jury trials has also increased. This is significant because jury trials are time consuming and expensive.

Finally, Wisconsin has benchmarks (case processing standards) for most case types. For more than 20 years the benchmark for felony cases was 6 months (180 days) from filing to disposition. In 2005 the chief judges adopted a new standard of 90% of all felony cases should be disposed of within 180 days. In Wisconsin a felony is defined as a crime in which the defendant can go to prison for one or more years. (Note: a subcommittee of the chief judges is reviewing the current standards again and will in all likelihood modify the standards later this year).

### **The Plan:**

The plan was to conduct a one-day workshop on felony case processing for the judges, court staff and related professionals in Kenosha County, Wisconsin.

I invited the judges handling criminal cases, court commissioners, prosecutors, public defenders, clerk of court staff, victim-witness advocates, a probation agent, police officers and sheriff deputies.

One might be questioning why I would invite police and sheriff's deputies. Police are often called to testify for hearings and trials. Their department budgets are significantly affected by court scheduling. Sheriff deputies are assigned to conduct all in-custody transportations, so their participation in the processing of cases is also important. If they get behind in the transportation of prisoners so do the courts.

I scheduled the workshop for a Friday. That is usually the least busy day of the week. Many courts only schedule cases in the morning on Friday so I knew I would have my best chance for good attendance. Potential invitees were also notified several months in advance of the workshop so they had ample opportunity to put it on their calendars and avoid any conflicts in scheduling.

About one month prior to the workshop I sent out a short survey to those who were planning on attending. The survey listed case specific and systemic reasons for case delay. Participants were asked to rank each reason from 1 to 10 (1 being no problem and 10 being a serious problem) on how they viewed felony case processing. They were instructed to send it back to me a week prior to the workshop.

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By the day of the workshop I enrolled 24 attendees.

**The Workshop Agenda:**

The workshop was to start at 8:30am at our local technical college. We got started a little late due to an ice storm causing one of my speakers to be slightly delayed.

We started with the Hon. Gerald P. Ptacek (a judge who is chairperson of our Chief Judge subcommittee on case processing standards). Judge Ptacek talked about the history of case processing standards in Wisconsin and nationally. He also discussed the need for judges to stay up to date with their cases and look for ways to improve efficiencies. He also responded to questions.

Next up was Kathleen M. Murphy, a circuit court Policy and Procedure Advisor with the Wisconsin Supreme Court. Ms. Murphy's presentation discussed the need for accurate data and for judges and court staff to review management reports. Wisconsin has a state-wide case management system that has monthly generated data that includes many standard reports. She focused on just five (5) of those reports:

- Caseload Summary Report—cases opened, disposed, begin and end pending.
- Age of Pending Cases Report—cases pending for the month or year to date, and how long each case is pending. Also includes the median age of all cases pending.
- Age at Disposition Summary—cases disposed for the month or year to date, and when each case was disposed. Also includes the median age of all cases disposed.
- Disposition Summary—cases disposed by month or year to date by method of disposition (Jury trial, court trial, stipulation, dismissal or other).
- Event and Activity Report—provides a point in time record of every judge's case currently open, when the last activity occurred and when the next activity is scheduled. Includes the number of days between the last activity and the next activity.

Ms. Murphy emphasized the need to continually review the reports so any cases pending too long can be addressed by the judge and clerk. A regular review of open pending cases assists in good case management. She also pointed out that there are also external reasons for the reports. Many government and legislative agencies can receive the information contained in the reports. This could affect funding and legislation in the state. Good data makes for good legislation. There was time for questions and answers.

I was the final presenter. I reviewed the survey results with the attendees. The survey showed that respondents generally had a good impression of the system in Kenosha. The case and systemic factors affecting delay averaged 3.7 and 3.9 respectively (on the 10 point scale). Areas that showed the most concern for respondents centered on poorly prepared lawyers, defendants without counsel, tardy lawyers, lack of case processing standards, and difficulty transporting defendants to and from court.

I also presented specific information on current data for the counties' felony cases and showed the pending felony cases from 2001 to the present, and did a linear progression to show how many cases might be pending by 2018 if the current trend continues. This was an eye-opening display of the need to do our best to keep caseloads to a minimum. After a short break I continued with a power point presentation on the Goals of Case Management and the Key Principles of Effective Caseload Management. Again time was allowed for questions and answers.

**Discussion in Groups:**

Attendees were divided into 4 groups and asked to discuss and begin to define some of the issues that they believe create delay in processing of felony cases. The groups were as follows:

- Judges and Commissioners
- Attorneys (prosecutors and public defenders, victim-witness staff)
- Law Enforcement and Probation Agent
- Clerks of court

After the 45 minute group discussion attendees had a 30 minute lunch break. After lunch they returned to the plenary session and each group selected someone to present a summary of what their group identified as issues. Here are the results:

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## **Judges and Commissioners**

- The mixing of in-custody-out of custody felony and misdemeanor cases.
- Filing of criminal complaints at 1:00pm thereby not allowing adequate preparation time for attorneys.
- Lack of video conferencing at 1st appearances.
- Fewer waivers of preliminary hearings.
- Judges not doing their own arraignments
- Attorneys withdrawing from cases
- Too many Presentence Investigation (PSI) Reports (when a defendant is found guilty of a felony crime the court normally orders a PSI. This report gives the judge a full social and criminal history of the defendant and makes a recommendation for sentencing. The report is completed by the Department of Corrections and may take up to 6 to 8 weeks to complete).
- Subpoena problems
- Lack of expertise by clerks in specific case types

## **Attorneys**

- Defendants without lawyers and failure to secure them in a timely manner (Felony cases are serious because the person can be sent to prison if found to be guilty. Judges are reluctant to proceed when the defendant does not have an attorney to advise them so finding attorneys to take these cases usually causes case delay).
- Lack of communication between defense and prosecution (Attorneys settle cases, not judges. The less opposing attorneys talk to one another the less likely the case will settle early).
- Lack of productive communication early in the process
- Law enforcement reports coming late
- Rooms/facilities for attorney client consultation
- Lack of adequate court technology

## **Law Enforcement and Department of Corrections**

- Numerous (unnecessary) appearances by law enforcement officers
- Need for better technology in the courtroom for taped materials (Most defendant interviews with law enforcement are now taped either by a recording device or by video. Many courts don't have adequate equipment in the courtroom to properly play the recordings).
- Lack of video conferencing
- Too many PSI Reports
- Lack of an expedited sentencing after revocation process
- Problems with communication with sheriff's deputies on transports
- Scheduling of in-custody defendants for Initial appearances.
- Parking for transports of Chapter 51 cases.
- Lack of procedures for paper reviews of probation revocations.

## **Clerks of Court Staff**

- Need to have the notice of retainer sooner
- Returning of cash bond too soon and to defendant
- Lack of an end date for the forfeiture of bond.
- Need a better process for the collection of fees—Pay or appear (Courts are always looking for methods to collect fines from criminal defendants as it often has a direct effect on their budgets. Courts should make rulings to encourage defendants to pay their fines).
- Lack of the timely indexing of criminal complaints
- Issues regarding the meaning or joint and several related to restitution
- Lack of consistency in numbering amended charges.

Another short break took place. The entire group was then asked, based upon the identified problems, what recommendations they would make that would improve case processing. Here's what was concluded:

## **Recommendations:**

- Have better communication between the District Attorney's office and the Public Defender's office. District Attorneys will set aside time for attorneys to discuss their cases with the Public Defenders. This will take place 1 (one) week prior to the Judicial pretrial.

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- Presentence Investigation (PSI) proposal: 1. No PSI on low level felony cases. 2. Judges will ask for any recent prior PSI if available.
  - Better defined schedule for Initial Appearances: 1:00 felony in-custody cases, 1:30 misdemeanor in-custody cases 2:00 out of custody felony and misdemeanor cases.
  - Clerks and Judges will do regular review of felony cases for clean-up purposes.
  - Courts need to begin using video conferencing at initial appearances and motion hearings (non evidentiary matters).

**Conclusion:**

After less than 7 hours of lecture, review of data and discussion in a non threatening atmosphere the primary participants identified 5 recommendations for positive change in processing of felony cases in Kenosha County. Other than the use of video conferencing these are all no cost improvements that can be easily implemented simply by getting the parties to agree.

The recommendations will now go to the judges for further discussion and approval. Implementation should begin immediately. The chief judge and I will follow-up with the effected parties to ensure implementation.

As mentioned in the first paragraph of this article this format can be conducted in any jurisdiction. You need to get all the parties who play a role in your case processing system to sit down and discuss the issues and make recommendations. This particular workshop focused on only one casetype, but could have focused on multiple casetypes. It's important to get people away from their offices at a time and location that will get them to discuss issues important to them. This took only 7 hours and we got 5 great recommendations that can and will be implemented to make our system more efficient and effective in processing felony cases in Kenosha County.

**Worthwhile articles on the subject of Case Flow Management:**

•Caseflow Management: A prescription for Renewal by Ernest Friesen. Court Communique', National Association for Case Management. Vol. 9, No 2, 2008. pp. 4-5.

•Strengthening Caseflow Management by Brian Ostrom and Richard Schauffler, Court Express, National Association for Case Management. Winter 2009. Vol. 10, No. 3. pp. 4-5.

