

PRINCIPLES OF CASEFLOW MANAGEMENT FOR ACCESS TO JUSTICE

**PREPARED BY THE
SELF-REPRESENTED LITIGATION NETWORK**



Prepared by the Courtroom Services Working Groups of the Self-Represented Litigation Network

Developed by the Self-Represented Litigation Network, with funding from the National Center for State Courts. Points of view and opinions stated in this document do not necessarily represent the official position or policies of the National Center for State Courts, or of any participant in, or funder of, the Self Represented Litigation Network.

Copyright 2010, National Center for State Courts

TABLE OF CONTENTS

I. CASEFLOW MANAGEMENT IS AN ACCESS TO JUSTICE ISSUE FOR SELF-REPRESENTED LITIGANTS.....	1
II. THE COURT IS RESPONSIBLE FOR MAINTAINING A CASEFLOW MANAGEMENT SYSTEM THAT ENSURES CASES ARE MOVING FORWARD IN A TIMELY MANNER.....	1
III. EFFECTIVE CASEFLOW MANAGEMENT REQUIRES ALL PARTS OF THE COURT TO WORK TOGETHER.....	2
IV. THE COURT MUST GENERATE REGULAR MANAGEMENT REPORTS THAT SET OUT CASE INVENTORY, DISPOSITIONS, BACKLOG OF UNRESOLVED CASES AND ANY OTHER DATA RELEVANT TO CASE DISPOSITION.....	2
V. CASES MUST BE TRACKED FROM FILING THROUGH DISPOSITION TO ENSURE THAT THEY ARE MOVING FORWARD IN A TIMELY MANNER.....	3
VI. PROCEDURAL MILESTONES SHOULD BE IDENTIFIED FOR EACH TYPE OF CASE THAT INDICATES WHETHER THE CASE IS MAKING PROGRESS TOWARD RESOLUTION.....	3
VII. PERFORMANCE GOALS SHOULD BE ESTABLISHED THAT SET OUT THE PERCENTAGE OF CASES EXPECTED TO BE RESOLVED WITHIN SPECIFIED TIME FRAMES.....	4
VIII. STATUS CONFERENCES, CASE MANAGEMENT CONFERENCES OR OTHER COURT EVENTS SHOULD BE IMPLEMENTED TO ASSIST LITIGANTS IN CASES THAT ARE NOT MOVING FORWARD AS EXPECTED.....	4
IX. PRIOR TO STATUS CONFERENCES, CASES SHOULD BE ASSESSED INDIVIDUALLY TO DETERMINE WHAT SUBSTANTIVE, PROCEDURAL OR INDIVIDUAL FACTORS MAY AFFECT THE PROGRESS OF A CASE TOWARD RESOLUTION.....	4
X. EACH COURT APPEARANCE PROVIDES AN OPPORTUNITY FOR CASE ASSESSMENT AND ASSISTANCE IN MOVING THE CASE FORWARD.....	5
XI. CASEFLOW MANAGEMENT COURT EVENTS SUCH AS STATUS CONFERENCES OR CASE MANAGEMENT CONFERENCES SHOULD INCLUDE THE OPPORTUNITY FOR SETTLEMENT DISCUSSIONS AND ASSISTANCE WITH WHATEVER PAPERWORK MIGHT BE REQUIRED TO MOVE FORWARD.....	5
XII. A CULTURE OF CONTINUANCES MUST BE AVOIDED. CONTINUANCES SHOULD BE SERIOUSLY LIMITED AND JUDICIAL OFFICERS SHOULD ENFORCE THE LIMITATIONS SO THAT CASES GO FORWARD AS SCHEDULED.....	6
XIII. IN-COURT REVIEWS SHOULD BE LIMITED TO CASES IN WHICH SPECIFIC GOALS ARE TO BE MET AND REVIEWED.....	6

PRINCIPLES OF CASEFLOW MANAGEMENT FOR ACCESS TO JUSTICE

I. Caseflow Management is an access to justice issue for self-represented litigants.

- a. Caseflow management is an access to justice issue for self-represented litigants. It is also an efficiency tool for court operations.
- b. Meaningful access to justice for self-represented litigants must include the ability to have their cases resolved in a reasonable and timely manner. Simply initiating a case does not amount to meaningful access to justice.
- c. Providing assistance to self-represented litigants at those points in the process where their cases are identified as potentially being bogged down is fundamental to full access to the courts.
- d. Without being alerted, self-represented litigants are unlikely to recognize when their case is bogged down in the system.

II. The Court is responsible for maintaining a caseflow management system that ensures cases are moving forward in a timely manner.

- a. The overall workload of the court can be reduced by maintaining an effective caseflow management system.
- b. Cases only become more complicated and difficult to conclude when they are not subject to effective oversight by the court.
- c. Unless the court is actively managing cases involving self-represented litigants, significant numbers of cases will languish, unnecessarily, often for months or years until they are dismissed by statute for failure to prosecute.
- d. Self-represented litigants can erroneously believe that their cases are completed and that no further action is required of them. This creates a backlog for the court of undisposed cases, and a variety of problems for the litigants who may be operating under the false impression that their case has a final judgment.
- e. It is unreasonable to expect that self-represented litigants will have the information necessary to manage their own cases effectively and efficiently.
- f. An effective caseflow management system should provide litigants with the specific and useful assistance and information that they need to move their cases each time they come to court.

An effective caseflow management system should avoid implementing processes that require potentially unproductive court appearances by litigants.

III. Effective caseflow management requires all parts of the court to work together

- a. The various parts of the system such as operations, self-help centers, other relevant court staff and judicial officers, are interdependent in an effective caseflow system.
- b. Communication within the court is critical to success of a caseflow management system.
- c. Successful caseflow management operations require both judicial and administrative leadership to ensure that the efforts are ongoing.
- d. All staff, including judicial officers, should be educated and trained regarding the entire work flow of a case from filing to final disposition.
- e. All parties to the system should be trained in, familiar with, and allowed access to all relevant system information so that coordination is fluid.
- f. Regular meetings should occur with all levels of staff, including judicial officers, to review processes, identify problem areas, and find solutions to improve the overall efficiency of the entire system.

IV. The Court must generate regular management reports that set out case inventory, dispositions, backlog of unresolved cases and any other data relevant to case disposition.

- a. Repeated continuances create a large increase in workload for the court.
- b. Effective case management reports should identify cases with multiple continuances so that these can be brought to the court's attention
- c. An effective caseflow management system will regularly disseminate reports regarding case inventory.
- d. Case management reports should identify inactive cases so that the litigants can be brought into court for assistance with moving their cases to resolution.
- e. Judicial leadership must be responsible for broad ongoing dialogue about the content and implications of these reports.
- f. Specific and differentiated reports are helpful to judicial officers because this gives them a perspective on the status of their department's caseload in relation to other departments.

V. Cases must be tracked from filing through disposition to ensure that they are moving forward in a timely manner.

- a. All cases should remain on the court's "radar" until they are resolved.
- b. One method of tracking cases is to make sure that they always have a court date set for review of status beginning at a specified time after the date the case was initiated and continuing until final resolution.
- c. Another method is to identify cases that are not moving forward in a timely fashion and bring the parties in for a status conference on the court's own motion. Ideally, the process of identification of cases according to the court's procedural criteria, and providing notice to the parties to appear at a status conference or case management conference, should be automated.
- d. For complex cases, and cases with particular problems, increased judicial case management is necessary and the court can set dates individually appropriate to the special needs of the case.

VI. Procedural milestones should be identified for each type of case that indicates whether the case is making progress toward resolution.

- a. Procedural milestones allow courts to identify which cases are not moving forward in a timely fashion.
- b. For example, in a dissolution case, a milestone might be that the Proof of Service of Summons and Petition be filed within 60 days from the date the case was initiated. An additional milestone might be that a Default is entered within 60 days from the date the Response was due, and a default or uncontested judgment within 30 days from the entry of the Default. A case in which the parties are actively negotiating or mediating might be expected to produce a judgment or request a trial within 6 months, and all cases to be resolved within 12 months.
- c. Cases must be considered individually as to what factors affect the timely progress of the case through the procedural milestones. Case complexity, extent of required discovery, number and location of witnesses, extent of expert witness involvement, and complicating issues such as family violence or substance abuse are all examples of such factors.

VII. Performance goals should be established that set out the percentage of cases expected to be resolved within specified time frames.

- a. In family law matters, many jurisdictions have established time standards for the disposition of cases. This allows the courts to assess the efficacy of its caseload management and other operational practices.

VIII. Status conferences, case management conferences or other court events should be implemented to assist litigants in cases that are not moving forward as expected.

- a. A review of cases within 90-120 days of filing tells the reviewer if service has been accomplished.
- b. When a case is not moving forward there may be obstacles for the SRL that are easily remedied by a status conference or other court event.
- c. Procedural assistance at mandatory case management conferences can be provided by legally qualified non-judicial staff .
- d. Mandatory case management conferences can be conducted by telephone for convenience and economy of time of litigants and the court.

IX. Prior to status conferences, cases should be assessed individually to determine what substantive, procedural or individual factors may affect the progress of a case toward resolution.

- a. Court staff review and triage of matters set for status conferences is essential to having a calendar that is capable of moving cases forward, not just continuing them
- b. With a review and triage of the file in sufficient time before the status conference, issues such as lack of proof of service and incompleteness of documents may be identified and remedied.
- c. SRLs can avoid multiple court appearances created from incomplete or ineffective preparation; instead they should only have to come to court when something can be accomplished in their matter
- d. Judicial officer time can be conserved for those complex matters that require judicial hands-on management. For example, review of files can spot cases with frequent filings so that consideration can be given to the needs of that type of cases.
- e. Individual assessment of each case will provide the bench with clarity as to the issues to be involved in the cases.

X. Each court appearance provides an opportunity for case assessment and assistance in moving the case forward.

- a. Hearings on law and motion calendars also provide an opportunity for case assessment and assistance in moving toward disposition.
- b. Court appearances provide face-to-face contact with the litigants so that judicial officers may make referrals to court staff for explanations and assistance can be accomplished at the hearing or immediately thereafter.
- c. Pre-hearing file review can provide an assessment of the exact nature of the issues to be resolved at the hearing that day⁷
- d. Assistance for SLRs immediately after hearing can provide necessary information for the next step toward resolution.
- e. Having court staff or volunteer attorneys prepare court orders for SLRs as well as explaining the orders should result in better compliance.
- f. Review can also assist the judicial officer so that important issues are sure to be addressed and insure that there is a “quality” hearing.

XI. Caseflow management court events such as status conferences or case management conferences should include the opportunity for settlement discussions and assistance with whatever paperwork might be required to move forward.

- a. Possible staff/resources to have available on the day of the hearing include:
 - i. Self help staff with forms and instructions for steps customers need to complete;
 - ii. Attorney mediators qualified to conduct settlement discussions about unresolved issues;
- b. Immediately before or at the time of the hearing, court staff should meet with the parties to each case to:
 - i. Update the case status and file any completed documents;
 - ii. Inform the parties of where they are in the process and what remains to be completed;
 - iii. Provide necessary assistance or referrals to where and when the assistance can be obtained if parties are not prepared to proceed immediately.

XII. A culture of continuances must be avoided. Continuances should be seriously limited and judicial officers should enforce the limitations so that cases go forward as scheduled.

- a. Courts should require a showing of cause before allowing more than one continuance and should not allow the parties to stipulate to a continuance without providing a basis for the request.
- b. If one continuance has already been granted, the second request should require a court appearance, or a showing of cause made pursuant to ex parte application rules.
- c. Even where a continuance has been granted, the court should attempt to resolve any outstanding issues that are not contingent upon the reason for the continuance.
- d. Before continuing a case, the court should determine if temporary orders are needed pending the continued court date and should make those orders based upon available information before granting the continuance.
- e. Where temporary orders are needed, but available information is incomplete, the court may include with the temporary orders a reservation over retroactive modification if a basis for such modification can be established at the continued hearing date.

XIII. In-Court reviews should be limited to cases in which specific goals are to be met and reviewed.

- a. In each case where a status conference has been continued for review, where possible the file should be reviewed in sufficient time before a continuation date so that unnecessary court appearances can be avoided.
- b. If appropriate progress is being made, the status conference should be continued before the court date, and a new goal set to be met. Notice should be sent to the parties about the next goal to be met and the new court date, if any.
- c. The notice should include information on:
 - i. What information the court will be looking for on or before the new status conference date;
 - ii. Where the parties can go for assistance before the status conference in order to keep the case moving along and possibly avoid the next court appearance;
 - iii. The option of appearing on the originally scheduled date if they need direction on how to proceed. Although this may seem counter-productive, it may be easiest for the parties, particularly if they have already arranged the time off of work and/or a caretaker for their children.