

# **CASE MANAGEMENT IN THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA**

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As the number and complexity of civil suits filed in the United States has increased, so too has the expense and delay associated with resolving those disputes through the normal processes of the judicial system. In an attempt to reduce the excessive cost and delay of civil litigation, courts throughout the United States are taking a more active role in managing their cases. The United States Congress endorsed this approach in adopting the Civil Justice Reform Act of 1990, when it referred repeatedly in the legislation to the importance of “litigation management” and instructed the courts to manage their cases on an individualized, case specific basis. In response, a number of courts in the United States have established formal case management programs with new rules and procedures which govern virtually all civil cases filed before them.

The basic concept behind “case management” is for the court to become actively involved, early in the case, in analyzing the specific issues presented by a particular lawsuit and to work with counsel and the parties to “manage” the structure of future proceedings to achieve the fastest and most cost effective resolution of the dispute. The process ordinarily begins with the court requiring that counsel for the parties schedule a meeting with one another shortly after the lawsuit has been filed. Counsel are directed to discuss the merits of the case, identify key legal issues, explore ways in which the case can be resolved using non-traditional dispute resolution mechanisms, and explore ways in which the parties can exchange information as efficiently as possible. Counsel are then required to file a written statement summarizing the results of their meeting and to make any case management suggestions they wish to the court. After that statement has been filed, the court presides over a Case Management Conference, at which time the court and counsel attempt to focus on the most important issues presented and determine the most effective and expeditious way of proceeding to resolve them. At this Case Management Conference, the court ordinarily will also impose deadlines for the assertion of new claims, the naming of additional parties, the informal exchange of factual information before trial, the filing of motions, and address other procedural matters that routinely occur before trial.

One of the goals of the case management approach is to structure the pretrial proceedings of a particular case in a way that will compel the parties to exchange additional information on key issues as early as possible, so the parties are in a continually better position to evaluate those key issues as the case proceeds. By structuring the case in this manner, it is hoped that the case management process will facilitate and promote earlier out-of-court settlements. For those cases where no such settlement is reached, the effective use of case management techniques will enable the court to eliminate frivolous issues and streamline the case so that it may proceed to trial as efficiently and cost-effectively as possible.

Among the case management procedures and techniques being utilized by the federal courts in the United States are the following:

- Assigning the case at the outset to one of the court-sponsored Alternative Dispute Resolution (“ADR”) procedures to facilitate either the settlement or early evaluation of the case.
- Ordering the pretrial exchange of factual information so that the most significant issues are exchanged first, and postponing the exchange of information on less important issues until after the parties have had an opportunity to examine the first exchanges.
- Scheduling multiple Case Management Conferences at regular intervals to monitor the pretrial process and streamline issues for resolution at trial.
- Using written motions to eliminate claims, either in whole or in part, by presenting legal issues to the judge for a decision before trial.
- Imposing quantitative limits on the parties’ rights to obtain pretrial “discovery” (formal proceedings to obtain documents, information or testimony from parties and witnesses).
- Changing the order in which the factual and/or legal issues in the case will be presented at trial, to facilitate settlement discussions or dispositive legal motions during the trial (for example, addressing the issue of damages first where there is a significant dispute on that point and the resolution of the issue would have a direct impact on the chances of settling the case).
- Requesting the parties to stipulate or agree on certain legal or factual issues that are not seriously in dispute, so that the trial of the case can be streamlined and future proceedings can focus on the principal disputed issues.
- Combining a number of cases which involve the same or similar issues into a single consolidated proceeding in which those common issues can be resolved at the same time.
- Separating a case into two or more parts, for pretrial or trial purposes, to minimize delay and expense and to facilitate settlement negotiations after the conclusion of the initial proceedings.
- Using a court-appointed expert to assist the court in understanding technical or complex factual issues that are in dispute.

- Appointing a Special Master to preside over a particular portion of a case, to take evidence if appropriate, and to make proposed findings of fact to the court.

The advantages of the case “management” approach over more traditional and less active methods of judicial involvement can be significant. What has become clear in comparing the two methodologies is that the resolution of disputes can often be achieved more quickly—to the mutual satisfaction of all parties—if the court takes an active case management role early in the case. While additional statistical data for these programs must be analyzed further to quantify the actual levels of improvement achieved, the overall improvement in the efficiency and effectiveness of the judicial process is already apparent to counsel, the parties to litigation and the courts.

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