Case Management

Fern M. Smith [*]

Introduction

In the last decade, the world has witnessed a significant increase in national commitments to democracy and free markets. These political and economic forces have been a factor in the creation of new substantive law, including constitutional and civil rights provisions, free trade agreements, and commercial legislation. These trends have increased both the quantity and complexity of private and public disputes within and across national borders. The reform of our judicial systems, however, has not kept pace with these substantial developments. Most of our systems suffer from insufficient institutional resources and outdated procedures.

Litigants and lawyers complain – justifiably – of excessively adversarial, lengthy, costly, prejudiced, unsatisfying trials and other proceedings and unenforceable judgments. Overworked judges demand more resources for court and case management, more disciplinary authority over the progress of litigation, better compensation and greater protection from attempts of improper influence and interference by other branches of government.

These trends have generated too many legal disputes for the courts to handle in traditional ways. Increasing backlog reduces the time spent on each case and causes delays. Delays strengthen the incentives for breaking commitments, leading to more legal disputes – and so the cycle continues. The effects of the resulting breakdown are no longer matters of only local or domestic concern, but have begun to take on international implications as the globalization of trade increasingly plays a role in the shaping of legal disputes that come before the courts in our various countries.

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[*] Director, Federal Judicial Center, Washington, DC; U.S. District Judge, United States District Court for the Northern District of California; J.D., 1975, Stanford Law School; B.A., 1972, Stanford University, Graduated with Distinction, Phi Beta Kappa.

Until fairly recently, most judicial systems, including our own, failed to provide meaningful processes in the trial [first instance] courts that could streamline the traditional trial process, while still providing just results. But over the past four decades, the American judiciary has been increasingly forced – by growing caseloads, increasing litigation costs, and public and governmental pressure – to address these problems by instituting procedural changes that mandate case management as a necessary part of the court process for civil litigation in the U.S. District Courts. This paper briefly sets out the chronology of major procedural changes, describes the goals of case management, the elements of case management used in the federal system, and poses some questions for others considering development of case management procedures tailored to their own cultural norms and legal traditions.

Background

Judicial resources in the United States have not kept pace with the massive expansion of litigation. There are neither enough judges nor enough funds for the optimal operation of the courts. The result is court congestion and excessive delay in the resolution of civil cases. The delay results in increased costs to litigants. Widespread concern among all segments of the legal community as well as the public has led to the search for solutions designed to eliminate unnecessary expense and delay in civil litigation.

In the federal courts, the prevailing response was twofold: (1) the creation and expansion of less costly alternative dispute resolution methods such as mediation, arbitration and judicial settlement conferences; and (2) active judicial case management of each civil case.

Over the past four decades, the trial judge has gradually emerged from a passive role to an active case manager, in an effort to conduct the business of the courts with greater judicial efficiency. This transition has occurred contemporaneously with rule changes and legislation. Utilizing its rulemaking authority, the federal judiciary amended

the Federal Rules of Procedure in 1983 to strengthen authority for the growing practice of early judicial intervention in civil cases and ratifying the authority for judges to require attorneys and litigants to attend pretrial conferences and enter case management and scheduling orders setting time limits for the progression of the case including a firm trial date. (See Rule 16, Federal Rules of Civil Procedure, attached hereto as Exhibit A.)

In addition, the United States Congress enacted the Civil Justice Reform Act of 1990, requiring each United States District court, working with planning groups of attorneys, to develop and implement a "civil justice expense and delay reduction plan." The legislation instructed each court to formulate a case management program providing for "early and ongoing control of the pretrial process through involvement of a judicial officer" whose responsibilities include "assessing and planning the progress of a case" and "setting early, firm trial dates." The Alternative Dispute Resolution Act of 1998 was the final related piece of legislation. That Act mandated every U.S. District Court to offer some type of court-annexed ADR process.

The practice of judicial case management has spread to most state courts. Today, trial judges throughout the United States are actively managing civil cases from filing through disposition with a purpose of achieving the "just, speedy, and inexpensive determination of every action." (Rule 1, Federal Rules of Civil Procedure.)

I. Case Management Goals

The specific case management design used should be tailored to fit each legal system. It should take into account both legal and social culture. But there are general principles that apply across systems. These are to:

- Eliminate or reduce undue delay by shortening the time between initial filing of a case and its ultimate resolution.
- Eliminate or reduce excessive expense by working with counsel to reduce pretrial discovery motions and streamline trial presentation.

- Provide just, timely, and effective resolution of cases by scheduling early, firm trial dates and encouraging consideration of alternative dispute mechanisms.
- Make litigation predictable for judges, attorneys, and parties.
- Sustain and enhance public confidence.
- Maintain adequate information on case processing and disposition in order to assess the impact of changes.

II. Elements of Civil Case Management in the United States District Courts

In the U.S. District Courts, we have found the following elements to be critical in meeting the previously listed goals.

- Each case is assigned to an individual judge for the duration of the case, from filing through resolution. This allows the judge to become thoroughly familiar with the facts and the legal issues, and to focus responsibility of the individual judge.
- Early judicial involvement in each case alerts the lawyers and the litigants to the judge's intent to actively manage and guide the litigation.
- Lawyers or non-represented litigants must attend and participate in conferences with the judge to make a schedule and plan for litigating the case. This creates a cooperative environment and offers an opportunity for the parties to clarify their interests and positions.
- Firm deadlines, set early in the case, limit the time for various litigation tasks. This helps keep costs under control and contributes to earlier resolution.
- Early identification and clarification of the factual and legal issues genuinely in dispute limits the litigation to those issues and disposes of others by agreement or summary procedures.
- Attorneys develop most of the evidence through discovery (collection of information by requesting documents, taking of depositions of witnesses, etc.).
- On-going efforts to settle the case through judge-hosted settlement conferences or use of alternative dispute resolution procedures (such as mediation) are encouraged throughout the process. Whether these settlement efforts are

completely voluntary or mandated by the court differs by jurisdiction. Although these settlements may not dramatically reduce the number of cases that actually proceed to trial, most cases settle at an earlier stage. This enhances the quality of the settlement and reduces costs to the litigants and judicial time devoted to the case.

- Judicial authority to impose sanctions if case management orders are violated plays a significant role in the success of these procedures.
- Continuous trials (i.e., evidence is presented continuously, usually daily, until the trial is over) are traditional in the United States. We believe this motivates settlement.
- Thorough planning and preparation for trial in cases where a trial is held keeps the trial organized and does not waste time or money of the parties, courts or jurors.
- A technologically sophisticated information management system tracks each case and provides the judge with information about the status of each case so that the judge can maintain an organized and predictable schedule.

III. Case Management Design

In designing a case management program for your courts, these are some questions to consider.

- What are the elements of a good case management system?
- Does your present law prohibit you from implementing such a system?
- If so, what procedural reforms need to be enacted?
- Who should be involved in designing and implementing such changes, e.g. judges, legislators, lawyers, all of the above?
- Do your courts have control over attorney compliance with procedural rules, such as case management timelines?
- If not, what can or should be done to increase judicial control in this area?
- Are there cultural impediments to a process that would increase the judge's authority to "manage the case?"

- If so, what process is available to change those cultural norms within the legal-judicial system, e.g. committees of judges and lawyers who work together on areas of mutual interest?
- What data collection system is in place by which to monitor performance of judges and comparative impact of different procedures?

Conclusion

Acceptance of case management into a national legal culture is not always accomplished easily. Many view it as a threat to long accepted legal and cultural norms; however, during the past four decades, many American judges believe that their efficiency has been significantly increased through the use of active judicial management of cases. Judges, lawyers and litigants now give testimonial to case management effectiveness, although significant opposition existed during the earlier years of implementation. Does that mean the U.S. courts are without problems – of course not. But it does mean that the downward spiral of logjam has been reversed in great part. It also means that we are less afraid of new systems, new methods and new processes to assist us in the delivery of prompt and fair resolution of civil disputes.

In order for case management to be useful, it must respond to real problems, genuine needs and their actual causes. When beginning its use, legal communities must work together to make a candid assessment of how their process operates and how new procedures can best be molded to become a comfortable part of that process. There are many available models that can be studied. The process of tailoring judicial reform to meet local needs is critical and should address the legitimate concerns of the primary participants in the judicial process. Judges, lawyers and the legislature must all work together to insure the acceptance and effectiveness of new procedures into the local legal culture. When possible, these innovations should be monitored to make sure the results are consistent with the intent.

It has taken approximately four decades, but I believe that the processes just discussed have substantially reduced excessive litigation costs and undue delay in the resolution of civil cases in the federal trial courts in the United States. Ninety-five percent of our civil cases are generally resolved without trial. Although some are disposed of by dismissal or summary judgment, most cases are resolved by voluntary settlement. Effective case management tailored to each particular case enables the parties to evaluate their positions sooner, thereby reaching settlement sooner and less expensively.

Consistent us of these procedures has led to a lower number of cases, better organized dockets and less conflict among the attorneys, because they know what the rules are and what dates they can plan for. For most of us, that predictability is advantageous. A reliable schedule assists the court, the lawyers, and the witnesses, including experts. The percentage of cases that settle before trial is about the same as it was before these procedural changes, but they usually settle at an earlier stage, resulting in reduced costs for the parties and the court. Further, the fact that the cases often resolve through early mutual agreement makes those results more satisfactory and eliminates appeals.

Although these procedures will not cure all of the ills of any legal system, the combination of consistent case management and effective alternative dispute resolution can significantly reduce the backlog in the civil courts without adversely affecting the quality of justice or the livelihood of lawyers.