

DOCKET (Calendar) MANAGEMENT

by

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I. JUDGES ARE MANAGERS

We district judges are all court managers whether we like it or not, and whether we are prepared for it or not. While we like to think of our jobs as decision making and doing justice, we can do neither without controlling our workload. We must manage our dockets so that we can make timely decisions that lead to justice.

We have heard the old saying that “Justice delayed is justice denied,” and we know that in many cases that is true. Judge Bill Dwyer refers to expense, delay and overload as three of the Six Deadly Sins of American Litigation. He states the others are over-contentiousness, fecklessness, and hyper-technicality. (*In the Hands of the People*, St. Martin’s Press, 2002).

As trial judges, our goal should be “the just, speedy and inexpensive determination of every action.” (Fed. R. Civ. P. 1). Our goal cannot be reached if we are not good managers. Judges work at different rates of speed and have different skills. Those differences must be considered in managing a court’s caseload.

II. BASIC RULES

There are four basic rules of any good docket management system: a) the Court, not counsel, is responsible for the pace of litigation; b) the judge must personally supervise the docket management system; c) every case must have a “next action date” at all times. Nothing should be allowed to float; and d) the necessary pace of our work output is determined by what comes in.

A. Why is the Court responsible for the pace of litigation?

1. The interest of counsel and litigants vary, but our goal of the just, speedy and inexpensive determination of each case does not vary. Neither too much speed, nor too much delay should be allowed to thwart our goal.

2. A confused system does not give the public confidence that justice is being done.
3. Lawyers cannot manage your docket successfully, even if they are successfully controlling the pace of individual cases. They do not have the big picture. Furthermore, if allowed, many lawyers will manage their cases by motions – or stipulations – to continue.
4. Disputes should be resolved promptly – they may grow out of control if the end is not in sight.

B. Why must the judge personally supervise the docket?

1. While the degree of supervision may vary with staff, training, ability, and dedication, only the judge: a) can provide leadership; b) pull all segments of the system together (staff, lawyers, probation and pretrial services, juries, interpreters, the press, the public, technology, forms, facilities, etc.); c) can set goals and standards; d) can use sanctions to be sure that the system requirements are met; e) can supervise staff; f) can determine if the system is working; and g) can change the system at the policy level.
2. Like it or not, the judge is responsible to the litigants and the public for the pace of litigation.

C. Why should every case always have a “next action date?”

1. Next action dates prevent cases and motions from getting lost in the system;
2. Next action dates allow the Court to control the pace of litigation;
3. Next action dates allow the Court to determine important events in litigation and to set deadlines;
4. Next action dates allow for differential case management;
5. Next action dates allow the judge to relentlessly prioritize the Court’s work.

D. Why is the pace of our work output governed by what comes in?

If our output does not match case and motion filings, the future can only be one of growing delay, overload and expense.

III. TIPS IN AID OF EFFICIENCY FOR INDIVIDUAL JUDGES

A. Motions

1. Law Clerks

- a. The only thing your law clerks cannot do is hold Court and sign orders. Delegate as much as they can handle and as much as you are comfortable with.
- b. Consider permanent law clerks. An enormous amount of time is spent training law clerks only to have them leave at the point where they have really started to produce. Permanent law clerks require no continual training and, if you have one permanent law clerk, that law clerk can do most of the training for a new clerk.

2. Rulings and Hearings

- a. Many routine motions can be disposed of by the use of minute orders prepared by a law clerk or your courtroom deputy.
- b. Written orders are a luxury. While you should always explain the reasons for your rulings, that can be done in a short, rather than lengthy, order. Lengthy orders should be reserved for those motions that truly require them. Don't publish unless you have a truly unusual issue that will assist in developing a body of law.
- c. Rule on motions orally, either by conference call or in open court. Oral rulings are particularly helpful when you are behind on motions. Do not routinely hear argument on motions in Court. Ask for oral argument only when you want it and then only on what you want to hear, and be prepared to rule at the end of the argument. Argument, as well as ruling, can be done by conference call as well as in open Court.

3. Deadlines

Establish deadlines for yourself and your clerks. Every motion should have a deadline for ruling. This establishes a “next action date” so nothing gets overlooked. The CM/ECF system is very helpful in establishing and following deadlines.

4. Resubmissions

When lawyers make a document dump on you on a complex motion, it may be appropriate to ask for resubmission in a form that you and your law clerks can reasonably handle.

5. Getting Help

Often the motion pile seems overwhelming. Ask for help from your own staff, from magistrate judges and district judges in your district, request extra temporary law clerks, request visiting judge help or assignment of some of your matters outside of your district, and think carefully about use of alternate methods of dispute resolution, not only for the ultimate issues in a matter, but for issues coming up in motions as well. For example, I have used my permanent law clerks to mediate discovery disputes with considerable success.

6. The Big Push

Judges and law clerks should not be forced to regularly work nights and weekends. On the other hand, a big push is sometimes necessary to keep pace with motions. Devoting extra time to work on occasion can prevent the terrible feeling of being hopelessly behind.

7. Local Rules

Local Rules can help. Local Rules can provide for a presumptive deadline for all motions and also can provide that lawyers should contact your calendar manager if deadlines pass without ruling. Local Rules can also help to guide lawyers in how to submit motions in an efficient manner.

8. Challenge Local Legal Culture

The worst reason to do something is because it was always done that way. Don't be afraid to challenge the local legal culture. Of course, a major challenge needs the support of your fellow judges and, perhaps, the support of your local bar association. For example, in many districts continuances are granted almost automatically on counsel's request. A change to granting continuances only when good cause is shown can upset a lot of people. Good calendaring management, however, requires that judges be stingy with continuances and that continuance not be granted just because lawyers agree on them.

9. Your Goal

Remember that, as Rule 1 of the Federal Rules of Civil Procedure indicates, your goal should be the "just, speedy and inexpensive determination of every" motion. Your goal should not be perfection in written orders when a shortcut will be as just, more speedy, and less expensive.

B. Trials

1. Pretrial Conferences

Much has been written about the use of status and pretrial conferences. They can be a great tool in streamlining trials. Besides discussion of how the trial will be conducted, the many issues can be discussed and resolved: bifurcation, stipulations, time limits, evidentiary problems, witness lists, jury instructions, interim opening statements, use of technology and special jury aids, expected trial interruptions, etc. It pays to think ahead in detail about how the trial will be conducted and to firm as much up as possible at the present conference. In complex cases, it may be appropriate to set a status conference followed by a final pretrial conference if the lawyers need advance notice of decisions to be made at the conferences.

2. Standby Calendars

It is simply not fair to litigants to have their trial date continued indefinitely, or even to a date certain long in the future, because the Court is too busy to get to their case. A more fair practice is to put cases on a standby calendar so that they don't lose their place in line. Typical cases don't need more than a 24-hour notice for trial after the original

trial date. Being on standby is difficult for lawyers, but they learn to adjust, and litigants much prefer a short delay to a long one. Standby calendars aid in equalizing workload – available judges can pick up standby cases from other judges on short notice.

3. Sidebars

Eliminate sidebars and discussions with counsel that take up the jury's time. Effective pretrial conferences and prompt evidentiary rulings made without argument minimize the need for discussions during trial, and discussions that are truly necessary can be delayed until the next recess. Keep the jury in the box during Court hours.

4. Rulings

Federal Rule of Civil Procedure 52 directs that in non-jury cases, "the Court shall find the facts specially and state separately its conclusions of law thereon" It further provides, "It will be sufficient if the findings of fact and conclusions of law are stated orally and recorded in open Court following the close of the evidence"

Laborious preparation of written findings and conclusions is, in most cases, simply unnecessary. Judges should develop the ability to rule orally, making findings and conclusions on the record. Usually, you can quickly prepare an oral ruling after trial. The case is never more fresh in the judge's mind than immediately after the lawyers stop talking, and that is the time to put a ruling together and to deliver it. A case is not over until the ruling is delivered, and judges should not start a new case before ruling on a case just tried. If publication is really necessary, an oral ruling can be edited for publication. Again, we are seeking speedy and inexpensive justice. A perfectly crafted written opinion is simply not necessary in every case.

5. Read Rafeedie

United States District Judge Edward Rafeedie, Central District of California, now deceased, has written two excellent articles on speedy trials. I have attached them here for your review. They are *The Conduct of Trials, a Neglected Area of Judicial Reform* by Honorable Edward Rafeedie, 23 *Southwestern Law Review*, No. 2, p. 205 (1994); and *Speedier Trials* by Edward Rafeedie in *Litigation Magazine*, Fall 1994, Vol. 21, No. 1 (the publication of the litigation section of the American Bar Association).