

Case Management Committee

Executive Summary: Recommendations and Suggested Best Practices

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Ninth Circuit's
Conference of Chief District Judges

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PURPOSE AND WORK OF THE COMMITTEE

The Committee was formed in the fall of 2007 by the Conference of Chief District Judges of the Ninth Circuit to study and make recommendations concerning case management. Under the Civil Justice Reform Act (CJRA), district and magistrate judges report in March and September of each year the number of their cases pending more than three years, and motions, social security appeals, and bankruptcy appeals pending more than six months. Those reports are published nationally. The Conference regularly reviews the CJRA reports of district and magistrate judges in the Ninth Circuit. At times, the number of cases and motions on the CJRA report has been high.

To provide some perspective, there were 54,604 cases filed in the Ninth Circuit's district courts during Fiscal Year 2008. Over the past few years the circuit has had as many as 2,041 civil cases pending more than three years, and no fewer than 1,843. Thus, the cases on the CJRA report are almost four percent of the number of cases filed each year. In terms of motions, the circuit has had as many as 916 pending more than six months and no fewer than 587.

Some courts rely on CJRA statistics in developing and tracking case management practices. The CJRA reporting standards were not intended to be tools of effective case management. The Conference of Chief District Judges

suggested that the Ninth Circuit should adopt its own goals and reporting standards that would identify effective case management and tools. The Committee was charged with studying the case management practices of district and magistrate judges in the Ninth Circuit and making recommendations for the consideration of the Conference.

Dr. Robert E. Rucker, Assistant Circuit Executive, conducted two surveys on behalf of the Committee in the summer and fall of 2008 to gather information on the actual case management practices and views of judges in the Ninth Circuit. The results of those surveys form the basis of the Committee's recommendations. The surveys show both the diversity of case management practices in the circuit and the significance of some practices over others.

The Committee also makes limited recommendations of preferred practices. Almost all of these recommendations follow what the survey shows to be the predominant practices of judges in the circuit.

The Committee also recommends adoption of certain aspirational goals for major events in processing of general civil cases, prisoner civil rights cases, and habeas corpus cases. These are aspirational goals. Failure to meet these goals is not intended as a mark of failure. Rather, the degree to which the goals are met is a measure of excellence.

The Committee also recommends adoption of circuit-wide case management reporting criteria that track the aspirational goals. The reporting is intended for the use of all district and magistrate judges in each district.

OBJECTIVES OF CASE MANAGEMENT

As a preface to the specific recommendations that follow, it is important to consider the underlying values and objectives of case management. In summary, they are as follows.

1. **The overriding purpose of litigation is prompt, economical, and accurate resolution of disputes in accordance with substantive law.** That purpose can be served by adjudicated decision or by compromise in light of informed assessment of the likely outcome of adjudication.
2. **Disputes are prepared for trial or for informed settlement only if the litigants and lawyers attend to the case without unnecessary delay.** The cost of litigation is reduced if the case is processed without unnecessary delay. Lawyers and litigants alike come to grips with the dispute if they must. The ability to settle a dispute requires that participants attend to the case at roughly the same time.
3. **Judicial management is required in all cases.** This is the

fundamental premise of modern case management. In many cases litigants or lawyers are not motivated to address the dispute. Left to their own, litigants who want their disputes decided or settled based on the merits may be defeated by other participants' delay, either by design or by disorganization. Fair and informed judicial management of litigation is therefore essential to prompt, economical, and accurate resolution of disputes.

4. Judges must organize, plan, and complete their own work to prevent delay that increases the cost and impairs the just settlement of litigation. Substantial delays in judicial work also increase the cost of litigation and obstruct just settlement in light of the likely outcome of adjudication on the merits.

RELIANCE UPON THE SURVEY TO INFORM JUDGES

An important part of the Committee's work is the 2008 survey of district and magistrate judges' practices and views on case management. The survey reflects the differences in history, legal culture, and settled routines in different courts and in different communities. The work methods of individual judges vary as well. Therefore, the survey is frequently a narrative of alternative paths to effective case management. This diversity of practices and combinations of practices will allow judges to determine best practices for themselves. Judges

concerned with improving their case management may learn from the techniques used by other judges. Judges may find that their practices result in timeliness and compare well with similar or different practices of other judges. The data will validate the effectiveness of existing practices of many judges, and some judges may be encouraged to try alternatives that others find effective.

The survey of practices should be considered in connection with individual judges' success in timely dispatch of judicial work. The aspirational goals and reporting recommendations discussed below may help some judges conclude that their case management practices warrant reexamination in light of other possible practices.

LIMITED RECOMMENDATIONS FOR EFFECTIVE CASE MANAGEMENT

Each judge should adopt his or her own case management practices. The committee recommends the following case management practices.

1. **Differentiated procedural tracks.** The schedules for trial preparation should be differentiated to the needs of different cases, either by case category or by individual case analysis, typically after a Rule 16 case planning report and/or conference. Sixty percent of judges use different procedural tracks based on case complexity.

2. **Intensive management for more complex cases.** Individualized case management is appropriate for more complex cases, with such techniques as status reports, sequencing of issues and discovery, and further case management conferences.
3. **Firm deadline for completion of case preparation.** Litigants and lawyers' belief that case preparation deadlines will be enforced is essential to timely completion of preparation. Without it, there is too much pressure from competing work, distaste for the dispute, procrastination, and strategic delay. A common method to communicate the firmness of deadlines is to set an absolute trial date early in the case. However, other methods, such as a firm deadline for dispositive motions or a proposed joint final pretrial statement, are just as effective if adequately communicated and enforced.
4. **Misuse of the CJRA report as a case management standard.** Eighty percent of judges do not consider the CJRA reporting standards as measures of effective case management. The reporting times of the Civil Justice Reform Act are too lengthy to serve as effective case management standards. All but the smallest fraction of civil cases can be concluded in far less than the three-year reporting

period of the CJRA, resulting in much less cost to the litigants. Most judges decide motions within 30 to 60 days, many within a few days or weeks. Delaying rulings for six to twelve months will prejudice litigants.

5. **Overuse and misuse of Magistrate Judge Reports and Recommendations.** Care should be taken in referring matters in district judge cases to magistrate judges for reports and recommendations. Referrals can result in substantial delay in cases and can cause duplicative judicial work.
6. **CM/ECF.** All districts should have ripe motions reports configured in CM/ECF. Judges and their staff should receive enhanced training in the use of ECF for case management.
7. **Continuances.** Continuances should be avoided. Some flexibility for the exigencies of lawyers and litigants is necessary and fair. However, repetitive and extended continuances communicate that deadlines are not real. Limiting continuances is the key to avoiding delay.
8. **Telephone and video arguments.** These should be considered in light of the issues and the economy to parties, especially when travel

would be costly in time or expense.

9. **Rulings from the bench.** These should be considered in appropriate cases where adequate direction can be given and delay avoided.
10. **Alternative Dispute Resolution.** An effective ADR program is essential to good case management. However, in light of diverse practices, resources, and local cultures, the Committee does not recommend specific circuit-wide ADR requirements. The Ninth Circuit ADR Committee may better address specifics.
11. **Discovery motions.** Prompt presentation and ruling on discovery motions is necessary to avoid delay and to reduce expense to litigants. Judges use a variety of methods without formal motions and briefing schedules. Some cases may require different procedures, such as planning conferences, regular status reports, and discovery masters.
12. **Prisoner cases.** In these cases it is especially important that deadlines be firm. Routine and general motions for continuances should be denied after fair warning. Early mediation and settlement conferences should be considered in selected cases of substance. Telephone conferences should be encouraged.
13. **Pro se attorneys.** Effective techniques, management, and

measurement of work efficiency should be developed with the Pro Se Committee in light of the circumstances, needs, and practices of different districts. Pro se staff attorneys' productivity should be measured and reported to supervisors where pro se staff attorneys are centrally managed, or reported to other appropriate court managers where pro se staff attorneys work directly for one or a few judges. Development and implementation of measurement and reporting standards for pro se staff attorneys should be done principally by the Pro Se Committee, consistent with circuit-wide aspirational goals and reporting standards.

Chambers Staffing and Oral Arguments

Though they are very important to case management and timeliness of work, the Committee does not make specific recommendations of effective practices in the following areas. Judges who complete their work more slowly than their colleagues may want to reexamine their own practices in these areas.

1. **Chambers staffing and work allocation.** How judges staff their chambers, allocate work among their staff, and manage their work are among the most important contributors to effective case management and timely completion of judicial work. The survey shows wide

diversity of practices among judges. Because of the complexity of the questions, the Committee does not recommend any specific systems of chambers staffing, work allocation, and management of staff.

2. **Oral argument on motions.** The survey shows similar wide diversity in practices on granting oral argument on motions. The Committee does not recommend any practice over others.

ASPIRATIONAL GOALS FOR CASE PROCESSING

The Committee recommends adoption of circuit-wide aspirational goals for certain significant steps in civil case processing. As previously stated, the Committee concludes that the CJRA reporting standards cannot be relied upon as measures of effective case management and therefore shorter time goals should be adopted. Aspirational goals are ones that often will be met but sometimes cannot. The extent to which they are approached is a measure of success, but some shortfall will be expected and should not be taken as a measure of failure. If the goals are always met, as the CJRA standards usually are for most judges, they are not good case management tools.

In settling on specific aspirational goals for recommendation, the Committee favors the self-selected goals and actual measures of performance

reported by the greatest number of judges in the survey. The goals are limited to a few of the most significant phases of case processing. They are as follows.

1. **Ruling on substantive motions:** within 60 days of the motion being at issue.
2. **Ruling on Reports and Recommendations from Magistrate Judges:** within 30 days of being at issue.
3. **Habeas corpus cases:** a ruling by a district judge or a Report and Recommendation from a Magistrate Judge within six months from being at issue.
4. **Prisoner civil rights review for *in forma pauperis* and screening under 28 U.S.C. § 1915:** within 60 days of filing original complaint, or within 30 days of filing of an amended complaint.
5. **Civil case completion:** The Committee believes that aspirational goals should be similar to those endorsed by the American Bar Association (ABA). The ABA believes that 98 percent of civil cases should be completed within 18 months and they also have a second goal of 100 percent completed within 24 months. The latter goal may be unrealistic in the more complex cases seen in our federal courts. That is why it is important to keep in mind that these are only

aspirational goals, and not mandated standards. The ABA's goals are similar to the goals of the Conference of Supreme Court Administrators and the Conference of Chief Justices which states that civil jury trials should be completed within 18 months.

ENHANCED REPORTING OF CASE DATA

All districts regularly prepare case data reports for internal use only. The Committee recommends adoption of minimum circuit-wide standards for data to be included in the regular reports of each district. The reports should be circulated to all judges in the district. This recommendation is based on modern management theory that general performance reporting within organizations shows individuals their own performance compared to their peers, and reveals how each individual can improve, even without stated requirements.

Where possible, the data should be graduated or aged. The data measures should include the following.

1. All aspirational goals and CJRA reporting times, with aging to show approaching goals and the extent to which matters exceed the goals.
2. Total prior cases pending, cases terminated, cases added, current pending cases, for each reporting period and year to date.

3. Aged cases pending.
4. Aged civil motions, social security appeals, and bankruptcy appeals pending.
5. Separate data for capital habeas corpus cases due to uniqueness of their processing and time lines.

Clerks' offices should not be burdened with substantial new data collection requirements. To minimize such burdens, transition with new versions of ECF may be considered.

PARTICIPATION AND ACCEPTANCE FROM THE BAR

The Committee has had participation from a representative of the Advisory Board, which has expressed strong interest in supporting the work of the Case Management Committee. The focus of the Committee and of this Report is primarily upon the working and practices of judges, for the purpose of improving judges' service to litigants and the community. The Committee believes that the assessment and validation of the Bar are essential to the success of the case management recommendations in this Report.

TRAINING ON REPORTING AND EFFECTIVE PRACTICES

The Committee recommends that training be developed for new judges and for experienced judges wishing to improve their own case management

techniques. Training should also be provided for chambers staff and others who will actually administer effective case management practices. This could include:

1. A case management session in the Ninth Circuit annual new judges orientation.
2. Presentations at circuit conferences.
3. Add-ons at biennial judges' workshops.
4. Presentations at district conferences.
5. Eventually, case management audits and recommendations at the request of individual judges or chief judges should be considered.

This would require additional resources and expertise and might need to be organized on a national rather than circuit level.