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# **Time Standards as A Court Management Tool: The Experience in American State and Local Trial Courts**

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As a public institution, the courts must be accountable for their use of a nation's resources. The institutional independence of the judiciary from political influences and the decisional independence of individual judges in specific cases are intended not for the personal benefit of judges, but for the benefit of the society as a whole and of all those who come before the courts. Indeed, the very legitimacy of government as a whole can be powerfully reinforced by the effective operation of an independent judiciary.<sup>3</sup>

Yet the independence of the judiciary is not likely to be achieved if a court does not manage itself, measure its performance accurately, and account publicly for its performance.<sup>4</sup> If a court has the leadership and commitment required for the successful introduction of caseflow management improvement efforts, an important element of day-to-day court leadership will be to do the actual management of all its cases. This involves the creation of expectations about what constitutes "success," monitoring and measuring the court's actual performance in view of such expectations, and then taking responsible steps to bring actual court performance into greater compliance with expectations. This article summarizes the experience in American state and local trial courts with the use of time standards as an important element of court management, and more specifically, managing the progress of cases to just dispositions.

## **A. Time Standards as a Court Management Tool**

If one of the objectives of court and caseflow management is to promote "prompt" justice, then it is desirable to have measures of what constitutes "prompt" justice. That a court of first instance should establish and comply "with recognized guidelines for timely case processing while, at the same time, keeping current with its incoming caseload," is one of the standards offered in the United States in 1990 by the Commission on Trial Court Performance Standards.<sup>5</sup> Furthermore in the United States, the American Bar Association, the Conference of [State Court] Chief Justices, and the Conference of State Court Administrators have all urged the adoption of time standards for expeditious caseflow management.

Courts with successful caseflow management programs know what they are trying to accomplish because they have goals reflected in case processing time standards they have adopted. Time standards or guidelines should not be based on what had transpired in the most difficult and complex cases that judges can remember from their own experience as lawyers or on the bench. Nor should they be set at a level that simply reflects what can easily be accomplished given current circumstances and practices among judges and the practicing trial bar. Rather, such standard or guidelines should reflect what is reasonable for citizens to expect for the prompt and fair conclusion of most cases of a given type. In determining what is reasonable for citizens to expect, court officials setting time standards should keep in mind the general principle set forth by the American Bar Association: "From the commencement of litigation to its resolution, . . . any elapsed time other than reasonably required for pleadings, discovery and court events, is unacceptable and should be eliminated."<sup>6</sup>

The adoption of case-processing time standards reflects a commitment to timely completion of these cases as an important goal. In operation, time standards serve several other important ends:

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<sup>3</sup> From the 18<sup>th</sup>-century constitutional debate in the United States, see Alexander Hamilton, *The Federalist* No. 17 (1787): "The ordinary administration of civil and criminal justice . . . contributes more than any other circumstance to impressing upon the minds of the people affection, esteem, and reverence towards the government."

<sup>4</sup> NCSC and Bureau of Justice Assistance, United States Department of Justice, *Trial Court Performance Standards with Commentary* (1990), p. 18.

<sup>5</sup> *Ibid.*, Standard 2.1.

<sup>6</sup> American Bar Association (ABA), *Standards Relating to Trial Courts*, 1992 Edition, Section 2.50.

- **Motivation.** By providing goals for judges and other participants in the court process to seek to achieve, both in managing caseloads and with regard to individual cases, time standards are motivators.
- **Measurement.** Time standards provide yardsticks for measuring management effectiveness, serving as benchmarks for determining whether the pace of court proceedings is acceptable.
- **Management.** Time standards provide a starting point for developing specific procedures to meet the goals they set forth.
- **Information System Development.** Time standards are useful only if judges and other participants in the court process receive information on the extent to which they are being achieved; and such standards should lead to the development of systems for monitoring caseload status and progress toward caseload management goals.<sup>7</sup>

Adoption and implementation of time standards is also likely to have an effect on the assessment of court resource needs for judges and non-judge personnel. There is ample evidence that case-processing times do not relate to the size of a court or its caseload per judge,<sup>8</sup> and that adding new permanent judgeships is not the only possible cure for court delay.<sup>9</sup> Yet even fast courts can reach a "saturation point," at which they cannot absorb and process more cases without additional judicial or non-judicial staff resources.<sup>10</sup> In a setting where the court is managing its caseload, time standards help to highlight the level of its judicial and non-judicial personnel needs.

**1. Time Standards for Intermediate Case Events.** As a means to focus on the progress of cases from initiation and assure that no case is "lost between the cracks," courts should have time standards for the progress of each major type of case through each of its key intermediate stages from filing through disposition and the completion of all postdisposition court work.<sup>11</sup> Elapsed time between key events in cases is what judges and court managers customarily see and count from day to day. How long ago was the last court event in this case? Has today's scheduled event been continued from a previous date? When is the next scheduled event?

Examples of such intermediate standards in the United States or other common law countries are those that might be adopted for civil, domestic relations, felony, juvenile delinquency, and abuse and neglect protection cases:

- Caseflow management of general civil cases or domestic relations cases is aided by intermediate standards for the time from filing to the completion of the pleadings, completion of discovery, and trial start or nontrial disposition.
- For felony cases, intermediate time standards might include those for time from arrest through key court events, including bail hearing, probable cause determination, felony arraignment, and trial start or nontrial disposition.
- For juvenile delinquency cases, elapsed times from arrest to detention hearing, adjudication hearing and disposition hearing should be subject to time standards for purposes of managing caseload.
- In an abuse and neglect case, intermediate standards might address time from when a child is removed from the home to temporary custody hearing, adjudication hearing, disposition hearing, and permanency hearing. (To avoid "foster care drift" in child protection cases,<sup>12</sup> standards in appropriate circumstances should also address time from the removal of a child from the home to events after the abuse and neglect proceedings, such as a petition to terminate parental rights and a petition for adoption.)

Time goals for intermediate stages give the court criteria for monitoring the progress of cases from the time of case initiation through judgment and the conclusion of all post-judgment court work. Such monitoring permits the early

<sup>7</sup> See Barry Mahoney, et al., *Planning and Conducting a Workshop on Reducing Delay in Felony Cases. Volume One: Guidebook for Trainers* (1991), page P5-3.

<sup>8</sup> National research on court delay reduction has consistently shown that disposition times are unrelated to the size of a court or the number of filings per judge. See Thomas Church, et al., *Justice Delayed* (1978), pp. 21-24; Mahoney, et al., *Changing Times in Trial Courts* (1988), p. 46; and John Goerdt, Chris Lomvardias, Geoff Gallas and Barry Mahoney, *Examining Court Delay* (1989), pp. 26-30 and 71-75.

<sup>9</sup> Barry Mahoney, Larry Sipes and Jeanne Ito, *Implementing Delay Reduction and Delay Prevention Programs in Urban Trial Courts: Preliminary Findings from Current Research* (1985), p. 30.

<sup>10</sup> See Goerdt, Lomvardias, Gallas and Mahoney, *Examining Court Delay* (1989), p. 30.

<sup>11</sup> See ABA, *Standards Relating to Trial Courts, 1992 Edition*, Section 2.51C.

<sup>12</sup> See the Adoption and Safe Families Act of 1997 (ASFA) (PL 105-89), effective November 19, 1997.

identification of cases whose progress has been impeded. These are the cases that may need further management attention from the court to reach fair outcomes in a timely manner.

**2. Overall Time Standards.** In addition to time standards for case progress through intermediate stages, a court should have overall standards for the time from case initiation to trial or disposition by other means. Such standards for total elapsed time provide a basic framework for caseload management efforts. For example, if 99 percent of all civil cases should be disposed in two years, then the court’s caseload management plan should be designed to dispose of a substantial majority of its cases within 12 to 18 months, allowing the last six months for those cases that are somewhat more complex.

Furthermore, the overall time goals provide the basis for determining the types of information that will be most useful in court caseload management reports. For example, if one of the court’s goals is to dispose 90 percent of all felony cases within 6 months after arrest, what percentage of the court’s disposed or pending cases exceed this time standard? Which individual cases are approaching the longest time standard or various interim goals?

Time standards developed by the National Conference of State Trial Judges and approved by the American Bar Association (ABA) are a common point of reference for the consideration of overall time standards. See Table 1.

The earliest efforts to introduce time standards in state court systems were made in the 1970s and early 1980s. By the end of the 1980s, over 20 states had adopted statewide goals for the time required to process cases in the state trial courts. By November 1994, this number had increased to 34 states and the District of Columbia. As of late 2007, 41 states and the District of Columbia had some form of case processing time standards.<sup>13</sup>

Virtually all of these jurisdictions have time standards for general-jurisdiction civil cases and felonies, and most also have standards for domestic cases, misdemeanors and limited-jurisdiction civil cases. There are 31 jurisdictions with standards for juvenile cases, and 12 have standards for probate cases. In many states, the time standards are mandatory, while in others they are voluntary or advisory.<sup>14</sup>

TABLE 1. AMERICAN BAR ASSOCIATION TIME STANDARDS <sup>15</sup>			
	Time Within Which Cases Should be Adjudicated or Otherwise Concluded		
Case Type	90%	98%	100%
General Civil	12 Months	18 Months	24 Months
Domestic Relations	3 Months	6 Months	12 Months
Felony	120 Days	180 Days	365 Days
Misdemeanor	30 Days	--	90 Days

a. **Civil Cases.** Among the states with time standards in 2007, 38 have guidelines for civil matters in general-jurisdiction trial courts. At least nine jurisdictions have adopted standards that are identical to or very close to the ABA standards shown above in Table 1. Standards in some states provide that cases should be disposed within six or 12 months, but the largest number suggest that all cases should be disposed within 18 or 24 months.

<sup>13</sup> NCSC, Knowledge and Information Services (KIS), “Case Processing Time Standards in State Courts, 2007 (February 10, 2009).

<sup>14</sup> Ibid. In at least nine states, time standards are articulated in a fashion like that in the American Bar Association time standards (the time from case initiation within which 90%, 98% and 100% of the cases of a given type should be disposed). (ABA, *Standards Relating to Trial Courts, 1992 Edition*, Section 2.52.) Other states have standards that cover only 99% of cases (Arizona and Minnesota), 95% (Utah) or 80% (Vermont), accepting that the remainder will take longer to be disposed. In still other states, there is either a flat standard (with no percent specified) or a standard for 100% of all cases of a given type.

<sup>15</sup> ABA, *Standards Relating to Trial Courts, 1992 Edition*, Section 2.52.

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ABA time standards do not include guidelines for limited-jurisdiction civil matters (usually torts, contracts and real property matters with less than a specified dollar amount at stake). Yet 23 states and the District of Columbia have time standards for such cases. Although time expectations vary more than those for general-jurisdiction matters, the largest number indicate that all of these cases should be decided within six months or less.

For civil matters using summary hearing procedures, such as small claims and landlord-tenant cases, ABA standards recommend disposition within 30 days after filing. Seven states and the District of Columbia have time guidelines for these cases, but only one has adopted the ABA standard. Most of the others provide that all such cases should be disposed within three months or less after initiation.

**b. Criminal Cases.** In 2007, there were felony time standards adopted by the court systems of 35 states and the District of Columbia. Although only a small number of jurisdictions have adopted the full ABA time standards shown in Table 1 for felonies, standards in a total of several states provide that all cases should be disposed within a year. An even larger number of states have shorter time standards, typically providing that all felonies should be disposed within 180 days.

Misdemeanor time standards had been adopted in 31 states and the District of Columbia by 2007. At least eight states agree with the ABA standard that 100% should be disposed within 90 days. Some states have standards shorter than 90 days for all cases, and the largest number have longer time standards.

**c. Traffic Cases.** Although ABA time standards do not include separate standards for traffic cases, those for misdemeanors – that 90% of cases should be disposed within 30 days after initiation, and that 100% be disposed within 90 days – may be considered applicable as well to traffic cases. At least nine states had time standards in 2007 for traffic cases.<sup>16</sup>

**d. Juvenile Delinquency Cases.**<sup>17</sup> Since the 1970s, several organizations have suggested time standards for delinquency cases. One of the earliest was the Joint Commission on Juvenile Justice Standards [a combined effort of the Institute for Judicial Administration (IJA) and the American Bar Association (ABA)], which issued recommendations in 23 separate volumes between 1977 and 1980. Another prominent set of standards was issued in 1980 by the National Advisory Committee for Juvenile Justice and Delinquency Prevention (NAC), created by the federal legislation creating the Office of Juvenile Justice and Delinquency Prevention (OJJDP). Following the release of those standards, ABA's National Conference of State Trial Judges included juvenile standards in their court delay reduction standards in 1984, which were incorporated in ABA trial court standards revised in 1992. Finally, the National District Attorneys Association (NDAA) issued standards for the handling of delinquency cases in 1992. Table 2 shows the different time standards offered by these groups.

Court systems in 30 states and the District of Columbia had time standards for delinquency cases in 2007.<sup>18</sup> Many had time standards to detention hearing, to adjudication, and to disposition, distinguishing detention from non-detention cases. Only a handful of states had time expectations equal to or shorter than the standards suggested by IJA/ABA, NAC/OJJDP and ABA for detained juveniles, however. The standards for most of the states were at least twice as long as those offered by these groups, and those for at least six states were longer than those of NDAA.

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<sup>16</sup> See NCSC, KIS, "Case Processing Time Standards in State Courts, 2007 (2009).

<sup>17</sup> Discussion of national time standards for juvenile delinquency cases is based on Jeffrey Butts and Gregory Halemba, *Waiting for Justice* (1996), pp. 20-25.

<sup>18</sup> See NCSC, KIS, "Case Processing Time Standards in State Courts, 2007 (2009).

**TABLE 2.  
TIME EXPECTATIONS IN NATIONAL DELINQUENCY STANDARDS<sup>19</sup>**

	Maximum Days from Referral to Adjudication	Maximum Days from Adjudication to Disposition	Total Maximum Days from Referral to Disposition
<b>Detained Juveniles</b>			
• IJA/ABA	15	15	30
• NAC/OJJDP	18	15	33
• ABA	15 <sup>a</sup>	15	30 <sup>a</sup>
• NDAA	30	30	60
<b>Released Juveniles</b>			
• IJA/ABA	30	30	60
• NAC/OJJDP	65	15	80
• ABA	30 <sup>b</sup>	15	45 <sup>b</sup>
• NDAA	60	30	90
<ul style="list-style-type: none"> <li>• Time limit begins at point of detention admission rather than police referral.</li> <li>• Time limit begins at filing of delinquency petition rather than police referral.</li> </ul>			

**e. Child Protection Cases.** In 1995, the National Conference of Juvenile and Family Court Judges (NCJFCJ) developed “Resource Guidelines” for improving the court process in child abuse and neglect cases. These guidelines were developed in consultation with representatives of the Conference of Chief Justices, the National Center for State Courts, and the American Bar Association. The purpose of the guidelines is to help courts hearing abuse and neglect cases to meet demands placed on them by federal and state laws conducting proper court hearings, managing court calendars, and dealing with necessary resource demands and costs.<sup>20</sup>

The guidelines offer recommendations on the timing of key events in the court process:

- A preliminary protective hearing should occur within 72 hours after a child has been placed outside the parents’ care if removal has not occurred after a completed court hearing and pursuant to a court order.
- When a child is in emergency protective care, adjudication should be completed within 60 days after the removal of the child.
- Disposition should ordinarily be completed within 30 days after adjudication.
- Review of children in foster care must occur at least once every six months to meet the requirements of federal law.<sup>21</sup>
- Permanency planning hearings, which federal law formerly required within 18 months after placement, must now be held within 12-14 months of a child’s being taken into care.
- If a petition is filed for termination of parental rights, a termination trial should be set within 60 days of completion of service of process.

In 1997, through the Adoption and Safe Families Act (ASFA) (P.L. 105-89), Congress mandated that states shorten the length of time that children spend in foster care, and that they provide an array of permanency options to provide safe and stable homes for children.<sup>22</sup> Child protection agencies at the state or county level are required by ASFA to give highest priority to the health and safety of children, focusing on permanency from the beginning of a child protection case. Courts

<sup>19</sup> Source: Jeffrey Butts and Gregory Halemba, *Waiting for Justice: Moving Young Offenders Through the Juvenile Court Process* (National Center for Juvenile Justice, 1996), p. 25.

<sup>20</sup> NCJFCJ, *Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases* (1995).

<sup>21</sup> See 42 U.S.C. §675(5)(B).

<sup>22</sup> See David Steelman, *Effects of Adoption and Safe Families Act of 1997 on Wisconsin Proceedings in “CHIPS” Cases (Those Involving “Children in Need of Services”)* (1999).

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hearing child protection cases are called on to ensure that cases progress to permanency in a fair and timely manner. By 2007, every state had enacted legislation implementing ASFA, thereby introducing time standards for child protection cases that may have been quite different from prior time expectations.

ASFA defines when a child has “entered foster care.” Since ASFA indicates that a child is considered to have entered foster care on the earlier of either (a) the date of the court’s first finding that the child has been abused or neglected, or (b) 60 days after the child was removed from the home, timetables in cases where there are reasonable efforts to preserve or reunify the family have up to 60 days added to elapsed time from when a child was taken into care.

If a court finds that reasonable efforts to preserve or reunify a family are required, the court must hold a permanency planning hearing to more than 12-14 months after the child was taken into care. Subsequent review hearings must then be held by the court, with reasonable efforts findings, not less than every 12 months after the previous hearing until a child is adopted or the permanency plan is completed.

ASFA identifies circumstances in which the filing of a petition to eliminate parental rights is mandatory unless doing so would not be in the best interests of the child. One of these circumstances is when the child has been in foster care for 15 of the last 22 months.

Proposed federal regulations suggest that a petition to terminate parental rights must in this situation be filed at the end of the fifteenth month. Calculation of when the petition must be filed must consider when the child was “entered foster care” and must include up to 60 days from the time the child was removed from the home. In effect, this provision for a mandatory petition to terminate parental rights thus comes into play when the child has been in foster care for 15 months in the last two years.

The second circumstance for a mandatory petition to terminate parental rights is when the court finds that reasonable efforts to reunify the family are not required. In that situation, the court must hold a permanency planning hearing within 30 days after it has found that reasonable efforts to reunify are unnecessary, and then a petition to terminate parental rights must be filed as soon as possible. Proposed federal regulations suggest that the court determination that reasonable efforts to reunify must be made within 60 days after the child’s removal from the home. The inference is that a permanency hearing must be held within 90 days after removal if the court finds that reasonable efforts to reunify are not required.

**f. Divorce Cases.** There were 33 states that had time standards for domestic relations cases in 2007. As Table 1 shows, ABA time standards suggest that 90% of these cases should have initial dispositions within 3 months after filing, 98% within 6 months, and 100% within 12 months. Although only one state had completely adopted the ABA standard, the standards in eleven states agreed that 12 months is appropriate for all or most divorce cases. Seven states had shorter time standards for all such cases, and standards in seven states distinguished between contested and uncontested cases in terms of expectations for time to disposition.

**g. Probate Cases.** The time standards recommended by ABA include none specifically for probate cases. In many states, statutory provisions may provide guidelines for the timely administration of simple and other decedent estates. In 2007, court systems in 12 states had time standards for probate cases, probably intended largely for decedents’ estates.<sup>23</sup> In recognition of the fact that most such estates are relatively uncomplicated, the standards in the majority of these states provide that estate administration should be concluded within a year. Other states’ standards acknowledge the small percent of estates that are more complex, and they generally provide that such matters should be concluded within 24 months. Because of their nature, such case types as trusts, guardianships and conservatorships may properly remain open for years depending on the individual circumstances of beneficiaries or their estates.

**h. Cases on Appeal.** Although this paper focuses largely on trial courts, time standards have also been developed for appellate courts. Since 1971, when Illinois and Ohio became the first states to implement standards for the appellate courts, many other states have chosen to follow suit. As of late 1995, 12 states had adopted some form of appellate time standards. By late 2007, 20 states and the District of Columbia had adopted appellate case processing time standards.<sup>24</sup>

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<sup>23</sup> See NCSC, KIS, “Case Processing Time Standards in State Courts, 2007 (2009).

<sup>24</sup> *Ibid.*

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## B. Other Related Court Management Goals and Policies

Associated with meeting time standards are specific goals relevant to the effectiveness of a court's caseflow management efforts. Relating directly to caseflow management is the size of a court's pending inventory of cases and its continuance policy. Of more general importance are the effects of court practices and procedures on the cost of access to justice and the court's maintenance of equality, fairness and integrity.

**1. Reduction Size and Age of Pending Inventory.** Keeping current with its incoming caseload is an important element of optimal performance by a trial court.<sup>25</sup> The size of a court's pending inventory is a key measure of the effectiveness of the court's caseflow management efforts. National research in the United States shows that the size of a court's inventory of pending cases, in relation to the number of dispositions per year, is strongly associated with delay. Slow courts are almost always "backlogged" courts.<sup>26</sup> In contrast, having fewer pending civil cases per judge is strongly correlated with shorter times to disposition.<sup>27</sup>

A court's goals with regard to its pending inventory may have two different parts: reducing the size and age of the inventory, and then maintaining it at a level that will permit the court to comply with its time standards. If a court's case processing times are too long, its inventory includes an unacceptable number of cases that are "backlogged" – that is, there is too high a percentage of cases in the inventory that have been pending for longer than the time standards adopted by the court.

For example, a court may have adopted the ABA time standards for civil cases, that all but a small number of exceptional cases be disposed within two years after filing. (See Table 2.) If the court has a pending inventory of 5,000 civil cases, of which 1,500 (or 30%) are more than two years old, then the court has a "backlog problem." In this circumstance, the court's caseflow management improvement plan must include steps specifically directed toward reducing the backlog. For a period of time, the court must dispose of more cases than are filed, until the age of the pending inventory is dramatically reduced, to the point where no more than 50-100 (1-2%) of its pending civil cases are more than two years old.

The second part of a court's goals for its pending inventory is to avoid future backlog and to maintain a pending inventory that is manageable in terms of the workload of judges and court staff members. What constitutes a "manageable" pending inventory? In simplest terms, it is the number of pending cases that the court can maintain and still meet its time standards without heroic efforts on the part of judges and staff or undue burdens on parties and counsel. If, after having eliminated its backlog, a court disposes of as many cases each year as are filed, the size of the pending inventory should remain relatively stable and manageable. (The court must not be misled that it can keep its pending inventory manageable simply by disposing of all its easiest cases, leaving all the more difficult cases unresolved. In that event, the mix of older and more complex cases in the pending inventory may increase even if the overall size of the inventory does not.)

**2. Court Policy on Time Extensions or Rescheduling of Court Events.**<sup>28</sup> In order for case progress from initiation to conclusion to be more predictable and reliable, judges must adhere to a clearly articulated policy on the court grant of time extensions and requests to reschedule court events. Having established time standards and goals regarding the pending inventory, the court can spell out for itself and other participants in the court process what kind of policy on extensions or rescheduling will aid the accomplishment of those standards and goals.<sup>29</sup> As the Court Delay Reduction Committee of the National Conference of State Trial Judges has observed, even the most effective calendar operation cannot (and should not, in fairness) eliminate all such extensions or rescheduling. Yet they can be kept to a minimum by adhering to firm enforcement standards, under which they are granted only for good cause shown, and requests for extensions or rescheduling must be in writing and are recorded in case files and the court's case management information system.<sup>30</sup>

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<sup>25</sup> See BJA and NCSC, *Trial Court Performance Standards and Measurement System Implementation Manual* (1997), Standard 2.1.

<sup>26</sup> Mahoney, et al., *Changing Times in Trial Courts* (1988), p. 195; Goerd, Lomvardias, Gallas and Mahoney, *Examining Court Delay* (1989), pp. 36-39, 42.

<sup>27</sup> Goerd, Lomvardias and Gallas, *Reexamining the Pace of Litigation in 39 Urban Trial Courts* (1991), p. 55.

<sup>28</sup> In the United States, such a policy is often called a "continuance" policy. It is helpful to define what is meant by the word "continuance." In some courts, a case is "continued" any time it is scheduled for a subsequent court event, even when the scheduling is done after the conclusion of a court event that occurred on the date it was initially scheduled to happen. That is not what is meant here. For purposes of caseflow management, a "continuance" is the rescheduling of a court event that did not happen on the scheduled date, whether it is granted by the court at the request of a party or is necessary because the court could not reach the case on its calendar. Compare the definition of "number of continuances" in Conference of State Court Administrators and NCSC, *State Court Model Statistical Dictionary 1989* (1989), p. 47.

<sup>29</sup> Institute for Law and Social Research (INSLAW), *Guide to Court Scheduling* (1976), p. 14.

<sup>30</sup> ABA, *Standards Relating to Trial Courts, 1992 Edition*, Section 2.55.

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In an individual case, the grant of a request to extend or reschedule obviously means a delay in its progress to conclusion. In the broader context of caseload management, however, a court's policy and practices about such requests also affects the view that others (attorneys and other case participants) have about the court's commitment to caseload management and timely disposition of cases:

If the court is lenient on continuances, a busy attorney may be less likely to be prepared or likely to be less prepared. Time will be devoted to the most pressing business, and postponements will be requested for less urgent matters, including cases in which a continuance due to unreadiness can be obtained. Each time the court grants such a request, it reinforces counsels' perception of the court's leniency and lack of case management orientation.<sup>31</sup>

Court policy should be to keep approval of requests to extend or reschedule to a minimum. In 1973, caseload management expert Maureen Solomon recommended that a maximum "continuance rate" should be among the management goals in a court's caseload management system:

Some judges feel that it is impossible or unrealistic to set a maximum on the number of continuances since each request must be evaluated on its merits. However, experience in both large and small courts of general jurisdiction indicates that when the continuance rate rises about 20 percent of the scheduled cases, the court is failing to be rigorous in evaluating continuance requests. Thus, when the continuance rate rises above the rate determined to be acceptable to the court, special attention should be directed to the continuance problem and steps taken to remedy it.<sup>32</sup>

Whatever is the "continuance rate" deemed acceptable to the court, attorneys and parties must have the expectation that requests to extend or reschedule are more likely than not to be denied, and that any such request other than for a good reason will be denied by the court.

Policy and practices for the grant of such requests in pretrial matters can be distinguishable from those for trial continuances. As part of a court's exercise of control over case progress, it may enter orders soon after case commencement to govern the timeliness of evidence submission and exchange, as well as any referral to mediation or another form of alternative dispute resolution (ADR). Such an order may also the timing of court events to allow opportunities for parties to reach negotiated resolution of issues, as well as trial dates (as in common law countries) or dates for completion of evidence submission to the court (as in civil law countries). As long as they do not threaten case progress to conclusion, short extensions of time before that may be granted more freely. Indeed, a short extension of time that demonstrably aids progress to early resolution of a case may be a valuable caseload management tool. In contrast, given the critical importance to successful caseload management of credible dates for trial or submission of all evidence, the court should be very strict about not granting time extensions for trial or submission of all evidence.

**3. Controlling Costs of Justice.** Court performance standards suggest that a court should ensure that "the costs of access to the court's proceedings – whether measured in terms of money, time or the procedures that must be followed – are reasonable, fair and affordable."<sup>33</sup> As thus defined to include time and procedures as well as money, costs of justice present an additional dimension from which to view court management of the pace of litigation.

Extensions of time and rescheduling court events must be viewed as an area where concern for delay and concern for costs intersect. In addition to delaying individual cases and affecting case participants' expectations of how serious the court is about caseload management, continuances cause additional activities in a case for judges and court staff.

Extensions of time or rescheduled court events can also involve significant costs for litigants and witnesses. If extension or rescheduling means additional court appearances for attorneys that are not offset by demonstrable savings as a result of settlement, then the costs of attorney fees can be increased. Moreover, parties and witnesses taking time off from work for a hearing or trial that is then continued must then appear again later, experiencing not only further delay and additional out-of-pocket costs, but also increased frustration with the court process.

**4. Maintaining Equality, Fairness and Integrity.** Over the years, many have observed that attention to expediting the court process must not overshadow attention to fairness and doing justice in individual cases. Professor Maurice

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<sup>31</sup> Maureen Solomon and Douglas Somerlot, *Caseload Management in the Trial Court: Now and for the Future* (1987), p. 29.

<sup>32</sup> Solomon, *Caseload Management in the Trial Court* (1973), p. 39.

<sup>33</sup> *Trial Court Performance Standards and Measurement System Implementation Manual* (1990), Standard 1.5.

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Rosenberg once observed that an obsession with speedy justice without attention to substantive results can erode the integrity of the justice process. He wrote, "Slow justice is bad, but speedy injustice is not an admissible substitute."<sup>34</sup>

But concern for timeliness is hardly irreconcilable with concern for justice. In the American Bar Association's trial court standards, the committee of the National Conference of State Trial Judges that developed delay reduction standards addressed the tension between the competing goals of delay reduction and substantive justice. They wrote that it is only elapsed time in a case "other than reasonably required for pleadings, discovery and court events" that is unacceptable and must be eliminated.<sup>35</sup> Professor Ernest Friesen, a leading American expert on caseload management, has observed that all of the essential functions of courts – such as doing justice in individual cases, appearing to do justice in individual cases, and protecting citizens from arbitrary government intrusion in their lives – are all defeated by delay.<sup>36</sup>

Effective implementation of a caseload management improvement plan can be thoroughly consistent with trial court performance standards for equality, fairness and integrity.<sup>37</sup> Through the faithful and consistent implementation of its caseload management improvement plan, the court can help to provide a fair and reliable judicial process. Court decisions and actions in such areas as the grant of continuance requests should be based in individual attention to cases and without undue disparity among like cases. The court should make clear how compliance with its orders relating to scheduling and other caseload management issues can be achieved. Finally, the court should take appropriate responsibility for seeing that case participants actually comply with its orders on scheduling and other caseload management issues.<sup>38</sup>

### **C. Monitoring and Measuring Actual Performance**

Successful caseload management requires that a court continually measure its actual performance against the expectations reflected in its standards and goals. For this purpose, the court should regularly measure times to disposition, whether it is disposing of as many cases as are being filed, the size and age of its pending caseload, and the rates at which trials and other court events are being continued and rescheduled.

Caseload-management information should be provided as part of the management reports produced with the aid of the court's automated case management information system.

Although measuring performance is vitally important for effective caseload management, it is possible to suffer from "information overload." To avoid such overload, court leaders measuring performance should give attention to the key types of caseload management information. To this end, a court would be well served to apply four of the performance measures that are part of "CourTools" (© 2005 NCSC), and which focus specifically on caseload management:<sup>39</sup>

- Clearance Rates (the number of outgoing cases as a percentage of the number of incoming cases): This measure whether the court is keeping up with its incoming caseload. If cases are not disposed of in a timely manner, a backlog of cases awaiting disposition will grow.
- Time to Disposition (the percentage of cases disposed or otherwise concluded within established time frames): This measure compares a court's performance with local, state, or national guidelines for timely case processing.
- Age of Pending Caseload (the average age of active cases pending before the court, measured as the average number of days from filing until time of measurement): Knowing the age of the active pending caseload is an important measure of a court's case management. This measure differs from "Time to Disposition," in that these cases have not reached a court disposition. It should only be used to calculate the age of active pending cases, since those that are inactive will exaggerate the overall age of cases pending before the court.
- Certainty of Trial Date or of Final Submission of All Evidence (the average number of times that cases must be scheduled for trial or final hearing before they are ready for judgment): Research in the United States has found that a court's ability to set firm trial dates is associated with shorter times to disposition. In a country whose courts do not necessarily provide oral trials as in the American common law practice, this measure is applicable in a

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<sup>34</sup> Rosenberg, "Court Congestion: Status, Causes, and Proposed Remedies," in American Assembly, *The Courts, The Public, and the Law Explosion* (1965), p. 58.

<sup>35</sup> See ABA, *Standards Relating to Trial Courts, 1992 Edition*, Section 2.50.

<sup>36</sup> See presentation by Friesen in NCSC's Institute for Court Management videotape, *Caseload Management Principles and Practices: How to Succeed in Justice* (1991).

<sup>37</sup> See *Trial Court Performance Standards and Measurement System Implementation Manual* (1990), Standards 3.1 through 3.6.

<sup>38</sup> See Trial Court Performance Standard 3.5.

<sup>39</sup> See NCSC, "CourTools – Trial Court Performance Measures" (© NCSC 2005), [http://www.ncsconline.org/D\\_Research/CourTools/tcmp\\_courttools.htm](http://www.ncsconline.org/D_Research/CourTools/tcmp_courttools.htm) (as downloaded from the Internet in June 2009).

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different way, having to do with certainty about the date of final hearing, on which all evidence must be submitted to the court for decision. In either circumstance, this measure provides a tool to evaluate the effectiveness of calendaring practices, the continuance rate, and whether there are enough judges and staff.

Measurement by itself does not solve problems. Judges and court administrators must use it as a tool to manage cases and caseload, by asking key questions.<sup>40</sup> The individual judge should be asking such questions as the following on an ongoing basis:

- **Case-related questions.** What is happening in this case? How old is it? What is its status? What should be happening next? By when?
- **Calendar-related questions.** What is the overall status of my calendar? How many pending cases are there, and what is their age and status? What are the oldest cases, and are they beyond the time standards? Why are they old? What needs to be done about them?

For a state-level court leader, trial court chief judge or trial court manager, there are different questions to ask in order to use information effectively to measure caseload management and delay reduction efforts:

- **Overall status of calendar.** How many old cases are there? That is, how many cases are pending beyond the time suggested by time standards? What is the "backlog" (the number of cases that cannot be completed within a tolerable time period, as defined by the time standards)?
- **Troubleshooting questions.** Are there problems with particular types of cases? Are there particular procedural bottlenecks? Are particular judges experiencing difficulties?

Regular attention by the chief judge and court manager to the court's performance in light of its caseload management goals and objectives is a powerful way to enhance the likelihood of court success. If the chief judge and the court manager meet regularly to review reports and measures of the court's caseload management performance, they can deal promptly with caseload management problems as they arise.

Measuring performance in such a way with the use of relevant information, the court should be able to identify problems and determine where caseload management efforts are needed. The steps taken to address problems should be consistent with basic principles of effective caseload management.

#### **D. Assuring Accountability and Taking Responsible Steps to Meet Expectations**

Having reasonable expectations about performance (such as time standards and related goals for caseload management) is one important part of accountability. Another part is to have means to measure actual performance in comparison to those expectations. The third part is to assure that responsible steps are taken to assure that actual performance is in compliance with appropriate expectations.

**1. Internal Accountability.** Within the court itself, accountability has to do with the assignment of specific responsibility to particular persons. The results of national-scope research on caseload management and delay reduction in urban trial courts suggest that courts with successful program have judges with clearly defined responsibility for managing cases. Furthermore, non-judicial court staff members – such as judges' secretaries, in-court clerks, and data-entry personnel – have clear roles and responsibilities in case processing, whereby their effectiveness can be periodically assessed.<sup>41</sup>

**2. External Accountability.** Both judges and court staff can measure their performance against caseload management standards and goals, as well as the court's caseload management improvement plan. To the extent that they have been publicly promulgated (as they should be), the standards and goals and the plan can serve as measures for both internal and external accountability. Periodic reports to the general public on the court's progress under its caseload management standards and goals and improvement plan address three important external accountability goals: (1) they show the court's use of public resources; (2) they show the effects on litigants of the court's caseload management activities, and (3) they promote public trust and confidence that the court functions are expeditious, fair and reliable.<sup>42</sup>

**3. Responsible Steps to Assure Prompt Justice.** If a court finds that its actual performance falls significantly short of relevant time standards, then it must take steps to close the gap. These involve the consistent application of such caseload management principles as the following in each case:

- Early court intervention and continuous court control over case progress;

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<sup>40</sup> Mahoney, et al., *Planning and Conducting a Workshop on Reducing Delay in Felony Cases. Volume One: Guidebook for Trainers* (1991), pp. P6-7 through P6-9.

<sup>41</sup> Mahoney, et al., *Changing Times in Trial Courts*, pp. 203-204.

<sup>42</sup> See *Trial Court Performance Standards with Commentary* (1990), Standards 4.2 and 5.2, and Reginald K. Carter, *The Accountable Agency* (1983), p. 31.

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- Differentiated case management (DCM);<sup>43</sup>
  - Realistic schedules and meaningful court events;
  - Providing a firm and credible date by which all evidence must be submitted, whether in terms of documents filed with a court or evidence presented orally in a trial;
  - Management of the submission of evidence; and
  - Management of post-judgment motions, proceedings in execution of judgment, and other court events after the entry of judgment by a trial court or court of first instance.

Although courts may differ in their specific approaches to caseflow management, those approaches can generally be considered to be variations on these basic methods or techniques that successful courts have in common.

## E. Conclusion

Caseflow management must ultimately be an activity that judges and court managers actually do on a day-to-day basis. The actual process of managing any operation, whether it be a small business, a large business corporation, a law firm, or a governmental organization such as a court, involves the establishment of performance expectations, measurement of actual performance against such expectations, and having mechanisms of accountability. These are the critical activities involved in managing a court generally, and they are necessary to the success of any effort to improve a court's caseflow management.



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<sup>43</sup> "Differentiated case management" (DCM) is a means for ongoing court control of case progress by which a court distinguishes among individual cases in terms of the amount of attention they need from judges and lawyers and the pace at which they can reasonably proceed to conclusion. In the absence of case differentiation, it has been customary for courts to apply the same procedures and timetables to all cases of a given type. Typically, courts would give attention to cases in the order they were filed, maintaining that older cases must be disposed before those filed later. Such an approach fails however to recognize the differences among individual cases, however. Treating all cases alike may mean that some cases are rushed while others are unnecessarily delayed. Some cases needing little attention from a judge may appear on calendars for more appearances than they need, restricting the judge's ability to give more attention to cases that need it. Management by differentiation can be seen as a "triage" process, under which very complex cases and very simple cases are distinguished from "standard" cases in terms of time expectations and procedural complexity.

For discussion of DCM in the American court context, see Holly Bakke and Maureen Solomon, "Case Differentiation: An Approach to Individualized Case Management," 73 *Judicature* (No. 1, 1989) 17. For a discussion of DCM in the courts of the Philippines, see Justice Zenaida Elepano, "[Case Management Reform: The Philippine Experience](#)," in *Judicial Reform Handbook*, Draft Chapter 4: Case Management Reform and Delay Reduction (Asia Pacific Judicial Reform Forum, Singapore Roundtable Discussion on the Handbook on Judicial Reforms in the Asia-Pacific Region, January 19 – 21, 2009), [http://www.apjrf.com/content-document-pdf/draft\\_chapter04.pdf](http://www.apjrf.com/content-document-pdf/draft_chapter04.pdf).