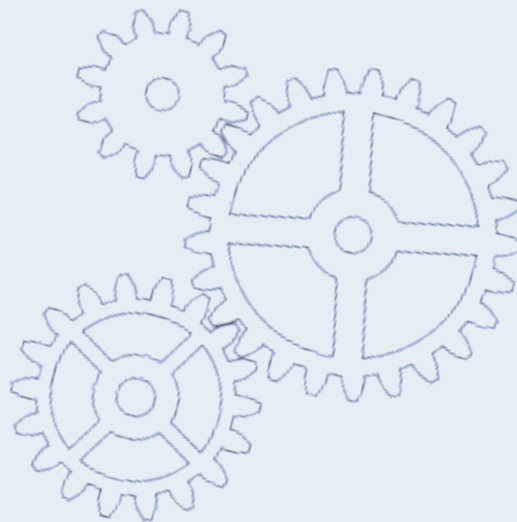


State Court Administrative Office  
Trial Court Services



# Best Practices: Case-Age and Clearance Rates



November 2016



## Michigan Supreme Court

State Court Administrative Office  
Michigan Hall of Justice  
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Milton L. Mack, Jr.  
State Court Administrator

November 21, 2016

Re: Trial Court Best Practices: Case Age Rates and Clearance Rates

Dear Colleague:

As you know, one of the major initiatives of the Supreme Court has been to implement performance measures in courts around the state. Doing so has been no small task, and I sincerely appreciate the efforts that judges, administrators, and court staff around the state have made to help move our courts forward.

Case age rates and clearance rates are important measures. This manual contains eight best practices to improve case age rates and clearance rates and the operational requirements to sustain those improvements. The courts mentioned in this manual have excellent case age rates and clearance rates and have graciously shared their practices. I extend my appreciation to these best practice courts for their work and commitment.

I encourage all courts to use this manual and the practices suggested in it. Please share your questions, concerns, or ideas with your regional administrator. It is my hope that all courts are able to demonstrate sustained success.

Thank you all for your work in moving Michigan's court system forward.

Sincerely,

A handwritten signature in black ink, appearing to read "Milton L. Mack, Jr.", written in a cursive style.

Milton L. Mack, Jr.

## Executive Summary

This manual contains eight best practices that courts should use to improve case-age and clearance rates.

### **Best Practice #1 – Conduct a Caseflow-Management Review**

A caseflow-management review involves examining many different but interrelated aspects of the flow of cases from filing to disposition, and sometimes beyond, and implementing change based on the results of the review. Research has shown that courts that have reviewed their current practices, addressed their ailments, and developed effective caseflow-management techniques have markedly reduced case-processing times and pending caseloads. This manual provides step-by-step techniques for developing and implementing a caseflow-management review.

### **Best Practice #2 – Establish Early Control**

To assume and maintain control of cases, the court must monitor case initiation, screen cases, and achieve event-date certainty through the control of schedules and adjournments. Early review and maintenance of cases can shorten times to disposition and improve tracking of case progress.

### **Best Practice #3 – Early Judicial Involvement**

The judge should play an active role in assuring that case-appropriate pretrial events are scheduled and that the court is actively monitoring compliance with the scheduling order. Early intervention from judicial officers can ensure that cases are handled appropriately throughout the process.

### **Best Practice #4 – Promote Party and Attorney Preparedness**

A court can promote party and attorney preparedness by providing notice of deadlines and procedures, granting adjournments only for good cause, and considering time and financial burdens when making court-management decisions.

### **Best Practice #5 – Provide Credible Trial Dates**

A court's ability to provide credible trial dates is correlated with shorter times to disposition in civil and felony cases. Establishing credible trial dates allows parties and counsel to plan in advance and can help the court plan its overall schedule more effectively.

### **Best Practice #6 – Trial Management**

Trial management is ultimately the responsibility of the judge. Certain techniques can improve the management of both jury and nonjury trials. These techniques include: holding trial-management conferences, developing time expectations, and controlling the proceedings.

### **Best Practice #7 – Conduct a Regular Review of Court Statistics**

Reviewing statistics allows a court to “take its temperature” as to caseflow performance, and regular review will not only gauge performance at that moment, but will also show whether conditions are improving over time and identify where to focus efforts for complete vitality.

There are three main categories of statistics court leaders should regularly review: pending case load information, age of cases at disposition, and reports on open cases.

### **Best Practice #8 – Ongoing Education and Training**

It is important to secure training for staff, both new and veteran, on the court's case-management system. Further, court staff should be kept up-to-date on changes to the case-management system and procedures impacting disposition of cases. Training manuals and updates should be available through the case-management system's vendor.

In addition to the best practices, this manual also explains the importance of the various staff roles at the court in maintaining caseflow, technology needs associated with caseflow management, and suggestions on how to implement an action plan. The best practices identified in this publication are examples of ways courts can improve performance in functional areas. The practices identified here can only yield positive results if thoughtfully implemented and continuously monitored. Once court leadership decides to incorporate these practices in the court's day-to-day operations, it must work to develop an implementation plan. Plans should be developed in a collaborative way with input from staff and other interested parties.

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## Defining Clearance Rates and Case-Age Rates

### Clearance Rates

Clearance rates measure the extent to which the court is keeping up with the number of cases filed. They will also tell the court if it is creating or resolving a backlog.

Clearance rates are calculated by dividing incoming cases by outgoing cases. Incoming cases are new filings, reopened cases, and reactivated cases in a particular time frame, often a year.

Outgoing cases are those that have an entry of judgment, a reopened disposition, or have been placed on inactive status, also from the same time frame. (See Figure 1 below) The resulting number is a percentage of cleared cases. If the number is more than 100 percent, then the court has disposed or cleared more cases during that time frame than were opened. This means that the court is reducing a backlog of cases. If the number is less than 100 percent, the court did not clear as many cases as were opened and is creating a backlog. A complete formula and an explanation for clearance rates are available in Appendices 4 and 5 at the end of this manual.

Figure 1: Clearance Rate Calculation

*Sample – Does Not Include All Cases in Caseload Reporting Instructions*

#### **Outgoing Cases**

Entry of Judgment	700
Cases Transferred	100
Dismissals	100
<b>Total</b>	<b>900</b>

#### **Incoming Cases**

New Filings	800
Reopened Cases	100
Reactivated Cases	100
<b>Total</b>	<b>1000</b>

$$\text{Clearance Rate} \quad \quad \quad 900/1000 = \quad \mathbf{90\%}$$

### Case Age

The case-age rate, also called time to disposition, is the percentage of cases disposed or otherwise resolved within the time guidelines for all cases available to be disposed. It is calculated by dividing the cases disposed within the time guideline during a specific time period by the cases disposed during that time period and the cases pending over the time guideline at the end of that time period. SCAO calculates these rates for each calendar year. The formula is:

$$\frac{\text{Cases Disposed Within the Time Frame During the Year}}{\text{Cases Disposed During the Year and Cases Pending Over the Time Frame at Year End}}$$

Case age is calculated by dividing the cases disposed within the time guidelines during a particular time frame, typically a year, by the cases disposed and pending over the time guidelines during the same time frame. (See Figure 2 below.) Certain events pause the accumulation of days counted toward the age of a case and the events that stop the clock are dependent upon case type. SCAO revisits the time guidelines frequently and adjusts the guidelines based on actual performance in Michigan and in consultation with judges.

Figure 2: Case-Age Calculation

<b>Case Event</b>	<b>Date</b>	<b>Clock</b>	<b>Case Age</b>
Entered in Circuit Court	March 1, 2014	Starts	
Made Inactive Due to Bench Warrant	March 6, 2014	Pauses	5 Days
Reopened at Appearance	February 6, 2015	Resumes	
Disposed by Plea	February 21, 2015	Stops	15 Days

**Case Age = 20 Days**

Clearance and case-age rates are affected by numerous events, some of which are outside of the court’s control. For example, the size and distribution of case types on a court’s caseload certainly affect case age and clearance rates. Some case types simply take longer to dispose than others, and a court with a disproportionate number of lengthy case types may have more difficulty meeting the time guidelines for those case types, resulting in cases remaining open longer and pulling down the court’s clearance rate. Likewise, a court that is understaffed may struggle with disposing of a heavy caseload in a timely fashion. The staffing issue may be related to a contraction in the court’s budget. Hence, budgetary limitations may also reduce court leaders’ ability to manage caseload. Even the design of the courthouse itself can impact clearance and case-age rates. For example, if the courthouse has too few courtrooms, it is likely that cases will pile up waiting for an open courtroom.

While some of these examples may be outside of the court leaders’ control, others are within leaders’ ability to influence. For instance, existing policies or procedures may allow for more delay in cases than is necessary. Or, perhaps a delay-limiting policy or procedure could be developed where none currently exists. Sometimes, simply shining a light on the issue of case delay brings it to the forefront of everyone’s mind. In those instances, printing reports and discussing case age and clearance rates with staff may be the catalyst necessary to begin a change in existing culture and attitudes about the courts’ processes.

As part of a case-age calculation, courts should first confirm that their data is complete and accurate. To do so:

1. Select a random sample of cases (within a division or for the entire court).
2. Review the ROAs to identify all dates that start and stop the case-age clock (for NA/DL cases, the clock should stop at the date the order is entered, not sooner).
3. Calculate the case age at disposition or as of 12/31/xx, if pending.
4. Run the Part 4 audit report for 20xx.
5. Compare the case-age calculation for each of the sample cases.

6. If there are inaccuracies in data collection and reporting, the court should work on correcting these problems with the clerk before initiating a caseflow-management review.

## **Best Practices for Improving Case-Age and Clearance Rates**

This manual is a compilation of national scientific research and Michigan trial court practices that have been shown to produce optimal results with regard to two of the performance measures adopted by the Michigan Supreme Court: case-age and clearance rates. This manual can be used to fine-tune your court's caseflow by presenting new ideas or validating the practices already in place at your court. The Michigan trial courts recognized as courts with best practices in this booklet represent courts that had a case-age statistic one standard deviation above average, a three-year clearance rate between 98 and 103 percent, and a 2014 clearance rate between 98 and 103 percent for a particular case type.

### **Best Practice #1 – Conduct a Caseflow-Management Review**

A caseflow-management review involves examining many different but interrelated aspects of the flow of cases from filing to disposition, and sometimes beyond. A caseflow-management review is the best place to start in order to understand the court's processes and outcomes. Research has shown that courts that have reviewed their current practices, addressed their ailments, and developed effective caseflow-management techniques have markedly reduced case-processing times and pending caseloads.<sup>1</sup> In instances where caseflow is lagging due to insufficient resources, be they human, monetary, or structural, a documented caseflow-management review and the clearance rates and case-age statistics that result are the types of facts and exhibits needed when approaching the court's funding unit for additional support. Use the following steps to conduct a case-management review:

- **Determine the Need and Readiness for Change:** The court needs to understand what skills and resources may be needed for success, and the possible changes required. Even if it is apparent that the court needs to improve its management of the pace of the court docket, it is important for the court to assess organizational readiness for the kind of change that would be involved.
- **Develop an Improvement Committee:** To support and oversee the caseflow-management improvement effort, a court should have an improvement committee,<sup>2</sup> headed by the chief or presiding judge. The committee should include the court administrator and the clerk of the court, as well as other supervisors from the court who have major responsibility for aspects of the process under review.
- **Focus on a Particular Unit and Determine the Scope:** The review should focus on the work of a particular division or unit, such as a civil division or a criminal division,

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<sup>1</sup> Mahoney, Bakke, Bonacci-Miller, Maron, and Solomon. How to Conduct a Caseflow Management Review: A guide for practitioners.

<sup>2</sup> In courts with smaller staffs, it may not be necessary to form a committee. The judge, administrator, and perhaps a clerk could work together to address issues identified in case-age and clearance rate reporting. In many cases, smaller courts are uniquely situated to make changes quickly that can have a direct and immediate impact on caseload statistics. What is important is that court staff work as a team to address any issues.



instead of attempting to review the entire court's caseload operations all at once.<sup>3</sup> It is possible to use only the case-age and clearance rates provided by the SCAO to guide your review; however, the outcome of a caseload review is most useful when it also includes observation of operations; discussions with judges, staff, and practicing lawyers; and an in-depth analysis of relevant statutes and court rules as they pertain to the specific case types being reviewed. A caseload review should also include a careful analysis of the court's scheduling policies and practices.

- **Careful Planning and Commitment to the Objectives:** The introduction of caseload-management improvements can involve dramatic changes in the day-to-day operations of a court and those who participate in the process. Any improvement effort must be organized and managed so that everyone knows the effort's objectives, what specific people are expected to do, and when activities are to be completed. To do so, the improvement committee and the team conducting the review should keep the following factors as a basis for the review:<sup>4</sup>
  1. Plan for appropriate oversight of the improvement effort.
  2. Measure the gap between actual and desired performance and develop feasible alternatives to the court's existing practices and procedures.
  3. Choose the best approach and plan for its implementation.
  4. Implement the new program and make further improvements as needed.
- **Consult Those Affected by the Changes:** In trial court operations, there are a number of regular participants such as attorneys, prosecutors, law enforcement, probation officers, caseworkers, and service providers. Court leadership should consult with those who will be affected by the changes.
- **Identify Team for Review:** Once areas for improvement are determined, the court should identify two or more people to have roles in the review process, either from the improvement committee or outside it. The team approach enables the use of those with expert knowledge in specific court areas, provides for a range of perspectives, and encourages the exchange of information and ideas.
- **Determine How to Proceed:** The court must prepare an implementation plan that includes time frames, deadlines, and allocation of resource. Planning should also address training needs. Finally, it is critical to develop a feedback and communication plan regarding changes.

The National Center for State Courts' [\*How to Conduct a Caseload Management Review: A Guide for Practitioners\*](#) can be used to guide your court through a self-assessment. If the review proves to be more complex than initially thought and additional assistance is needed, court leadership may enlist the State Court Administrative Office's assistance with the internal review process or to conduct the review itself. The SCAO is also prepared to assist courts that do not have a large enough staff or the resources to conduct the review on their own.

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<sup>3</sup> As with the committee, smaller courts may not need to define a focus area. Courts with small caseloads may be able to address caseload and clearance rate issues all at once. Court staff should work together to identify if issues are common in a particular case type.

<sup>4</sup> Mahoney, Bakke, Bonacci-Miller, Maron, Solomon. *How to Conduct a Caseload Management Review: A Guide for Practitioners*. National Center for the State Courts, 1994.  
<http://cdm16501.contentdm.oclc.org/cdm/ref/collection/ctadmin/id/5>

## **Best Practice #2 – Establish Early Control**

“Early control” is the equivalent of early court and judicial intervention and is “any substantive action taken by the court at the earliest meaningful point in the litigation process.”<sup>5</sup> The term “early” means court activity as soon as the time of filing or arrest, or shortly thereafter. “Substantive action” occurs when the activity is related to management, rather than solely clerical in nature, and either prepares a case for disposition or disposes of the case.

### **Monitor Case Initiation**

To assume and maintain control of cases, the court must monitor case initiation, screen cases, and achieve event-date certainty through the control of schedules and adjournments.<sup>4</sup> Today’s case-management systems are sophisticated in comparison to those created in early 1990s. With updated systems, the manually kept motion and trial calendars of those days are now accessible at the click of a mouse, making scheduling and adjourning hearing or trial dates as simple as a few clicks of a button, but potentially wreaking havoc on caseflow and creating unnecessary delay. Many iSeries case-management systems still require manual scheduling, which can cause confusion or delay. Upon initiation of a case, a current case-management system can schedule one event, or possibly several, to assure a preliminary review. When case filing triggers a cascade of associated review dates in a case-management system, civil cases tend to have shorter times to disposition.<sup>6</sup> Since some iSeries systems require manual scheduling, courts may wish to carefully monitor case initiation to ensure that scheduling is done as efficiently as possible with these manual systems. A small amount of human intervention can make even older case-management systems an excellent tool to monitor case initiation.

### **Screen Cases for Complexity**

Screening cases for complexity is an example of a substantive action compared to the clerical tasks associated with recording and indexing newly filed cases and subsequent pleadings. If the judiciary is to fulfill its responsibility in assuring litigants a timely and just disposition, it is essential that intervention be by the “court.” The review dates associated with the filing of the case should comport with the Michigan Supreme Court time guidelines established by [Administrative Order 2013-12](#) and are ideally pre-programmed in the court’s case-management information system. These events can be scheduling-order conferences, briefing dates, dispositive motion hearings, discovery dates, pretrial conferences, settlement conferences, and trial dates. As one event concludes, the next should be scheduled. In addition, issuing case-management orders that govern the progress of a case to disposition may help a case progress in a timely fashion. Examples and resources are located on the [One Court of Justice website](#) at <http://courts.mi.gov/Administration/admin/op/Pages/Caseflow-Management.aspx>.

### **Use Quasi-Judicial Officers**

The use of quasi-judicial officers and shared judicial resources can also aid the court in achieving early control over cases. This might include district court magistrates moving cases from one step to the next in criminal, small claims, summary proceedings, and general civil cases. Friend of the court and domestic relations referees also fall into this category, providing mediation of both custody and parenting-time disputes, hearing show-cause motions, or conducting referral hearings. Similarly, juvenile referees, probate registers, deputy registers, and probate clerks

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<sup>5</sup> Various Authors. Caseflow Management Guide. Michigan State Court Administrative Office. <http://courts.mi.gov/Administration/SCAO/Resources/Documents/Publications/Manuals/cfmg.pdf>

<sup>6</sup> John Goerd, Chris Lomvardias, and Geoff Gallas, Reexamining the Pace of Litigation in 39 Trial Courts (Williamsburg, VA: National Center for State Courts, 1991), p. 55.

handle certain aspects of cases under the juvenile code and for the probate judge, respectively, with certain exceptions. District judges also assist the criminal bind-over process taking felony pleas at bind-over and effectively shortening the time to trial in the circuit court.

Early intervention on a case is attributed to many non-trial dispositions being achieved earlier in the process. This results in a significant time savings since 90 to 98 percent of all cases are disposed of by non-trial means.<sup>7</sup> Non-trial disposition can be achieved at the case initiation stage through dismissal or default. All manner of these early control tools assist counsel to consider the merits of their case and direct their focus to the information needed to resolve the dispute. The following are examples of trial courts deriving the benefit of employing these early control practices in their current caseflow:

- **Monitor Case Initiation** – The 1st Circuit Court in Hillsdale, in divorce cases, schedules a final pretrial conference upon filing of the case. All parties know immediately upon filing that final judgment may be determined at the conference, or the case will go to trial. Trials, in turn, are seldom adjourned. This policy has contributed to excellent case-age and clearance rates in the 1st Circuit Court.
- **Strict Adjournment Policy** – The 1st District Court in Monroe has a firm adjournment policy. Adjournments are not granted without good cause. The court reports that this creates an atmosphere in both the prosecutor’s office and the local bar association that preparedness is essential in managing their calendars. The court provides access to the judges’ calendars on its website and has multiple public terminals that the attorneys use at the courthouse. The prosecutor’s office can see the judges’ dockets, too, via JIS. A section of the case-management plan regarding scheduling and adjournments, and the court’s trial schedule information are available in Appendix 4.
- **Alternative Dispute Resolution** – Grand Traverse County courts build alternative dispute resolution (ADR) options into a case’s scheduling order. The parties agree to certain types of ADR as part of initial planning and case negotiations and these are memorialized into the scheduling order. This helps cut down on confusion later, as well as helping to maintain the court calendar in that ADR is an excellent docket-management tool. Early referral to ADR or mediation can be critical in helping resolve a case.
- **Use of Quasi-Judicial Officers** – The 30th Circuit Court in Ingham County uses quasi-judicial officers frequently in friend of the court (FOC) cases. An FOC conciliation conference is scheduled within 14-21 days from the date the FOC receives the summons and complaint. The conciliator/investigator meets with the parties and if an agreement is not reached, will explore disputed material facts and prepare a report and recommended order. The recommended order is entered as an interim/temporary order subject to objections. If an objection is filed, an FOC referee hearing is scheduled. Adjournment of referee hearings is not freely granted, and referee hearings are not adjourned without a new date. Adjournments that require changing the pretrial date are not granted without the assigned judge’s approval. The use of conciliators and referees allows the court to ensure that judges spend less time on preliminary matters. Referees can be extremely successful in helping cases reach resolution prior to trial.

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<sup>7</sup> U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics.

### **Best Practice #3 – Early Judicial Involvement**

As soon as service is complete on a civil or domestic relations case, the court should plan a scheduling conference with the assigned judge. This provides an opportunity for the judge to become familiar with the issues in the case and determine the time necessary to move the case to disposition by the completion of pretrial events. Discovery, mediation, case evaluation, and other pretrial preliminary events require different times for completion depending upon the complexity of the case and the willingness of the parties to participate in alternative dispute resolution. The judge can play an active role in ensuring that case-appropriate pretrial events are scheduled and that the court is actively monitoring compliance with the scheduling order.

Michigan business court judges have engaged in early judicial involvement by utilizing scheduling conferences. These conferences allow the judge to develop some control over the process and case planning shortly after case initiation. Business court information is available on the [SCAO website](#). Many of the business court local administrative orders contain language regarding scheduling conferences and pretrial disclosure policies. These practices can be incorporated into a general civil docket.

In the 72nd District Court in St. Clair County, judges oversee their individual dockets and the court has established a clear directive to both bench and bar that the parties are to be prepared for court dates. By establishing early control of their dockets, the judges have been able to maintain a well-organized schedule and ensure that case-age and clearance rate measurements remain successful. The court publishes its [caseflow-management plan](#) on its website so that parties and attorneys can understand the process and expectations. The 72nd District Court has case-age and clearance rates that consistently rank among the highest in the state.

### **Best Practice #4 – Promote Party and Attorney Preparedness**

While case development is dependent upon litigators and the parties that they represent, the management and flow of cases in the trial court is the responsibility of the judiciary. The courts can promote party and attorney preparedness by providing notice of deadlines and procedures, granting adjournments only for good cause, and considering time and financial burdens when making court-management decisions.

In order to adequately supervise case progress, a court must have a caseflow-management plan in place. This plan communicates to the judges, administrators, court staff, attorneys, and others in the judicial system the overall goals of the court in processing its cases. A scheduling policy and an adjournment policy are both important components of all caseflow-management plans. By communicating expectations, the court can help parties and attorneys be more prepared.

#### **Provide Notice of Deadlines**

The court should provide notice of deadlines and procedures by issuing a scheduling order early in the judicial process. See [MCR 2.401](#). Scheduling orders, which are often entered after consultation with counsel, establish dates for witness exchange, discovery completion, dispositive motions, pretrial conference, mediation, settlement conference, and trial. Accurate scheduling must also take into account staff and judicial resources. Achieving event-date certainty should be a primary goal of each court's case-scheduling system and will encourage parties and attorneys to be prepared for every step along the way.

## **Control Adjournments**

Court control of adjournments is also closely related to achieving event-date certainty. Therefore, credible scheduling must be based on a restrictive adjournment policy. See [MCR 2.503](#). Court control of adjournments is important because adjournments contribute to delay, adjournment practices influence attorney and litigant perceptions of the court, and a lenient adjournment policy undermines event-date certainty. A court's adjournment policy should create the expectation that events will occur when scheduled unless there are compelling reasons to postpone. The 1st District Court in Monroe has a strict adjournment policy in place, a copy of which is available in Appendix 4. The 53rd Circuit Court in Cheboygan also has a strict adjournment policy; parties asking for an adjournment must stipulate and include a new date in the request. Even then, not all adjournment requests are granted. A court that postpones too many cases will find that counsel no longer believe that cases will be heard as scheduled. As one would expect, research has shown that when litigants have confidence that deadlines are meaningful, they are more likely to be prepared for court events.<sup>8</sup> When litigants are prepared, it is less likely that important court events will need to be rescheduled, thereby preventing delay.

See the [Caseflow Management Guide](#) for more information. Also, as in Best Practice #3, business courts may provide a model for other Michigan courts wishing to implement some of these practices. Business court information is available on the [SCAO website](#).

## **Best Practice #5 – Provide Credible Trial Dates**

A court's ability to provide credible trial dates is correlated with shorter times to disposition in civil and felony cases.<sup>9</sup> This is largely because while in the process of preparing for trial, the parties and attorneys are afforded time to assess whether the matter can be resolved expeditiously through plea or another resolution. Procedures that courts can implement to ensure trial date credibility include:

- **Dispose of as many cases as possible before setting trial dates:** The court is involved in the pretrial process by ruling on pretrial motions, especially dispositive motions such as suppression motions in criminal cases or summary judgment motions in civil cases.<sup>10</sup> If cases can be disposed at early settlement conferences or pretrial, trial dates are never necessary and the schedule can be more easily managed. In the 72nd District Court in St. Clair County, the trial date is set at pretrial only if the case is not resolved at that time. Generally, trials are set for within 30 days of the pretrial. This strict and prompt scheduling provides courts with a clear schedule and may allow for faster disposition of cases.
- **Schedule an appropriate number of trials for a given date:** The court should develop a process for scheduling trials that will avoid overbooking of cases or excessive downtime for the judge, while still maintaining new filings. The court should take into consideration the number of judges, the complexity of anticipated trials, and expected trial length. Some courts have developed practices that ensure trial-date credibility. The 21st Circuit Court in Isabella County sets all felony trials for within 90 days of bindover. The court reports that this allows the parties time to work on the case, but enough notice that their schedules should be clear for trial. The 65B District Court in Gratiot County

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<sup>9</sup> Goerdts. Reexamining Court Delay: The Pace of Litigation in 39 Urban Trial Courts.

<sup>10</sup> Steelman. Caseflow Management: The Heart of Court Management in the New Millenium,

gets a copy of police work schedules three months in advance so that trials can be scheduled around police witness availability.

- **Develop a policy for limiting adjournments/continuances:** [MCR 2.503\(D\)](#) states that the court may grant adjournments for good cause “to promote the cause of justice.” A continuance policy should define guidelines and/or provide examples of reasons that would be good cause for a continuance, either for further negotiations or to delay a trial. The policy should define who will rule on the motion; the methods a party should follow to seek continuance, and possible exceptions to the rule. The National Center for State Courts provides a [Model Continuance Policy](#) that can be adopted for local use.
- **Provide back-up judges:** It is possible that predetermining how many cases will go to trial on a given date may not work out as scheduled. Thus, the court may have more than one case ready for trial on the same day. To resolve this issue without adjourning the matter, courts should have back-up judges available when possible, including using visiting judges or sharing resources with a neighboring court. In order to avoid delay, another judge within the county will handle the trial.

### **Best Practice #6 – Trial Management**

The American Bar Association’s first standard of trial management is that “[t]he judge shall be prepared to preside and take appropriate action to ensure that all parties are prepared to proceed, the trial commences as scheduled, all parties have fair opportunity to present evidence, and the trial proceeds to conclusion without unnecessary interruption.” The techniques that help to manage jury and nonjury trials are similar.

#### **Hold a Trial Management Conference**

A trial management conference held a few weeks prior to a scheduled trial date may help manage an upcoming trial. Many courts conduct settlement conferences the week prior to the scheduled trial date; however, using the terminology “trial management conference” may help to reiterate the importance of finalizing plans for a trial in an unsettled case. The trial management conference may include:

- Preparing exhibits
- Preparing witnesses
- Separating issues of law or fact
- Establishing time limits for each part of the trial
- Reviewing pending motions and ruling on those that can be disposed
- Reviewing jury instructions and form of verdict
  - Ruling on objections to those that deal with matters of law
  - Noting parties’ positions on instructions that will be ruled upon after evidence is received
- Determining special needs such as an interpreter
- Determining voir dire procedures

#### **Develop Time Expectations**

Time limits should be considered for trial length, length of opening and closing arguments, and voir dire. The length of the trial day should also be determined in advance of the trial’s start date. Not only does setting time limits emphasize the court’s desire for trial efficiency, but predetermined time limits allow counsel to plan their presentations effectively.

Although not discussed with counsel prior to trial initiation, during the trial the judge may determine that it is necessary to impose time limits in order to curb repetitive or continued irrelevant questions or witness unavailability. Additionally, the court should aim to avoid interruptions to momentum, such as having a witness's testimony begin on a Friday and finish on a Monday. In a bench trial, it is ideal to rule at the close of the trial and put findings of fact and conclusions of law on the record as soon as possible.

### **Control the Proceedings**

[Michigan Court Rule 2.513](#) states that the trial court must control the proceedings during trial. Exerting control over the proceedings helps to ensure that the trial's momentum is maintained. Activities that maintain momentum include:

- Making arrangements with court staff members to avoid telephone calls or requests for meetings during the trial
- Clearly communicating requirements for presenting objections so as to avoid delay due to ruling on objections
- Arranging for other judges to hear unanticipated matters associated with other cases
- Ensuring that the jury, witnesses, and counsel convene on time
- Having witnesses available and waiting to testify
- Having counsel arrange the exhibits that they need for each witness so that time is not consumed finding exhibits and bringing them to the witness stand
- Periodically reviewing case progress with counsel.

Many courts use these techniques without even realizing it. Courts using only one or two of these techniques may wish to expand their process to allow for more control over court proceedings.

[Michigan Court Rule 6.412\(C\)](#) states that the scope of the voir dire examination is within the discretion of the court. The court may wish to expedite the process by using questionnaires to collect juror information at the time they are selected for service. Additionally, jury orientation may be shortened by using videos, slides, or a written introduction for the jury panel to read when they arrive. The 62B District Court in Kentwood publishes a [Juror Manual](#) to answer frequently asked questions for potential jurors. The State Bar of Michigan also publishes a [Juror Manual](#) that courts may find useful in orienting potential jurors.

### **Best Practice #7 – Conduct a Regular Review of Court Statistics**

Regular review of court statistics is “vitaly important for effective caseload management.”<sup>11</sup> In fact, “[s]uccessful caseload management *requires* that a court continually measure its actual performance against the expectations reflected in its standards and goals.”<sup>12</sup> Reviewing statistics allows a court to “take its temperature” as to caseload performance, and regular review will not only gauge that moment, but it will also show whether conditions are improving over time and identify where to focus efforts for complete vitality.

Court leaders should regularly review pending caseload information, age of cases at disposition, reports on open cases, and delay in criminal proceedings.

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<sup>11</sup> Steelman, Goerdt, and McMillan. 2000. *Caseload Management: The heart of court management in the new millennium.*

<sup>12</sup> *Id.* (emphasis added).

- **Pending Caseload Information:** Reviewing pending caseload information is important because it paints a picture of the court’s current workload and shows how many cases might exceed time standards. Court leaders should examine the number of pending cases by case type and age.
- **Age of Cases at Disposition:** Age of cases at disposition is important because the court will be able to measure performance based on time standards and differential case management. Court leaders should examine the age of disposed cases by case type and disposition type.
- **Reports on Open Cases:** Reports on open cases are useful in assisting the judge in managing cases as effectively as possible. For example, the open-cases report could list all open cases assigned to the judge in chronological order and include additional detail such as docket number, party names, case status and nature of the last action, next scheduled action, and names of attorneys. This allows the judge to assess potential problem cases, evaluate whether particular attorneys cause caseload-management issues, and identify whether certain case types consistently take a longer to dispose.
- **Clearance Rates:** Clearance rate reports should be generated at regular times throughout the year. The reports can be generated by case type and will allow the court to quickly see when a backlog is being created. The court can then redirect resources to alleviate the backlog.
- **Delay in Criminal Proceedings:** Courts should run and review their quarterly delay in criminal proceedings reports on MCAP or their own case-management system. This allows the court to address potential delays and identify solutions.

Once statistics are reviewed, court leaders should meet and discuss what it means and how to improve performance. If court leaders regularly review court statistics, they will be well-equipped to address caseload-management issues as efficiently and effectively as possible.

The State Court Administrative Office annually gives each court a data packet that includes case-age and clearance-rate statistics. This annual data review is a good starting point for addressing caseload performance. In addition to reviewing the annual data packet and making adjustments based on those statistics, courts should engage in more frequent reviews on their own.

The 16th Circuit Court in Macomb County, for example, has frequent meetings among judges, administrators, and other court staff to review reports and address case-age issues. The county’s information technology department and the court’s case management department worked together very closely on the development of a pending case-age report. This report is configured pursuant to the State Court Administrative Office case-age reporting requirements and lists all open cases in chronological order by case age with oldest cases listed first, as well as case number, party names, case initiation date, last action date/event type, and next action date/event type. The court’s regular and thoughtful review of statistics has helped it to have successful case-age and clearance-rate statistics that rank among the best in the state.

The 9th Circuit Court in Kalamazoo also has frequent meetings between judges, referees, and administrators to review case age. The court uses these meetings to discuss individual cases, if necessary. Statistical reports are projected on a screen during the meeting, and provided electronically prior to the meeting for all to review. The court reports this constant monitoring of cases has resulted in careful scheduling, which has positively impacted case-age rates.

Other courts may find it useful to implement a similar practice to address outstanding issues or resolve older cases.



## **Best Practice #8 – Ongoing Education and Training**

Case-age and clearance rates depend upon accurate entry of information into a court's case-management system. Responsibility for this data entry is shouldered by court staff, who must provide the proper coding and disposition information for each matter handled by the court. It is unrealistic to expect court staff to accurately process cases if they do not have the proper education and training to accomplish these tasks.

It is important to secure training for staff, both new and experienced, on the court's case-management system. Further, court staff should be kept up-to-date on changes to the case-management system and procedures impacting disposition of cases. Training manuals and updates should be available through the case-management system's vendor. For JIS courts, there are resources (including training manuals, updates, and recent communications) available on the [JIS page](#).

Education on court procedures and case processing will help staff understand the big picture when dealing with individual cases. For example, staff with an understanding of caseflow management and time guidelines will be more likely to understand why it is important to properly dispose of a case. Resources to assist courts with training and education are available through the Michigan Judicial Institute (MJJI). Webinars and webcasts are accessible to court staff on many topics, including criminal case processing, criminal procedure, civil case processing, and the appellate process. MJJI also provides education and training via live presentations on a variety of topics during the year and publishes its training schedule [online](#).

## **Role of the Court and Other Entities in Implementing Best Practices**

Change for the sake of change is typically rejected by those affected. However, justified improvement that requires change is often embraced. It is important for court leaders to broadly consider stakeholders that will be impacted by a change and bring them into the planning stages of proposed changes. Not only are all stakeholders' perspectives important to understand and embrace, but the very act of including them in planning stages sets the building blocks in place for garnering buy-in of the new process. Individuals are less resistant to switching to a new process that they helped to build than to one by which they have been surprised. Some of the key stakeholders to consider when reviewing the court's caseflow are listed below. Courts should consider the roles and needs of each party, as well as the goals of the caseflow-management plan, when implementing change.

### **Judges**

Judges have the greatest level of involvement and responsibility in the best practices associated with case-age and clearance rates because of their leadership role in the court. Judges are involved in developing deadlines for litigants, creating and enforcing adjournment policies, disposing of as many cases as possible before a trial date, and limiting continuances, for example. Promoting party and attorney preparedness through establishing firm deadlines, setting credible trial dates, and properly managing trials rests squarely on judges' shoulders. In addition, overseeing a caseflow-management review, ensuring early control of cases through proactive assignment of important dates, and developing a differentiated case-management process are activities in which judges are also heavily involved. Ultimately, judicial leaders set expectations, bring stakeholders together, garner buy-in, and act as visible proponents of change.

## **Court Administrator**

In most courts, the court administrator is heavily involved in most aspects of caseflow management, leads many of the implementation activities, and reports to the judges. For example, the court administrator would be involved in the early court control exerted through automated date assignment in the electronic case-management system, and in developing a differentiated case-management process. In addition, while judicial officers may develop policies and procedures in principle, the court administrator is often responsible for drafting those policies. Lastly, the court administrator coordinates workgroups, holds committee members responsible for outputs and outcomes, and acts as a liaison with other stakeholders in developing the court's processes and procedures.

## **Clerk**

To coordinate the scheduling of important court events following case filing, the clerk of the court must be brought into the planning and implementation of a new process. The clerk also plays an integral role in data entry and active case monitoring. Clerks can run case-management reports that aid the court with identifying delays. Similarly, the clerk is able to run reports that show the court's compliance with timeliness. This is an essential step in successful caseflow management.

## **Attorneys**

Prosecutors, public defenders, appointed counsel, and privately retained counsel are integral to caseflow management. Communicating with the local bar is important for promoting attorney preparedness for critical case events and for setting expectations such as the length of a trial day and the management of jury selection. Further, attorneys should have input in developing deadlines that are realistic for each case. Likewise, the monetary costs associated with changes to caseflow for parties and attorneys must be considered when revising current processes. For example, if a change in procedure results in an attorney coming to the courthouse multiple times, the court should consider ways for those costs to be mitigated. Or, courts that liberally grant adjournments will have to communicate new adjournment policies to attorneys. Other issues must be addressed, as well. For example, in criminal matters, consider whether the prosecutor's office will engage in early negotiations or if there are frequent reassignments of cases between prosecutors or defense attorneys that require additional time.<sup>13</sup>

## **Parties**

The court can assist itself and pro se litigants by providing clear directions regarding how to file a case, specific procedures particular to the court, and notification of important deadlines. Ensuring that pro se litigants have equal access to justice is a meaningful endeavor for the courts. Much of the court's time with pro se litigants involves explaining the court processes and procedures. There are several things a court can do to ensure that parties, including pro se litigants, are adequately informed about the process without straining the court's docket. Some courts create self-help brochures for litigants or have volunteers on hand to assist pro se litigants. Allegan County developed a legal assistance center, featuring volunteers that help litigants navigate the court process. The center also provides computers and access to Michiganlegalhelp.org, where litigants can find relevant court forms and other information.<sup>14</sup>

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<sup>13</sup> Solomon, 2008. Improving Criminal Caseflow. Available at: <http://jpo.wrlc.org/bitstream/handle/11204/2864/Improving%20Criminal%20Caseflow.pdf?sequence=3>

<sup>14</sup> Michigan Legal Help website accessed 8/27/15 at <http://allegan.michiganlegalhelp.org/>

## **Sheriff, Department of Health and Human Services Staff, Court-Appointed Special Advocates, and Other Partners**

If the court is considering changes to its scheduling and calendaring, it is important to involve all stakeholders in the planning stages. For example, if the court is going to change scheduling processes for felony matters, it should seek meaningful input from the prosecutor, the public defender, a member of the private defense bar, the sheriff, the chief of police, and the chief probation officer. When considering who to include in meetings, the court should determine whether a particular agency is impacted by the court's schedule. In child protective cases, the Department of Health and Human Services (DHHS) is required to submit case-service plans to the court before dispositional hearings, and changes to the court's scheduling would impact caseworkers. It is logical, then, to include DHHS in the planning process.

In addition to fostering collaboration, inclusion of agency stakeholders informs questions related to process and procedure. For example, if criminal case arraignments are set for a new time, the court must consider whether the local jail can bring prisoners to the court at that new time. Case workers for DHHS may need to reorganize and coordinate their court appearances if the court implements a new scheduling system, meaning training may be necessary. The court should consider whether a calendaring change would result in attorneys being scheduled in multiple courtrooms at the same time, and how to reduce any inconvenience caused by overlap. When organizations fail to include affected stakeholders in planning for change, procedural issues that could have been addressed in planning arise later and disrupt implementation. Thus, it is imperative that a court involve its stakeholders in any caseflow-management planning process.

## **Technology Associated with Best Practices**

A court case-management information system is essential for efficient caseflow management. Ideally, case-management information systems should be able to produce reports that enable the court to monitor case-age and clearance rates and to schedule important case dates to ensure timely progress.

Less crucial but potentially helpful technology includes computer-based jury-management systems, document-imaging systems, and technology for remote appearances. A jury-management system may assist the court in summoning, selecting, and qualifying jurors, ensuring that jury trials have sufficient jurors available to occur when scheduled. Imaging systems may help the court to electronically store documents and make them available instantly, saving the time to retrieve paper files. PolyCom and/or telephone systems that allow for remote appearances may assist parties and litigants with avoiding missed court dates.

The 62B District Court in Kentwood has implemented several upgrades in technology that have allowed for improved efficiency. The court's case-age and clearance rates rank among the best in the state, particularly for preliminary hearings and general civil cases. The court uses a document-imaging system and video conferencing for remote appearances.

While the court's technology certainly helps with caseflow management, the court is dependent upon information from other stakeholders, as well. Sharing information or automated databases with police, prosecutors, public defenders, private law firms, and child protection agencies, when possible, can result in a substantial time savings for all involved in a case.

Other new and emerging technologies can be used in a court's operations, such as electronic docket boards, online dispute resolution, calendar integration from a case-management system, or expanded use of video conferencing.

## **Costs Associated with Best Practices**

The monetary costs associated with a caseflow-management review (Best Practice #1) are minimal. The State Court Administrative Office can provide caseflow-management reviews free of charge. To request a caseflow-management review, contact your regional administrator. Alternatively, the National Center for State Courts provides similar services. To learn about the services and availability of their resources, call 757-259-1811. An internal review of caseflow is an option, as well. While an internal review may be low-cost, it is likely to be time-consuming. An internal review would draw on the court administrator and a small team of court staff. The costs would primarily be in terms of man hours devoted to documenting the current process, identifying strengths and weaknesses, developing an action plan, and implementing it.

Early control, promoting party and attorney preparedness, ensuring credible trial dates, and trial management (Best Practices #2, #4, #5, and #6) also have negligible costs. There may be costs associated with a case-management system; however, a case-management system that automatically assigns dates is not required to carry out this best practice. Staff can set milestone dates associated with cases and monitor their approach with minimal monetary costs.

Party and attorney preparedness is accomplished by actions such as providing notice of deadlines and procedures and only granting adjournments for good cause. These practices, also, are of no cost to the court. Rather, it is largely a matter of establishing clear policies, explaining expectations, and carrying through by adhering to both. If the court chooses to purchase a jury-management system to assist with ensuring credible trial dates, it will incur the cost of such a computer-based system. However, other aspects of ensuring credible trial dates are, again, a matter of developing and adhering to policies and procedures. For example, establishing a strong and specific continuation policy costs the court nothing but time. Likewise, setting time limits for particular segments of a trial or holding a trial-management conference cost the court little money. The greatest expense would be in a time commitment. However, the time spent up front on these activities should be easily offset by the time saved during the trial itself.

Differentiated case management (Best Practice #3) is also free to the court. However, transitioning to such a system brings a significant time commitment and the coordinated effort of many staff members. It is helpful to observe the practice of courts that are using this practice. Those visits do come with the cost of mileage, meals, and perhaps lodging. However, when balanced against the potential benefits of implementing a differentiated case-management plan, the costs may be justified.

## Staffing and Central Oversight Needs

Caseflow management researchers have found that the chief judge's leadership ability is often a critical factor in a court's ability to reduce delays in case processing.<sup>15</sup> That leadership includes developing a vision of how changes in caseflow would improve both the court's and individuals' work experience. It also involves effectively communicating the necessary changes and following through to ensure that the changes occur and are adhered to going forward.

However, others have also observed that change is easier when the chief judge is not the only advocate of change. Some courts have found that a caseflow-management committee, chaired by the chief judge but including other judges, a court administrator, and heads of other administrative units in the court, is an effective method to make changes. In fact, researchers have found that involving staff members at all levels of the court in addressing delay is a common denominator of successful courts. After changes have been implemented, the caseflow-management committee should continue to meet, perhaps quarterly, to monitor caseflow, review clearance and case-age rates, and discuss additional changes.

## Implementation of Action Plans

The best practices identified in this publication are examples of ways courts can improve performance in functional areas. The practices identified here can only yield positive results if thoughtfully implemented and continuously monitored. For best results, an implementation plan should address the following:

- **Convene a Team:** To develop an implementation plan, the court should convene a leadership team including judges, court administrators and staff supervisors. The team should identify best practice and measures to incorporate within the court.
- **Communication:** The plan should illustrate how implementation of the best practice and corresponding measurement will be communicated to leadership, court staff, and the public.
- **Capacity:** During development of the implementation plan, the court should assess its capacity to implement new practices and corresponding performance measures. The court should also consider what changes are necessary to build capacity and the timeline for doing so.
- **Application:** The court's implementation plan should specify the scope of implementation and whether the practices identified by the leadership team will be applied to all case types.
- **Goals:** The plan should include a brief overview of the court's current measures related to the best practice as a benchmark for improvement along with a stated goal and timeline for achieving that goal.
- **Accountability:** The court must determine who will be responsible for various tasks in order to mobilize best practices related to performance measurement. Assign tasks to specific employees such as collecting and distributing data, coordinating training, making

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<sup>15</sup> Steelman, Goerdt, and McMillen. 2000. Caseflow Management: The heart of court management in the new millennium.

adjustments to forms, etc. The accountability list should be included in the implementation plan.

- **Follow-up:** Continuously review data and adjust process as needed. The implementation plan should include a schedule for progress review, a calendar of meetings, and a list of the data/reports or other information that will be required for the progress review. In order for performance measurement practices to become part of the court's day-to-day activities, they will go through refinement as a result of continuous monitoring and feedback. The court's implementation plan should include information about how the court will monitor its performance measure implementation plan. To that end, the plan should also address how the performance measurement data will be presented and distributed and to whom it will be distributed.

Although the changes required to implement practices geared toward improving court performance eventually create organizational efficiency, change is never easy. In fact, it is widely recognized that there is widespread individual and organizational resistance to change due to fear of the unknown, sense of loss, threats to competence, altered relationships, and lack of involvement.<sup>16</sup> A thorough implementation plan that is developed and communicated in a collaborative and transparent way is a great tool to remedy many of these concerns that spark resistance to change.

The [SCAO Caseflow Management Guide](#) provides guidance on how to effectively produce change.<sup>17</sup> The guide proposes three primary mechanisms for producing effective change, including disseminating and explaining information about change, motivating through leadership, and involving organizational support. The implementation plan incorporates these three mechanisms by ensuring that communication, transparency, leadership, and inclusion are part of the process. For example, convening a leadership team enables judges and court managers to develop strategies for motivating court staff. Implementation plan step 2 ensures that the court has considered communication to court staff and the public.

By having a plan, the court can allay concern regarding implementation early and often through information sharing. And finally, various steps included in the implementation plan feature aspects that involve organizational support. For instance, the implantation plan guide provides that the court's plan should assess current capacity, accountability, and follow-up. These activities require consideration and inclusion of various members of the organization and are, therefore, likely to foster the type of engagement that combats organization resistance to change. While the implantation plan does not guarantee success, it provides a roadmap that makes the court's ultimate success in measuring performance attainable. A sample implementation plan is attached at Appendix 3.

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<sup>16</sup> Adapted from B. Mahoney *et al.*, "Planning and Conducting a Workshop on Reducing Delay in Felony Cases" (1991).

<sup>17</sup> Caseflow Management Guide (revised. 10/13), State Court Administrative Office, pp. 37-39 available at <http://courts.mi.gov/Administration/SCAO/Resources/Documents/other/caseflow/newGUIDE.pdf>

## References to Statutes and Other Authorities to Consider

- [MCR 2.401](#): Pretrial Procedures; Conferences; Scheduling Orders
- [MCR 2.501](#): Scheduling Trials; Court Calendars
- [MCR 2.503](#): Adjournments
- [MCR 2.513](#): Conduct of Jury Trial
- [MCR 6.412\(C\)](#): Selection of the Jury
- [Michigan Supreme Court Administrative Order 2013-12](#): Caseflow Management Guidelines.
- [Michigan Caseflow Management Guide](#)
- [Michigan Trial Court Case File Management Standards](#)
- [Michigan Performance Measures](#)
- [Michigan Judiciary Dashboard](#)

The references listed above are not an all-inclusive; instead, these are the references and authorities as stated in this manual. Legislation, court rules, and case law provide additional authority as to case-age rates, clearance rates, and time guidelines.

## Appendix 1: Resources

The Michigan One Court of Justice website contains many helpful resources for caseflow management. <http://courts.mi.gov/Administration/admin/op/Pages/Caseflow-Management.aspx>. Examples of available resources include:

- [The Caseflow Management Guide](#)
- Case screening and scheduling forms
- [Guidelines for Alternative Dispute Resolution Plans](#)
- [Michigan Supreme Court Administrative Order 2013-12](#)
- Model Local Administrative Orders
- Performance indicator reports

The National Center for State Courts has a webpage specifically devoted to caseflow-management resources. <http://www.ncsc.org/Topics/Court-Management/Caseflow-Management/Resource-Guide.aspx>. The webpage provides links to caseflow management research, guidebooks, resources for specific types of cases, and information on differentiated case management.

The National Association for Court Management has a webpage for caseflow management. [https://nacmnet.org/CCCG/cccg\\_3\\_corecompetency\\_cfm.html](https://nacmnet.org/CCCG/cccg_3_corecompetency_cfm.html). Curriculum guides are available for six core components of caseflow management.

*Caseflow Management: The Heart of Court Management in the New Millennium* by Steelman, Goerdt, and McMillan is a comprehensive collection of caseflow-management methods, elements of successful caseflow-management programs, and tips for implementing caseflow changes. <http://cdm16501.contentdm.oclc.org/cdm/ref/collection/ctadmin/id/1498>.

*Reexamining the Pace of Litigation in 39 Urban Trial Courts* by Goerdt, Lomvardias, and Gallas is a scientific review of felony and civil case correlates with case processing speed. <http://cdm16501.contentdm.oclc.org/cdm/ref/collection/ctadmin/id/1>.

CourTools for Clearance Rates and Time to Disposition (Case Age) provide definitions and calculations. <http://www.courttools.org/Trial-Court-Performance-Measures.aspx>.

Best Practice Courts Listed in This Manual: Each listed court is linked to its main website. A full trial court directory of all state courts is available on the [One Court of Justice website](#).

- [1st Circuit Court, Hillsdale](#)
- [1st District Court, Monroe](#)
- [9th Circuit Court, Kalamazoo](#)
- [13th Circuit Court, Grand Traverse](#)
- [16th Circuit Court, Macomb](#)
- [21st Circuit Court, Isabella](#)
- [30th Circuit, Ingham](#)
- [62B District Court, Kentwood](#)
- 53rd Circuit Court, [Cheboygan](#) & [Presque Isle](#)
- [65B District Court, Gratiot](#)
- [72nd District Court, St. Clair](#)
- [Allegan County Legal Assistance Center](#)



## Appendix 2: Sample Implementation Plan

### Performance Measures Best Practice Implementation Plan Supreme County Circuit Court-Family Division

*NOTE: This section is intended as a sample to aid courts in developing an implementation plan. It is not a step-by-step guide for implanting best practices. Court should use this sample to consider the resources and work involved in introducing a new best practice. In this section, team members will vary depending on the court's organizational structure and the best practice and corresponding measures involved. Possible leadership team members might include the county clerk, probate register, chief referee, magistrate, and other jurists.*

**Court Performance Measurement Leadership Team Members:** Chief Judge Smart, Judge Arnold Palmer, Presiding Judge of the Family Division, Annie Orfen, Circuit Court Administrator, John James, Family Division Administrator, Carla Anderson, Family Division Clerk

**Best Practice:** Early control over divorce cases both DM and DO.

**Current Practice:** The court does not use mediation, and scheduling orders are used infrequently. This is an area of concern because case-age rates are lower than time guidelines and lower than the statewide average in both case categories. Judge Palmer will lead the project of incorporating early interventions in these case types as he presides over them.

**Goal:** Improve case age rates. For 2014, the court processed 77 percent of its DO cases within the time guidelines and 82 percent of its DM within the time guidelines. The court would like to improve these numbers by 5 percent per year until it achieves compliance with time guidelines in both case types.

**Method:** In order to improve case-age rates, the court will use early intervention strategies including: (1) entering scheduling orders at pretrial on all DO and DM cases (2) holding scheduling conferences within 60 days of service on all appropriate cases (3) access to pretrial mediation in appropriate DM cases (4) expanded use of hearing officers in DM cases.

#### **Communication Plan:**

**Internal:** At an all-staff meeting Chief Judge Smart will introduce the idea of incorporating best practices to improve performance measures. Staff will learn that court leadership will meet to develop a proposed plan and distribute the plan for feedback in September. An all staff meeting is scheduled for September where the plan will be distributed. Staff will have 2 weeks to provide input.

**External:** Annie Orfen will schedule an opportunity to speak at a local bar association meeting to explain the changes and seek feedback on the proposed plan from the bar. Upon finalization of the plan, Annie Orfen will issue a press release to local media outlets explaining the early interventions, performance measurement and likely impact on the community. She will then follow up with the local bar association to discuss the final plan.

**Capacity:** The family division has one presiding judge and 2 attorney referees and 2 clerks. The court also relies on the Friend of the Court office for many of its cases. The caseload is relatively small compared to staffing level and affected staff agreed to shifting responsibilities if necessary to accommodate implementation. No staffing changes are necessary. Trial-date

certainty and a reduction in adjournments should save staff time from rescheduling and re-noticing hearings.

**Accountability:**

<b>Task</b>	<b>Staff Accountable</b>	<b>Deadline</b>
Draft Model Scheduling Orders	John James (approved by Judge Palmer)	9/1/2015
Ensure scheduling conference is held within 60 days of service	Carla Anderson	Ongoing
Coordinate Mediation Schedule	FOC, Chief Referee, Carla Anderson	9/20/2015
Develop Mediation Handout	FOC, Carla Anderson	9/25/2015
Assign attorney referees to appropriate cases where pretrial disposition is possible.	Judge Palmer, Chief Referee	Ongoing
Monitor implementation and hold quarterly meetings	Leadership team	Quarterly
Annual implementation review and plan revision	All-staff	Annual

**Follow-up:** The family division administrator will follow up to ensure compliance with deadlines listed above. The family division judge and chief judge will work together to continuously monitor outcomes and review case-age and clearance rates. Together, staff will adjust and revise the early interventions implementation plan as needed.

## **Appendix 3: Case Management Plan & Trial Scheduling**

**Provided by the 1<sup>st</sup> District Court in Monroe**

### **C. Scheduling Policy**

The court will schedule all cases or contested matters in a manner that minimizes delay for the parties and that reduces the possibility of adjournment of scheduled events. The court will control all cases from case initiation through post-disposition proceedings by:

1. Appropriate case screening;
  2. Scheduling conferences and orders for the purpose of achieving date certainty;
  3. Management of discovery and motion practice;
  4. Realistic scheduling of all court events.
- 

The court will monitor all cases and contested matters to ensure that no case exists for which a future action or review date has not been scheduled. The court will schedule all cases pursuant to the time guidelines set forth in Administrative Order 2013-12. The court will not permit a case or contested matter to remain on this court's docket in excess of the guidelines set forth in this local administrative order without immediate judicial review.

### **D. Adjournment Policy**

The court strictly adheres to MCR 2.503.



## MONROE COUNTY COURTS

106 East First Street · Monroe, Michigan 48161-2197

Hon. Jack Vitale, Chief Judge

Hon. Michael A. Weipert, Chief Judge Pro Tempore

### SCHEDULING TRIALS

#### **MCR 2.501(A)(1) Scheduling Conference or Trial.**

(1) Unless the further processing of the action is already governed by a scheduling order under MCR 2.401(B)(2), the court shall

- (a) schedule a pretrial conference under MCR 2.401,
- (b) schedule the action for an alternate dispute resolution process,
- (c) schedule the action for trial, or,
- (d) enter another appropriate order to facilitate preparation for trial.

**MCR 2.501 (C) Notice of Trial.** Attorneys and parties must be given 28 day's notice of trial assignments, unless

- (1) a rule or statute provides otherwise as to a particular type of action,
- (2) the adjournment is of a previously scheduled trial, or
- (3) the court otherwise directs for good cause

Notice may be given orally if the party is before the court when the matter is scheduled, or by mailing or delivering copies of the notice or calendar to attorneys of record and to any party who appears on his or her own behalf.

<i>Suggested Final Pretrial Conference Date</i>	<i>Earliest Jury Trial Date</i>
<b>Monday, 11/03/14</b>	<b>Tuesday, 12/02/14</b>
<b>Monday, 11/10/14</b>	<b>Tuesday, 12/09/14</b>
<b>Monday, 11/17/14</b>	<b>Tuesday, 12/16/14</b>
<b>Monday, 11/24/14</b>	<b>Tuesday, 12/23/14</b>
<b>Monday, 12/01/14</b>	<b>Tuesday, 12/30/15</b>
<b>Monday, 12/08/14</b>	<b>Tuesday, 01/06/15</b>

## Appendix 4: Formula for Calculating Clearance Rates

### Method

The formula for calculating the clearance rates is based on the method recommended by the National Center for State Courts as outlined below.

Step 1: Sum Incoming Cases

New Filings + Reopened Cases

$$812 + 271 = 1,083$$

Step 2: Sum Outgoing Cases

Dispositions + Cases Placed on Inactive Status

$$821 + 92 = 913$$

Step 3: Calculate Clearance Rate

$$913 \div 1,083 = 84\%$$

Clearance rates were not calculated for case groups with 5 or fewer incoming cases.

### Interpretation

Clearance rates above 100 percent indicate that a court is reducing a backlog.

A clearance rate of 100 percent indicates the court is keeping up with its current caseload and maintaining the size of any pending caseload.

Clearance rates between 0 percent and 100 percent indicate the court is creating a backlog. Courts with clearance rates repeatedly below 100 percent may have a caseload management problem. Clearance rates can also indicate a problem with accurately managing and reporting case information to SCAO. If all dispositions are not recorded and reported, for example, the clearance rates may be erroneous.

## Appendix 5: Case-Age Formula and Details

### CASE-AGE FORMULA

Cases Disposed Within the Time Frame during the Year

-----divided by-----

Cases Disposed during the Year and

Cases Pending Over the Time Frame at Year End

### Circuit Felony (AX, FC, FH, FJ)

BEGINS – upon entry of the order binding the case to circuit court<sup>1</sup>

ENDS – at adjudication or dismissal of all counts against defendant

TIME NOT COUNTED during inactive status as a result of:

- a warrant being issued for nonappearance before adjudication
- a defendant being referred to the Department of Community Health for evaluation to determine whether competent to stand trial
- a defendant being found incompetent to stand trial
- any order entered by an appellate court that stays the case

<sup>1</sup> For a delinquency case, upon entry of the order granting the motion to waive the case to the general criminal jurisdiction of the court.

### Circuit Civil (Case Types that Begin with C, N, P, or M) or Appeals, Administrative Reviews, and Extraordinary Writs

BEGINS – at case filing<sup>2</sup>

ENDS – at disposal of all claims of all plaintiffs against all defendants or all counter or cross claims

TIME NOT COUNTED during inactive status as a result of:

- a case being stayed through an order issued by
- a higher court for interlocutory appeal
- the trial court for bankruptcy
- the trial court for military stay

<sup>2</sup> For appeals, administrative reviews, and extraordinary writs, the clock starts at the filing of the claim of appeal or other initiating document.

### Divorce (DO, DM) or Other Domestic Relations (DP, DC, DS, DZ, UD, UE)

BEGINS – at case filing

ENDS – at disposal of all claims of all plaintiffs against all defendants or all counter or cross claims. A divorce is considered disposed when the judge grants the divorce or separate maintenance, after evidence has been presented in open court that there has been a breakdown in the marriage relationship pursuant to MCL 552.6 and MCL 552.7.

TIME NOT COUNTED during inactive status as a result of:

- a case being stayed through an order issued by
- a higher court for interlocutory appeal
- the trial court for military stay

### Child Protective (NA)

BEGINS – at authorization of the initial petition<sup>3</sup>

ENDS – at entry of initial order of disposition<sup>4</sup>

Courts count and report the age of the petition for each child named in the petition.

<sup>3</sup> Petitions that are withdrawn, dismissed, transferred, or not otherwise authorized are not reported. However, if the petition is first authorized and then withdrawn, dismissed, or transferred, then it is reported.

<sup>4</sup> Adjudication and disposition of a petition are considered complete upon entry of an initial order of disposition or some other dispositive order. Cases held in abeyance do not qualify for adjudication and should not be counted as disposed in this report. Report petitions held in abeyance on the Delay in Matters Submitted to Judge (DMS) report on MCAP.

### **Delinquency (DL)**

BEGINS – at authorization of the initial petitions

ENDS – at entry of initial order of disposition<sup>6</sup>

TIME NOT COUNTED during inactive status as a result of:

- a warrant being issued for nonappearance before adjudication

<sup>5</sup> Petitions that are waived, dismissed, transferred, placed on consent calendar, diverted, or not otherwise authorized are not reported. However, if the petition is first authorized and then waived, dismissed, transferred, placed on consent calendar, or diverted, then it is reported.

<sup>6</sup> Adjudication and disposition of a petition are considered complete upon entry of an initial order of disposition or some other dispositive order.

### **Juvenile Traffic (TL)**

BEGINS – at first appearance<sup>7</sup>

ENDS – at adjudication and dispositions<sup>8</sup>

TIME NOT COUNTED during inactive status as a result of:

- a warrant being issued for nonappearance before adjudication

<sup>7</sup> First appearance date means an appearance at a hearing, an appearance by way of motion (such as a motion of nolle prosequi) that is followed by an order (whether that order is the result of a hearing or not), or a payment date, whichever occurs first. If there is no first appearance date as defined above, then do not report in this section.

<sup>8</sup> Adjudication and disposition of a citation are considered complete upon entry of an initial order of disposition, some other dispositive order, or payment. Note: If the first appearance is the same date as the adjudication and disposition, the age of the citation will be reported as zero days.

### **Designated (DJ)**

BEGINS – at designation<sup>9</sup>

ENDS – when all counts against the juvenile have been disposed

TIME NOT COUNTED during inactive status as a result of:

- a warrant being issued for nonappearance before adjudication

<sup>9</sup> For prosecutor designated cases, the date of designation is the date the petition was authorized for filing. For court designated cases, the date of designation is the date of the order designating the case. Petitions that are not authorized are not reported.

### **Estate, Trust, Guardianship, Conservatorship (DH, DA, DE, PE, TV, TT, CA, DD, GA, GL, CY, GM, LG, PO)**

BEGINS – at the joining of the contested matter<sup>10</sup> (when an objection is filed)

ENDS – at resolution of the contested matter

<sup>10</sup> A contested matter is any competing petition, any written responsive pleading requesting relief, or any other situation the court deems the matter to be contested.

### **Mental Illness & Judicial Admission (MI, JA)**

BEGINS – at the filing of the petition<sup>11</sup>

ENDS – at disposition of the petition<sup>12</sup>

TIME NOT COUNTED during inactive status as a result of:

- the original MI petition being deferred

<sup>11</sup> In MI cases, if the original petition was reported disposed under "deferred" and a subsequent demand for hearing is filed, measurement begins on the date of the filing for that petition and is completed when disposition after the hearing occurs; however, subtract the period of time under which the original MI petition was deferred.

<sup>12</sup> If a demand for hearing is filed in an MI case, the original petition will be reported twice; once as to its age at deferral and again as to its age after the hearing.

### **District Felony (EX, FY, FD, FT)**

BEGINS – at the appearance and arraignment on the complaint and warrant or citation, or at the appearance made by motion and followed by an order<sup>13</sup>

ENDS – at disposition

Starting a preliminary exam does **not** stop the clock. The exam must be finished before the clock stops.

TIME NOT COUNTED during inactive status as a result of:

- a warrant being issued before adjudication
- a defendant being referred to the Department of Community Health for evaluation to determine whether competent to stand trial
- a defendant is found incompetent to stand trial
- any order entered from an appellate court that stays the case

<sup>13</sup> First appearance means arraignment date (meaning, the arraignment occurred) or an appearance by way of motion (such as a motion of nolle prosequi) that is followed by an order (whether that order is the result of a hearing or not). If no arraignment date is present and the case has not been made inactive, then the age of the case is calculated as zero.

### **Misdemeanor (OM, SM, OD, SD, OT, ST)**

BEGINS – at the appearance and arraignment on the complaint and warrant or citation, or at the appearance made by motion and followed by an order<sup>14</sup>

ENDS – at adjudication of all counts against the defendant

TIME NOT COUNTED during inactive status as a result of:

- a warrant being issued before adjudication
- a defendant being referred to the Department of Community Health for evaluation to determine whether competent to stand trial
- a defendant is found incompetent to stand trial
- a case being stayed through an order issued by
  - an appellate court for interlocutory appeal
  - the trial court for military stay (for traffic misdemeanors)

<sup>14</sup> First appearance means arraignment date (meaning, the arraignment occurred) or an appearance by way of motion (such as a motion of nolle prosequi) that is followed by an order (whether that order is the result of a hearing or not). If no arraignment date is present, then appearance date means payment date (meaning, a payable citation has had a payment applied).

### **Civil Infraction (OI, SI, ON, SN, OK, SK)**

BEGINS – on the date the original citation is filed

ENDS – at adjudication of all offenses against the defendant

TIME NOT COUNTED during inactive status as a result of:

- a warrant being issued before adjudication
- a defendant being referred to the Department of Community Health for evaluation to determine whether competent to stand trial
- a defendant is found incompetent to stand trial
- a case being stayed through an order issued by
  - a higher court for interlocutory appeal
  - the trial court for military stay
  - the trial court for bankruptcy



**District General Civil (GC, GZ) or District Summary Civil (LT, SC, SP)**

BEGINS – on the date of case filing

ENDS – at disposal of all claims of all plaintiffs against all defendants or all counter or cross claims

TIME NOT COUNTED during inactive status as a result of:

- a case being stayed through an order issued by
  - a higher court for interlocutory appeal
  - the trial court for military stay
  - the trial court for bankruptcy