

JUDICIAL DEPARTMENT
COURT AUTOMATION WORKGROUP MEETING

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115058

Guide to Automating the Courts of the Russian Federation

Moscow, Russia
March 13 to 17, 2000

Thomas M. Jordan & Associates
Judicial Department of the Supreme Court of the Russian Federation
Russian-American Judicial Partnership (RAJP)

Wednesday, March 15

- 9:00 – 9:30 Opening Remarks
Judge Betty Barteau, Chief of Party, RAJP
Valentin Voronov, Deputy Director of the Judicial Department
Valerii Drobryshev, Acting Director of the Office of
Organizational and Legal Support of the Courts
Joseph Jordan, Court Administration and MIS Consultant
Thomas Jordan, Court Administration and MIS Consultant
- 9:30 - 10:00 Court Automation in the Tulsckaya Oblast
Presentation by Boris B. Aksenov, Director of Informatization
Department, Judicial Department Division, Tulsckaya Oblast
- 10:00 – 10:30 Court Automation in the Kaluzhskaya Oblast
Presentation by Elena V. Yakovleva, Chief Informatization Expert
of the Kaluzhskaya Oblast Judicial Department Division
- 10:30 – 11:15 Review Materials from the Workgroup
Discussion led by Joseph and Thomas Jordan
- 11:15 – 11:30 Break
- 11:30 – 13:00 Overview of Judicial and Court Staff Requirements Development
Presentation by Joseph and Thomas Jordan
This presentation will focus on judicial and court staff requirements
development in the United States. Participants will be provided with
concrete information and material on how to prepare and improve
judicial and court staff requirements.
- 13:00 – 14:00 Lunch

- 14:00 – 15:30 **Criminal Caseflow Analysis / Standards Development**
Presentation by Joseph and Thomas Jordan
This presentation will address criminal caseflow analysis and standards development in the United States. Participants will receive examples of methods for developing criminal caseflow standards.
- 15:30 – 15:45 Break
- 15:45 – 17:00 **Working Groups**
The participants will be divided into two groups to analyze and compare criminal caseflow in the Russian Federation. Each group will begin to develop standards based on the current situation in Russia. Joseph Jordan will work with one group and Thomas Jordan the other.
- 17:00 Adjourn
- 18:00 Dinner

Thursday, March 16

- 9:00 - 10:30 **Civil Caseflow Analysis / Standards Development**
Presentation by Joseph Jordan and Thomas Jordan
This presentation will focus on civil caseflow analysis and standards development in the United States. Participants will review methods for developing civil caseflow standards using examples from the United States.
- 10:30 - 10:45 Break
- 10:45 - 13:00 **Working Groups**
Participants will be divided into two groups to analyze and compare civil caseflow in the Russian Federation. Each group will begin to develop standards based on the current situation in Russia. Joseph Jordan will work with one group and Thomas Jordan the other.
- 13:00 - 14:00 Lunch
- 14:00 – 15:30 **Juvenile Caseflow Analysis / Standards Development**
Presentation by Joseph Jordan and Thomas Jordan
This presentation will focus on juvenile caseflow analysis and standard development in the United States. Participants will receive practical information on how juvenile cases are managed using models from the United States, including sample legislation and juvenile court procedures.
- 15:30 – 15:45 Break

15:45 – 17:00

Working Groups

The participants will be divided into two groups to analyze and compare juvenile caseflow in the Russian Federation. Each group will begin to develop standards based on the current situation in Russia. Joseph Jordan will work with one group and Thomas Jordan the other.

19:00

Dinner

Friday, March 17

9:00 -10:30

Overview of the Process of Standards Development in the United States

Presentation by Joseph Jordan and Thomas Jordan

The presenters will summarize the process of standards development in the United States

10:30 – 10:45

Break

10:45 – 13:00

Further Develop the Guide to Automating the Courts of the Russian Federation Based on Meeting Results

Discussion led by Joseph and Thomas Jordan

Participants will be asked to add their suggestion to refine the Guide to Automating the Courts of the Russian Federation

13:00 - 14:00

Lunch

14:00 – 15:00

Closing Remarks

**LIST OF JUDICIAL DEPARTMENT COURT AUTOMATION
WORKGROUP PARTICIPANTS**

Guide to Automating the Courts of the Russian Federation

**Moscow, Russia
March 13 to 17, 2000**

**Thomas M. Jordan & Associates
Judicial Department of the Supreme Court of the Russian Federation
Russian-American Judicial Partnership (RAJP)**

Head of the Court Automation Workgroup:

Valentin Drobyshev, Acting Director of the Office of Organizational and Legal Support of the Courts of the Judicial Department of the Supreme Court of the Russian Federation

Court Automation Workgroup:

1. Sergei Voznesenski, Director of Judicial Department Division, Ulyanovsk
2. Valeian Egornov, Director of the Judicial Department Division, Yoshkar-Ola
3. Svetlana Oboleninova, Deputy Director of the Judicial Department Division, Kurgan
4. Yuri Riabtsov, Director of the Judicial Department Division, St. Petersburg
5. Vladimir Voloshin, Court Administrator, Ivanovo Oblast Court
6. Semyon Zilberman, Director of the Informatization Department, Cheliabinsk Oblast Court
7. Boris Aksenov, Director of Informatization Department of the Judicial Department Division, Tulskey Oblast
8. Elena Yakovleva, Chief Informatization Expert of the Judicial Department Division, Kaluzhskaya Oblast
9. Olga Egorova, Acting Chair of the Moscow City Court
10. Konstantin Zotin, Deputy Chair of the Moscow Oblast Court
11. Vladimir Niesov, Advisor to the General Director, Judicial Department of the Supreme Court of the Russian Federation
12. Yuri Pogozhev, Director of Informatization Department of the Judicial Department of the Supreme Court of the Russian Federation

Court management guide workshop, Materials

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STATUS

DOCUMENT NAME

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Processing Standards for the Designing and Developing of an automated case management "section 2"

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Information type for case management automation »section 5

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Guideline for Assessing the Need for Judges and Court Support Staff

4

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Case Processing Development Standard "section 6"

5

T

Developing Case Management Standards (as titled in Guide)

6

T

Caseflow Management and Delay Reduction "standard 2.50"(back w/David from Reno)

7

T

A Complete Case Flow Management Information System (back w/David from Reno)

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Criminal Caseflow Documentation and Analysis

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Identification of factors for case management "section 4"

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2
Statistical Information for Control (in guide)

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Civil Case Management Plan (attached to last email to David)

12

Managing Complex Litigation (standard 2.79.5 in last email to David)

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Civil Case Management Outline

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T

Case management in the Russian courts, general jurisdiction (written by Voronov, '99
54pages apx.-intro + job descriptions)

~~Section~~
~~Case Processing Analysis~~

Processing Standards for the Designing and Developing of an Automated Case Management System of the Courts of the Russian Federation

Critical to any management process are the goals and standards by which performance is judged. Justice standards are almost impossible to establish, therefore we must determine the controllable variables that may cause an injustice to the participants. These variables are objective measures of justice.

Delay of trial or disposition of a case may well be the principle controllable variable in doing justice. Delay may be controlled by regulating the behavior of participants in the system. Thus, continuances, postponements or delays by whatever name, must be carefully considered and granted only when there is an honest, adequate reason. Experience has demonstrated that recorded and monitored continuance procedures are necessary standards in limiting delay. The recorded experience made at all stages of the process becomes data available information to determine and understand the needs for changes and delays in the time required to reach trial or disposition of the case..

Delay producing principles must be dealt with on a sufficiently regular basis to be the subject of standards. There are a number of situations that cause delay that repeat themselves often enough to attempt to establish stands. A request for a examination of a defendant to determine his or her competency to stand trial often causes a delay of trial. By establishing a time frame within which this examination must be requested and monitoring the request. the delay in this area can be minimized.

Also, allowing guilty pleas on the day of trial unduly complicates trial schedules, especially when the plea arrangement could have been decided at some time before the trial date. Therefore, the control of last minute pleas thus becomes an important subject for standards. They must be considered when developing standards.

Guilty pleas often consume excess amounts of judge's time. Better and more expeditiously ways of handling guilty pleas must be developed as standards are determined. One effective way is to require a petition to be signed which contains representations on the necessary issues.

Whenever an effective procedure is established, the court, by adopting the procedure as a court standard, saves time. The operating standards may be changed as better procedures are developed, but will require addressing the information system for the changes.

To design an effective management information system, a decision must be made on the points identified as needing standards, and the information which best supports this decision must be specified. The design must allow the experience gained in using the information to be used to refine the process. The

decision-maker may often need more information or need to eliminate some information to provide for better decisions. This is a continuing process which allows the information system to adjust incrementally as the managerial skills of those using it increase.

More specifically, to meet the information requirements contemplated, the critical factors concerning case management, and the operating characteristics of the courts of the Russian Federation must be examined in detail. This is accomplished by a step-by-step examination of the process to identify the sequence and flow of the work processes. During this examination the individuals who do the daily operation of the system must be identified and their function classified, as well as the decisions that they have the authority to make. As the individuals and their roles in the decision-making process are identified, it will become possible to determine not only what information they require to meet their needs, but also how often they need that information and in what format. A critical factor essential to the initial development of any monitoring and controlling process for case flow is the itemization of the information. The individual user and the format are a product of local operating procedures.

In the absence of a case management system a simple manual system may be used in the initial stages of development. This provides an opportunity to start the development of a system and provides some clear definition as to what will be appropriate for automation. After determining the necessary information and the format of required reports is determined, the program for developing an automated system can be undertaken with assurance that the end product will be useful.

Included in this section is an outline and discussion of the kinds of information which would serve as a foundation for the courts information systems. For each event (arrest, first hearing, etc.) four main categories of information must be designated to enable the courts to effectively monitor the case flow. They are elapsed time, event occurrence, interval time, and status.

To determine the category of elapsed time, information must be collected to determine the following:

- (1) the amount of time which occurs between any two events or procedures in the case,
- (2) the time difference between the time for the procedures for the case in question and the standards determined by the court, and
- (3) any special characteristics of those cases which use less or more than the standard time, such as the number of defendants, type of case, or any other distinguishing characteristics

Included under the heading of event occurrence is the determination of each process which should occur at the event. Once the necessary processes are determined, information must be collected to permit the court to detect whether the process did or did not occur. Often two main reasons why a process may not occur, are the lack of available resources or necessary persons at the process and

the lack of preparation by participants. Information required to monitor this is discussed in the remaining two categories.

The third category of information necessary to effectively monitor the case flow of a court is the interval time between processes. This requires a specification of tasks or activities that are necessary to the process. There are two components to the measurement of interval time. The first is measurement of the time that represents preparation-- the actual time necessary for the participants to prepare for whatever process is next. An example of this is the actual amount of time necessary to identify the need for and the preparation of a document which would be necessary for the case to proceed, such as the preparation of the notice or other required pleading. The other component of the interval time is the waiting time between the completion of the preparation and the time the next process takes place. This component of the interval time could be caused by either the court or the litigants, but must be measured to determine what is reasonable.

Interval time activities can take place either simultaneously or in sequences. Activities that represent simultaneous tasks could be tasks such as the request and receipt of a laboratory report, and at the same time the ordering and receipt of a psychiatric report. Tasks which might be performed in sequence are the identification of individual to whom notices are to be sent and then the actual preparation of the notice.

The fourth category of necessary information, status, reflects the availability of resources and participants at the event. Depending upon which process is to take place, the necessary information would include the availability of courtrooms, judges, defense lawyers, prosecution lawyers, defendants, witnesses, juries, pleas, reports, lab reports, or anything that is required to proceed to complete the scheduled process whether it be the trial or a preliminary matter. The key monitoring concern here is to learn how frequent the unavailability of each of the resources named above have interfered with the proceeding..

The use of these four measurements in the monitoring of the case process from the very beginning to the disposition is extremely important, not only in identifying specific tasks which must take place for the case to move forward, but also identifies the resources necessary at the case to move forward at each point. Therefore, if any important task fails to take place, the cause can be established.

The following represent the partial list of information elements classified by monitoring category. This list will expand, contract and change in particular periods of case management to comply with monitoring needs. Also, development of management skills will play a role in identifying which types of control are most effective in attaining desired goals for particular case management situations and thus with what frequency the information needs to be reported.

Case Processing Analysis Method

In this framework it is helpful to make a distinction between processing time and waiting time. Processing time, as used in this framework, is the time during which a participant in the process is actually working on the case. Processing time is seldom the critical factor in delay. The time during which participants are waiting for something to happen is waiting time. Waiting time accounts for most of the delay. The basic assumption of this analytic framework is that delay is best attacked by organizing and controlling to eliminate waiting time rather than to speed up processing time.

THE EVENTS:

1. ARREST. The arrest starts the clock running for the purposes of accounting for delay in the criminal justice process. In an overall measure of the system delay one would start with the commission of the crime. The pre-arrest investigation time, though important to system effectiveness, is not a part of this study.

The arrest is a multi-part event which can include the following:

- 1.1 The apprehension and control of a suspect.
 - 1.2 The booking of a suspect.
 - 1.3 Prosecutorial screening of the arrest and charge.
 - 1.4 The preparation of charging instrument.
 - 1.5 Notice to appear at first hearing when released.
2. FIRST HEARING. The first hearing can accomplish several purposes when properly conducted as follows:
- 2.1 Identifies the person appearing as the person accused in the charge.
 - 2.2 Determines that the complaint is sufficient to state a crime.
 - 2.3 Advises the accused of the nature of the accusation.
 - 2.4 Makes a record of the advise to the counsel.
 - 2.5 Makes a determination of indigence in appropriate cases.
 - 2.5 Arranges for the advice of counsel.
 - 2.6 Fixes term of release of incarceration.

3. ACCUSATION All American systems have some process for screening felony accusations to avoid the burden of defending what may be insufficient evidence to support a conviction. Since the time of the Magna Carta a grand jury was the accepted screening device. More recently one can be forced to answer to felony charges after a preliminary hearing or more summarily after a review by the prosecuting officials if all the information reviewed is submitted to the defendant. The filing of the formal accusing document, usually known as an indictment or information, accomplishes the following:

- 3.1 Fixes the limits of the crime for which the accused may be tried.
- 3.2 Provides a record of the accusation.
- 3.3 Provides a check against frivolous or unwarranted accusations.

4. ARRAIGNMENT The term arraignment does not mean the same thing in all jurisdictions. As used here it means the first hearing after an accusation of a felony has been lodged in a court which may try the felony. The hearing may serve other purposes but it must do the following:

- 4.1 Identify the accused as the person named in the information or indictment.
- 4.2 Formally advise the accused of the charges which must be answered or defended.
- 4.3 Provide an opportunity for accused to deny the charges or enter such a denial as a matter of course.

5. MOTIONS. In many cases no motions are filed and this event does not occur. Delays of a substantial amount do occur in connection with pretrial motions. Evidence is sometimes taken, briefs are sometimes submitted, judges often take motions under advisement and often opinions are written. Some motions are appropriately handled between arraignment and trial while others should be held at trial time. The motion as an event in the pretrial process occurs with sufficient frequency to be a necessary event. To avoid obvious criticism it should be acknowledged that motions may occur at any time so as to make the above time periods imprecise. Motion hearings should provide the following:

- 5.1 An opportunity to apply adversary techniques to the resolution of a clearly defined issue.
- 5.2 A time for the parties and the judge to better understand the boundaries of the controversy.
- 5.3 Resolution of an uncertainty in the case.

6. CONFERENCE. Not all courts require a conference between counsel to the parties before a case is tried. The conferences, however, almost always occur, if at no other time, immediately before a trial. The conference with or without the presence of a judge is a necessary event for effective management of a case through the court. It includes one or more of the following:

- 6.1 A discussion of the evidence which the prosecution and defense will put forward (including numbers of witnesses).
- 6.2 A discussion of the propriety of the charges
- 6.3 A discussion of an appropriate sentence if the defendant is found guilty.
- 6.4 A discussion of the length of trial.
- 6.5 A discussion of motions which might be dispositive of the case.

7. TRIAL. Since very few trials actually occur, the significance of the event is found more in the results which flow from the probability that the event will occur than the actual occurrence of the event. The arrival of the event thus has the following consequences:

- 7.1 The uncertainties as to the availability of a particular judge are resolved.
- 7.2 The uncertainties as to the available evidence are resolved.
- 7.3 Where pleas are settled, the best offer from both sides is fixed.
- 7.4 The nature of the jury is known.
- 7.5 The reliability of witnesses under examination is established.
- 7.6 A decision of the jury or judge is reached.

The importance of identifying the events and their characteristics or purposes is first, to conceptualize the processing time necessary to prepare for the events and second, to understand the waiting time which may be reduced. It is not enough to control the events if the processes are not controlled. Most waiting time occurs at all stages of the process because the processes necessary for the proper disposal of the events are not in control.

ARREST TO FIRST HEARING. Between the arrest and first hearing the following processes should take place:

- 1 The sufficiency of the evidence if not screened at the arrest should be screened by an experienced prosecuting attorney.
- 2 The police report should be written and reviewed.
- 3 Charges should be prepared sufficient to state the crime which has been committed.
- 4 Eligibility for defense aid should be investigated.

FIRST HEARING TO ACCUSATION. The principal cause of delay in the period between first hearing and an accusation of the completion of the investigation. The following matters relating the investigation often need to occur:

- 1 Witnesses must be interviewed
- 2 Laboratory reports must be obtained.
- 3 New reports must be written
- 4 A formal indictment (or information) must be drafted and reviewed.
- 5 Evidence must be organized and reviewed.
- 6 Legal research must be completed.

ACCUSATION TO ARRAIGNMENT. There is very little reason to delay the arraignment after an accusation has been made. The following procedures are largely clerical:

- 1 The arraignment date must be set.
- 2 The arrangements must be made for a judge and courtroom.

3 The papers must be drafted, reviewed and transmitted to the felony court clerk's office.

4 The persons necessary must be notified of the arraignment.

ARRAIGNMENT OF PRETRIAL MOTIONS. Delays occur in this process in many instances because rules of procedures require waiting periods between steps in the process. Waiting time is thereby mandatory if motion processes are involved. Typical delays are as follows:

1 Ten days are allowed after arraignment for the filing of certain motions.

2 Ten days are allowed to respond to the motions.

3 Five days are allowed to reply to the responses.

4 A motion is set for hearing ten days after a response time.

5 Briefs are requested after hearing with fixed response time.

6 Evidence, if taken, must be transcribed by the reporter which is often back logged for 30-60 days (this, even though the typing time for the transcript is less than one day).

7 Evaluation of the need for psychiatric and physical exams.

8 Evaluations of the possibility of dispositive motions.

PRETRIAL MOTIONS TO CONFERENCE. Conferences are often not scheduled or controlled. The processing which must take place is as follows:

1 The lawyers must evaluate the difficulties in their case.

2 The defense lawyer must have a conference with his client.

3 All discovery must be complete either by co-operation or motion.

CONFERENCE TO TRIAL The delays between conference and trial are usually minimal because lawyers do not confer until the trial time is upon them. Most of the processing between conference and trial is in preparation for trial as follows:

1 Witnesses must be found and notified.

2 Attorney schedules must be adjusted and planned.

3 In some cases new trial attorneys must be briefed.

4 New physical or mental examinations must be had.

5 Everyone must be notified.

6 Courtroom must be made available.

7 A judge must be made available.

The foregoing list of processes which take place between events is not complete. For purposes of this analytic framework the list provides an adequate number of processes to illustrate the problems involved in controlling delay.

The causes of delay in the criminal justice system are many and complex. Without some framework it would be impossible to define the interdependencies and relationships which affect the system. The findings are built on the above analytic framework and, though they cannot be universally applied, should provide a base for the analysis of all justice systems growing out of the common law.

Sec 2

~~SECTIONS~~

~~Case Management Information and Statistical Reports~~

Information Types for Case Management Automation

The information categories which follow are needed to support automated case management operations

Activity levels. This category of statistics is intended to provide basic, profile information related to court operations. Case volume information broken down by various categories is a typical type of included data. The level of breakdown can go from the very general, such as civil, criminal, domestic relations, juvenile and appeals, to the substantive subcategories of cases falling into each of these general categories. The type of breakdown depends largely upon the use of the statistics and the way they are intended to be reported. This breakdown is normally made in reference to number of filings, pending cases, dispositions, etc.. In this respect it portrays the general volume through the system from the viewpoint of throughput and inventory. Resource information, used as the number of visiting judge days and the dispositions per judge, is included.

Another category of data used in this context is that data which indicates trends. This category of data would portray the general movement in levels of court activity, such as increase in filings or increase in the number of pending cases overtime. This trend information is usually kept on a simple basis, but is sometimes adjusted for seasonality or unusual occurrences which would affect the level of activity.

Diagnostic. This type of information is directed towards identifying problem areas in the system. The information collected is intended to identify abnormalities in the system which would be evidence of dysfunctions such as delay. Diagnostic information focuses on the particular stages of proceedings so that it is possible to test the functioning of the system at each juncture. Diagnostic information not only serves to identify trouble spots in the system, but also can be used for setting goals and standards by which the system can be measured. Typically, in the development of diagnostic information intended to measure delay in the system, a realistic assessment of what the system is cable of producing can be fed into a definition of acceptable time standards for management programs to address.

Monitoring. Once the system's operating characteristics have been identified and an information system developed to support their measurement, the operation can be systematically monitored. The purpose of the monitoring system is to provide in the system a sensor which will check performance. This

information often takes the form of lapse-time and interval-time measurements. It is intended to check limits and standards built into the system so that when a deviation from expected results is identified, it can be passed on a reporting function.

Control. This area of information systems support is directed towards decision-making. The information that comes from the monitoring function is directly utilized to assist in bringing the system into conformance with the standards that were described. A key element of this part of the information system is a selection of report types and frequency. An exception reporting system, for instance, brings to the administration only those matters which need attention. This element of the information system is structured in such a way that remedial action is indicated by the portrayal of the information itself

Evaluation. This is the element of information system which is often ignored. Evaluation information is particularly important to the development stages of new programs in that it provides a basis for evaluating the remedial action which has been taken. If a new program to provide assistance in reducing time from arrest to trial is adopted, evaluative data provides the ability to track the success or failure of the particular management program. In any change process it is always important to compare the results obtained with those predicted and plan for. In this respect, the initial program predicted a reduction in the amount of time from arrest to trial, the starting data is as important as the current data. Comparisons over time measure the effect of the programs if those comparisons are designed in advance to accomplish that purpose. This element of the information system provides an ongoing reassessment of system progress toward identified goals.

Guidelines for assessing the need for judges and court support staff

Guideline 1

The need for judicial and court support staff positions should be assessed against (1) measure of demand for service (2) regional standards of judgeship needs and (3) effective use of existing resources.

Guideline 2

The number of judgeship and court support staff positions required should depend upon satisfying pre-establish criteria. The criteria should be established by the Judicial Department prior to the analysis of need in any particular region and should include consequences of not adding judges or court support staff.

Guideline 3

After decision on judgeship and support staff is made, the burden of proof for any modification should rest upon those advocating a contrary position, whether they be members of the judicial, legislative or executive branches of the Russian Federation.

Guideline 4

Local courts should provide the data necessary to assess the need for judges and court support staff on a regular basis. Statutes or court rules should specify a clear set of definitions and the data elements required to produce the assessment measures

Guideline 5

The best direct measure of demand for judges and court support staff is a number of weighted filings, tempered by qualitative considerations.

Guideline 6

Existing resources should be evaluated in terms of a standard year and full-time equivalent hours per day for judges and court support staff

criteria may need to be changed.

The Procedure - Court Support Staff Requirements

The steps involved in undertaking a weighted caseload analysis for court support staff are basically the same as those used in the judicial weighted caseload technique

1. Identify court support functions and positions
2. Select the sample of participating courts
3. Develop a clear and detailed understanding of the work of court support staff
4. Choose the type of case to be examined
5. Build the weights
6. Interpret the final task in case weights
7. Determine the amount of support staff time available
8. Determine the number and type of court support staff needed
9. Institute procedures to keep the weights current

Judicial and Court Support Staff Needs Analysis

This process is intended to acquaint regional and local courts as well as legislative bodies with alternative methods of assessing the need for judges and court support staff and to help Judicial Department evaluate these alternatives and choose those most appropriate for their situation. In sum, this project is intended to be a management and planning tool for regional courts and legislatures to use to assess objectively how many judges and court support staff are needed to process the work effectively and efficiently.

The specific goals of this analysis are to:

- Describe and evaluate current criteria for determining the need for judges and court support staff;
- Develop a range of alternative approaches for determining the need for judges and court support staff;
- Evaluate innovative methodologies used to determine the need for judges and court support staff;
- Identified ways to lower costs and ease the burden of conducting judgeship needs and court support staff analysis;
- Identify the balance between quantitative and qualitative methods of assessment;
and
- Integrate the criteria used to assess the need for judges and the criteria used to assess the need for court support staff

A weighted caseload analysis is essentially the response to these two questions:

1. How much judge time, on average, is required to hear each type of case?
2. How much time does a typical judge have available for hearing cases?

Basically, the number of judges required is determined by dividing the amount of judge time needed to hear all cases by the time judges have available to hear cases.

The Procedure - Judicial Requirements

The following steps outlined a process for conducting a weighted caseload analysis.

1. Select the sample courts, cases and case events to include in the study.
2. Determine the number of court events required to process each type of case.
3. Calculate the average amount of judge time per event.
4. Determine the average frequency of occurrence for each event in each type of case.
5. Multiply the average amount of judge time per event by frequency of occurrence to create a "task weight" for each type of case.
6. Multiply the number of each type of case filing by their respective weights to arrive at the total amount of time spent on filings.
7. Determine the amount of judge time available to process cases.
8. Divide the total amount of time required to process the anticipated number of case filings by judge time available.
9. Institute procedures to keep the weights current.

Sec. 4

~~Section 6~~

Case Processing Standards Development

Analytical Tools

The process of developing case management standards include: (1) the use of system rates for both the diagnosis and planning, and (2) subsystem analysis provided necessary concentration of efforts.

1. System Rates

Based on substantial experience in studying court statistics, it is generally accepted that relationships and systems, and consequentially, the rates of flow through the system, change slowly and are generally predictable. As a consequence, simple mathematical models can be applied which aid in understanding operational characteristics of the system.

Over a period of years, court analysts have applied a general formula to estimate backlog and delay. The formula has, when carefully applied, proved to be quite reliable. Its utility is in the ease with which the basic information can be gathered

The following information is necessary to use the formula:

1. Annual filing rates in significant categories
2. Jury trial to disposition rates for the significant categories
3. The number of judge days available to the courts (normally to 220 days per judge, sometimes less)
4. The average length of jury trial by significant categories
5. The number of active pending cases by significant categories

For general-purpose planning the significant categories may be as broad as felonies, misdemeanors, civil tort, juvenile, domestic and probate. Up to a point, a refinement of the categories beyond this will usually provide a better result. (dividing felonies and misdemeanors into small categories in the past has not proved useful because the subcategories have not been proved to be statistically significant).

The annual judge time needed to dispose of any given significant category can be derived as follows

Jury Trial Rate x Average Length of Jury Trial Annual Filings

550

Example: $\frac{.1 \times 15 \text{ hours} \times 800 \text{ filings}}{550} = 2.2 \text{ judges}$

The "550" is one-half of the 1100 professional hours in a judge's year, i.e., 5 hours times to 220 days. Studies of professional time support the five-hour day as the effective chargeable time of a professional in an eight-hour day. The total hours (1100) is divided by two to reflect the effective trial time of a judge available at work, i.e., a judge is available for trials about one-half of the time. Pretrial conferences, sentencing, motions, chambers work and administration consume the other half. Though it has not been carefully documented there is considerable reason to conclude that judges who consistently spend more than half of their time in trial are not performing other duties necessary to the disposition of their work.

The court backlog can similarly be computed based on the above information. Backlog as defined here is the number of cases in any significant category which cannot be disposed of by the court within tolerable delay. The definition of "tolerable" is a policy question. If the legislature, for example, provides for the dismissal of felony cases 90 days after arrest if not otherwise tried or disposed of, the legislature has announced a public policy that more than 90 days is intolerable.

If one accepts 90 days as an outer limit for felony delay, the median time to disposition should be half that or 45 days to be tolerable. Felony backlog is thus represented by the following formula:

$$\text{Backlog} = \frac{\text{Active Pending Cases}}{\text{Annual Disposition Rate}} - \text{Tolerable delay}$$

Example:

Rate 300 Backlog = 400 Active Pending minus 800 Annual Disposition

8 (45 days)

(Cases that cannot be disposed of in 45 days)

In the example given, the median time from arrest to trial would usually be six months. The active inventory would turnover twice a year. The cases dismissed or pled short of the median time to trial and those disposed of at a longer delay would tend to balance out.

Using the given example, a delay program to bring the court within tolerable delays would require dispositions at a higher rate than filings. Assuming a jury trial takes 15 hours and a judge has five hundred fifty trial hours available, then 2.2 judges can hold 80 trials and dispose of a total of 800 cases. To be able to reduce the backlog by 300 would require thirty additional trials or 450 hours which is .8 of a judge. Since 2.2 judges can dispose of the new filings, an additional .8 of the judge would be needed to reduce the pending caseload to 100 (no backlog) within one year.

The formula works to suggest other possibilities. If in fact the average length of trial could be reduced to 2 days, the judge years necessary to dispose of the filings would be 1.5. an additional .7 of the judge year would eliminate the 300 case backlog by holding 30 trials in the three hundred eighty-five trial days available. The formula would also suggest that by increasing the number of judges by the equivalent of one-half a judge, the backlog of 300 cases could be eliminated in less than two years.

It is, of course, possible that trial length could vary or that filings could increase or decrease. By monitoring these factors and watching for any abnormal fluctuations the resource allocations could be changed which would accommodate these variables.

Implicit in application of the formula must be a recognition that increasing judge days does not automatically increase the effective judge days. If prosecutors, defense lawyers, or expert witnesses are not available to accommodate the increasing judge time, the output will not increase. Generally speaking, however, the formula is equally applicable to prosecutors and defense lawyers. They have a personal trial rate and in most instances, an average trial time which can be used to predict availability of trial days. Though it would be unusual for them to be able to participate in the same number of trials as a judge, they can be expected to participate in a constant number of trials per year. The foregoing is only illustrative and is included to indicate that the recognition of the system rates has proved useful in the diagnostic and planning efforts of trial courts.

Of particular importance is the definition of active pending caseload. A high proportion of old cases (which will be disposed of by dismissal rather than by trial) distorts the trial rate as old cases are dismissed. Experience in courts has indicated that a felony trial rate of 12 percent of all dispositions may be normal when the court is current. Backlogged courts clearing out old cases often have trial rate of 5% or less. Needless to say, the formula must be adjusted as the court becomes more current.

Disposing of old cases also distorts the 50% trial time constant. Holding substantial numbers of status conferences on old, marginally triable cases tends to reduce the effective trial time of a judge to 40% or less. Thus in 1100 hours of

judge time in a judge year the trial time may be 450 rather than 550 hours, and the anticipated number of trials (with an average trial time of 15 hours) is reduced by seven.

System rates vary widely. The average length of trial varies substantially from court to court. trial length is, for instance, often directly proportional to the tolerated length of Vor Dire procedures. Trial days of six hours result in 20% more trials and 20% more dispositions than five-hour trial days

2. Sub-Systems analysis

Many of the delays in the system are caused by a limited interaction of a few. To concentrate their efforts on a narrow problem and to avoid confusion and wasted time the staff divides the work into discrete parts and work only with the affected staff. Large coordinating council meetings proved to be unnecessary and even dysfunctional when the problem to be addressed could be narrowly defined. In some instances working with a few rather than many people prevent embarrassment and defensiveness which would otherwise slow the progress towards a solution.

Developing Case Management Standards

The strategy for developing the organization of a case management plan is contained in the following steps:

- (1) Identify and describe the content and sequence of necessary court processes. These processes include: identifying the due process events—those to which a participant is entitled to assure due process; identifying the control events—the steps necessary in a court case; and identifying what preparations are necessary for those events and the time necessary to make the preparations.
- (2) Measurement and determination of a normal time interval between events;
- (3) Determination of the age of the inventory of cases in appropriate time spans;
- (4) Identifying the relationships of all participants with respect to the significant events and preparation time;
- (5) Convene the principal participants and present the prospective on the system and the case management plan;
- (6) Organize task groups to work on identified problems;
- (7) Provide assistance to the task groups;
- (8) Develop and present the standards and goals which can be reached with the available or obtainable resources;
- (9) Reinforce with disseminated information the accomplishments of the goals.

1. Identifying the events in a case management program are those events necessary for guaranteeing due process and for controlling the progress of cases through the system. Most due process events can and should be used for both purposes, control as well as due process. A hearing held to determine the probable cause when a crime is committed, should be used to plan for and schedule the next event. If counsel is needed to prepare for the next event, the process should at that time be used to assure the presence of an attorney for the next event. Notice of future processes should not be sent, but should be given at the process taking place unless one of the necessary participants is not present, in which case, all present participants should be notified in open court and written notice sent to those not present. The effectiveness of the process can be evaluated in terms of its accomplishments.

The preparations needed to make this event successful need to be identified and incorporated into the plan. If the events fall short of the purpose, it will generally be caused by lack of preparation if the plan is comprehensive enough.

2. Measure the normal time interval between events. This requires a study of the system and its' approach in terms of the necessary events and the time it takes to have them occur. The measurement should be limited to the

normal process and to significant categories of cases. By knowing normal time intervals of the principal cases of the system, the preparation time necessary can be judged and realistic time limits set. This will be based upon the necessary time for preparation as well as the rules required by the code.

3. Determine the age of the inventory of cases in the appropriate time spans. Determining the normal time lapses between necessary events are meaningless if there is an accumulation of cases which do not reach these events. A inventory of cases by age in pre-determined time spans is necessary. In a summary sense, it tells whether the system is building a backlog even within a generally even case flow.

4. Identify the relationships of the participants with respect to the necessary events and preparation for the events. All of the relationships and duties of the participants need to be described in order to ensure there is an orderly processing and preparation of cases. Each participant must be aware of what is expected of him or her and when it is expected. This step has great impact on the progress of the case. Since there cannot be a description of each and every situation, the normal or routine duties, not the unusual should be sought.

5. Convene the principal participants and present the above prospective on the system and case management plan. When time and participant relationships are shown graphically, they are more understandable to the principal actors. The participants in the case flow system confronted with longer than necessary lapses of time in their area of operations quickly become interested in finding the solutions. For the most part they see facts, and perhaps problems displayed that had not occurred to them before viewing the graph..

6. Organize task groups to work on the identified problems.

In many instances problems exist where two entities are responsible for action. The case does not progress and appropriate preparations are not made because each entity is waiting for the other to act. Task groups can address these problems, report a suggested solution, and provide assistance in resolution.

7. Provide assistance to the task groups. Leadership and staff should meet with the groups on a weekly or monthly basis to provide assistance in the working stage. They can gather data about the progress being made and the preparations still necessary. They can emphasize the need to develop subsystem communication links, to have internal monitoring statistics which measure progress, to have feed back to the operating personnel with respect to success achieved, and to reward productive behavior. Task groups tie the system together at the working level.

8. Develop and present the standards and goals which can be reached with available or obtainable resources. All subsystems should be examined in the light of the overall operations of the system. Once the subsystem changes are assimilated, standards and goals must be adopted, but they must only be adopted when the measure of accomplishment can be defined in advance.

9. Reinforce with disseminated information the accomplishment of the goals. The information which was defined in the beginning as indicators that

desired goals were being attained must be collected and organized. It will show the success which is being reached. Negative results are must also be shown, if the goals are not being attained. The progress must be genuine if it is to last. When the goals are being reached, the entire system is one in which professional pride in the results are taken.

In many respects the foregoing strategy is apparently mechanical and manipulative. If a process is conducted in a mechanistic way it will no doubt be rejected by the users of the system. In complex problems systematic methodology is necessary. When applied with sensitivity, with a genuine appreciation of the importance of the each individual step in the process, the methods will not be perceived as mechanistic. The approach is more an analysis of necessary activities than a process.. A fair approach to solve problems in these complex processes makes necessary such reminders, fore there are many parts which effect the system.

Standards Relating to Court Delay Reduction

(Replacing Sections 2.50 through 2.56 of the ABA Standards Relating to Trial Courts, 1976, except former Section 2.54 which is numbered as Section 2.79.)

Sec 6

Sec. 2.50—Caseflow Management and Delay Reduction: General Principle:

From the commencement of litigation to its resolution, whether by trial or settlement, any elapsed time other than reasonably required for pleadings, discovery and court events, is unacceptable and should be eliminated. To enable just and efficient resolution of cases, the court, not the lawyers or litigants, should control the pace of litigation. A strong judicial commitment is essential to reducing delay and, once achieved, maintaining a current docket.

Commentary

Justice delayed is justice denied. Delay devalues judgments, creates anxiety in litigants, and results in loss or deterioration of the evidence upon which rights are determined.¹ Accumulated delay produces backlogs that waste court resources, needlessly increase lawyer fees, and create confusion and conflict in allocating judges' time.² The public expects and deserves prompt and affordable justice.³ Delay signals a failure of justice and subjects the court system to public criticism and a loss of confidence in its fairness and utility as a public institution.⁴ As the steward of public trust in our legal system, the court

1. Connolly and Smith, *The Litigant's Perspective on Delay: Waiting for the Dough*, 8 JUSTICE SYSTEM JOURNAL 271 (Winter, 1983).
2. Delay invites extra motion activity, needless status conferences, aimless discovery, and false trial starts, all of which waste judge time and lawyers fees without benefiting litigants. See *id.*; Connolly and Plasket, *Controlling the Caseflow—Kentucky Style*, 21 THE JUDGES' JOURNAL 8, 55 (Fall, 1982) (Hereinafter *Kentucky Study*).
3. YANKOVICH, SKIPLY & WHITE, INC., *The Public Image of Courts: A REPORT FOR A NATIONAL SURVEY OF THE GENERAL PUBLIC, JUDGES, LAWYERS AND COMMUNITY LEADERS AT 51-55, contained in STATE COURTS: A BLUEPRINT FOR THE FUTURE*, National Center for State Courts (1978).
4. *Id.* at 21-26.

system is obliged to dispose of court business without delay. To do less is to compromise justice.

Eradicating delay depends on adherence to this one axiom: The court must take the initiative to eliminate the causes of delay. Since the American Bar Association enunciated this conclusion in its 1976 Trial Court Standards, a sizeable body of research has established that the leading cause of delay has been the failure of judges to maintain control over the pace of litigation.⁵ The American Bar Association here reiterates its policy that the courts must assume control over the docket and establish a schedule that ensures timely dispositions.

A timely disposition is defined as the elapsed time a case needs for consideration by the court. Research shows that the large majority of cases require little preparation for trial in the form of pleadings, motions, and discovery; cases which require considerable preparation by attorneys form a small minority of civil and criminal dockets.⁶ As a matter of principle, a case should be pending in court in proportion to the elapsed time the attorneys reasonably need for its preparation. In keeping with this concept of proportionality, delay is declared to be any elapsed time beyond that necessary to prepare and conclude a particular case.

Delay is not inevitable. Timeliness demands that each court system must have in place either a delay prevention system or, until the calendar is current, a delay reduction program. The premise underlying this

5. Friesen, *Causes for Court Congestion*, 23 THE JUDGE'S JOURNAL 4 (Winter, 1984); Flanders et al., *Case Management and Court Management in United States District Courts* (Federal Judicial Center: 1977); Friesen et al., *Justice in Felony Courts: A Prescription to Control Delay*, 2 WINTER LAW REVIEW 7 (1979); Sipes et al., *Managing to Reduce Delay* (National Center for State Courts: 1980); Trotter and Cooper, *State Trial Court Delay: Efforts at Reform*, 31 AMERICAN UNIVERSITY LAW REVIEW 213 (1982); Sipes, *The Journey Toward Delay Reduction in Trial Courts: A Traveler's Report*, 6 STATE COURT JOURNAL 5 (Spring, 1982). See also Church, *Who Sets the Pace of Litigation in Urban Trial Courts?*, 65 JUDICATURE 76 (1981).

6. CONNOLLY et al., *JUDICIAL CONTROLS AND THE CIVIL LITIGATIVE PROCESS: DISCOVERY* at 31 (1978) (the typical federal case going to trial totalled only five discovery requests; only 10 percent of federal cases totalled ten or more discovery requests); CONNOLLY et al., *JUDICIAL CONTROLS AND THE CIVIL LITIGATIVE PROCESS: MOTIONS*, at 70 (1979) (federal cases averaged 2 motions and fewer motions than federal cases). The results of these studies comport with the findings of other such studies, e.g., Trubek et al., *Civil Litigation Research Project Final Report, Part A* at 11:58-59 (1983).

concept is that the court and the judge possess the requisite authority to achieve and maintain a current docket. Whereas achieving a current docket may entail removing some statutory and regulatory impediments, no trial court or judge as part of the judicial branch so lacks authority as to not be able to begin reducing docket delay. Ultimately, the key to success will be a driving spirit committing the court or judge to a delay-free docket coupled with acceptance of the concept that management of the court is the ultimate responsibility not of the lawyers, but of its judges.

Sec. 2.51—Case Management:

Essential elements which the trial court should use to manage its cases are:

- A. Court supervision and control of the movement of all cases from the time of filing of the first document invoking court jurisdiction through final disposition.
- B. Promulgation and monitoring of time standards for the overall disposition of cases.
- C. By rules, conferences or other techniques, establishment of times for conclusion of the critical steps in the litigation process, including the discovery phase.
- D. Procedures for early identification of cases that may be protracted, and for giving them special administrative attention where appropriate.
- E. Adoption of a trial setting policy which schedules a sufficient number of cases to ensure efficient use of judge time while minimizing resittings caused by overscheduling.
- F. Commencement of trials on the original date scheduled with adequate advance notice.
- G. A firm, consistent policy for minimizing continuances.

Commentary

The pathology of delay has been the subject of considerable scholarship. A consensus has emerged that a docket can be current only when a

judge supervises the scheduling and progress of all steps of the case with systematic case management.¹

As the linchpin of its operation, the judge must be vested with the power and assume the responsibility to press the attorneys and litigants into resolving the case in no more than the time needed for full consideration by the court. Effective case management has been found to contain the following seven fundamental elements, inattention to any one of which can nullify the benefits derived from application of the others:

A. Court Supervision. Once a litigant invokes the jurisdiction of the judicial system, the court has the responsibility of pressing the attorneys and litigants to prepare the case for adjudication without delay. The court's loss of control over the litigation invariably leads to procedural inactivity. This loss of court control can take many forms, such as failing to take charge of the case upon the filing of service of process by allowing the complaint to be filed at a later date, allowing counsel to waive the time proscriptions in filing an answer and/or responses to legitimate discovery, failing to assure that counsel conduct important discovery promptly, permitting counsel to place a case off-calendar or dictate when a case is ready for trial, or depending on the prosecutor to calendar trials. All such practices improperly delegate to counsel supervisory control over the pace of the case to the detriment of the litigants' needs for a timely case disposition. Whether made the prime responsibility of the judge or of a competent court staff, every case must be supervised throughout its life with no unreasonable interruption in its procedural development tolerated.

B. Time Standards. Goal setting is a precondition to achievement of management results.² Courts should adopt the standards of timely disposition in Section 2.52 as the model against which the state of the docket can be compared. By setting goals that are feasible and reasonable, the court will have announced the policy that the pro-

cedural needs of the case and the time used to exercise those procedural rights must be proportionate. Moreover, these standards permit the court to measure the extent to which the court docket is in a condition of delay and backlog.

C. Internal Standards. A case is divisible into identifiable phases bounded by critical events which can be subjected to deadlines. For example, civil pleadings can be defined by the filing of the complaint or petition (or the application to invoke the court's jurisdiction) and the last responsive pleading, and state rulemakers have set time deadlines for the filing of intermediate pleadings. Except for a few states and the U.S. Courts,³ courts do not set time standards for major phases of civil or criminal cases. Setting an overall standard for disposition provides insufficient management control over cases; each court should consider the timeliness of its litigation according to interval time standards.

D. Protracted Complex Cases. Most cases on a court docket involve a modest investment of lawyer and judge time and can be managed presumptively because of their procedural homogeneity. Every court has pending cases, however, with complex substantive and procedural issues which generate considerable filing activity and consume substantial amounts of judge and lawyer time.

These complex cases often require special handling by the court. Once such a complex case is identified from its pleadings, a case management plan must be tailored by a judge to apply close and continuous supervision over its procedural progress and development. Their diversity and the demands on judge time to manage them effectively suggest the need to consider individual calendaring these complex cases.⁴

Management of complex cases involves the judge learning about the issues and exerting control over the trial preparation by the attorneys. To discharge these duties, conferences with the attorneys may be conducted in complex cases to schedule and focus discovery, to streamline the evidentiary presentation at trial, and to facilitate the lawyers' efforts to

1. See authorities cited *supra* § 2.50 note 5.

2. The Kansas Judiciary is the first state to have adopted overall time frames for civil and criminal case dispositions. Schwartz, *Delay: How Kansas (Is) Making it Disappear*, 23 *THE JUDICIAL JOURNAL* 22 (Winter, 1984). The U.S. Judicial Conference has established that civil cases pending longer than three years are to be deemed a judicial emergency and requires U.S. District Court judges to explain why such cases are still pending on their docket. *Reports of the Judicial Conference of the United States*, September 1961, p. 62-63.

3. KENTUCKY RULES OF CIVIL PROCEDURE 88-97 (1982). Many speedy trial statutes set standards for the intervals from arrest to first appearance and from first appearance to trial. See e.g., 18 U.S.C. § 3161 *et seq.* With the exception of pleading deadlines, only Kentucky sets such standards for civil cases.

4. Superior Court of the District of Columbia (Civil Rule 40-11 (1982)). Planet *et al.*, *Screaming and Tricking Civil Cases: Managing Diverse Caseloads in the District of Columbia*, 8 *JUSTICE SYSTEM JOURNAL* 338 (Winter, 1983).

reach settlement. Such conferences should be scheduled presumptively only for identifiable groups of cases in which the aggregate costs in terms of judge and lawyer time invested yields a net saving in which a more timely and affordable outcome results.

Ultimately, the judge must choose a case management plan for each case that best achieves proportionality among its procedural needs, its stakes, its case processing time, and its cost in terms of judge and lawyer time. Along these lines, recent research suggests there is merit to combining early and continuous judicial control over the timing and content of the discovery process and ongoing attempts to facilitate settlement.⁵ Courts must be sensitive to situations or kinds of cases where the court might expedite matters by focusing discovery and/or settlement discussions.

E. Trial Settings. Calendaring trials is a complex but manageable task. Setting too few cases for trial over a given period of time runs the risk of last-minute settlements leaving the judge with considerable downtime. Setting too many cases for trial runs the risk of losing the confidence of lawyers in the firmness of the trial date due to court-initiated resettings or an overly permissive attorney-initiated resetting policy. No single calendaring system exactly strikes the balance between these extremes because trial dynamics differ from court to court, but experts believe that an occasional dark courtroom due to undersetting is preferable to rolling over masses of trials due to oversetting.⁶ Because the factors affecting trial rates change over time, a continuous study of trial rates, lengths, and dynamics is required to apply the appropriate mix of trial settings to a calendaring system designed specially for each court.

F. Trial Dates. The trial should commence on the first date scheduled. Unpredictable trial dates breed last minute continuances and settlements. When the court creates pervasive doubt about the firmness of trial dates, counsel tend to defer trial preparation and then seek a continuance when pressed for trial. With sufficient notice of a trial date and the beginning of the trial on the first day set, counsel learn that the court

5. This research by Professor Wayne Brazil of the Hastings Law School was sponsored jointly by the National Conference of Federal Trial Judges and the Lawyers Conference of the ABA Judicial Administration Division. WAYNE D. BRAZIL, SETTLING CIVIL SUITS (1983) is available from ABA.

6. Dean Ernest Friesen of the California Western Law School and Executive Director of the Justice Institute is a staunch supporter of this concept.

means business, resulting in earlier settlements or pleas without an increase in the trial rate.⁷

Settlements on the day of trial materially increase the cost of operating the court and wreak havoc with its calendaring system. Adoption of a policy of imposing jury and subpoena costs on lawyers who announce a settlement on or just prior to the first day of trial is reported to be an effective deterrent against last minute settlements.

G. Continuances. The backbone of a current docket is holding court matters, particularly trials, on the date when first set so that counsel expect that the court means what it says. Even the most effective calendar cannot eliminate all continuances, but continuances can be kept to a minimum by adhering to the firm enforcement standards in Section 2.55. Ultimately, a delay-free pace of litigation will reduce the demand for continuances by making counsel realize the inevitability of trial being held on the originally scheduled date, and that trial can only be avoided by negotiating a settlement.

Sec. 2.52—Standards of Timely Disposition:

The following time standards should be adopted and compliance monitored:

A. General Civil—90% of all civil cases should be settled, tried or otherwise concluded within 12 months of the date of case filing; 98% within 18 months of such filing; and the remainder within 24 months of such filing except for individual cases in which the Court determines exceptional circumstances exist and for which a continuing review should occur.

B. Summary Civil—Proceedings using summary hearing procedures, as in small claims, landlord-tenant and replevin actions, should be concluded within 30 days from filing.

C. Domestic Relations—90% of all domestic relations matters should be settled, tried or otherwise concluded within 3 months of the date of case filing; 98% within 6 months and 100% within 1 year.

⁷ Acton Commission research into the Vermont Civil Delay Reduction program suggests that certainty in the trial date facilitates counsel reaching a settlement well before the trial date.

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D. Criminal—

FELONY—90% of all felony cases should be adjudicated or otherwise concluded within 120 days from the date of arrest; 98% within 180 days and 100% within one year.

MISDEMEANOR—90% of all misdemeanors, infractions and other nonfelony cases should be adjudicated or otherwise concluded within 30 days from the date of arrest or citation and 100% within 90 days.

PERSONS IN PRETRIAL CUSTODY—Persons detained should have a determination of custodial status or bail set within 24 hours of arrest. Persons incarcerated before trial should be afforded priority for trial.

JUVENILE—Juvenile cases should be heard within the following time limits:

1. Detention and shelter hearings—not more than twenty-four hours following admission to any detention or shelter facility;

2. Adjudicatory or transfer (waiver) hearings—

a. Concerning a juvenile in a detention or shelter facility: not later than fifteen days following admission to such facility;

b. Concerning a juvenile who is not in a detention or shelter facility: not later than thirty days following the filing of the petition;

3. Disposition hearings—Not later than fifteen days following the adjudicatory hearing. The court may grant additional time in exceptional cases that require more complex evaluation. (*ABA Standards Relating to Juvenile Justice: Court Org. and Adm.* 3.3)

Commentary

These standards are goals that courts can and should reach and maintain. The adoption of standards of timely disposition provides the court system with ultimate and measurable objectives towards which planning must be directed. Expressly rejected is the notion that factors such as the

complexity of the docket excuses a jurisdiction from seeking compliance with the standards. The formulation process was based on research which demonstrates that the typical civil case involves a total of about ten filings or court proceedings and consumes approximately eighteen hours of each attorney's time on a per case basis.¹ Typical criminal matters were assumed to involve less procedural activity and no more of an investment of attorney time. Putting into operation the general principle of delay reduction in Section 2.50 means that elapsed time should be proportionate to procedural activity. The standards are designed to strike a balance between allowing enough time for the litigants to exercise their procedural rights and barring delay due to neglect. Maintaining these standards eliminates the necessity of legislation giving priority to hearing specified types of cases. Such legislation complicates calendaring and can result in discrimination between cases where real urgency is the same.

The standards have been achieved in courts of all sizes that are adequately staffed and well managed.² Achieving them in other courts will require adoption of the Court Delay Reduction Program in Section 2.54. The administration of a system of time standards must, however, avoid becoming entirely mechanical. Judges have a duty to ensure justice is served by giving due consideration to matters having merit and taking sufficient time to develop complex issues. To do otherwise impairs the quality of justice.

The standards are expressed in terms that cover the whole docket, while other standards set a time only for the median or typical case. Not only is a median difficult to attain as a management objective, but the median time does not cover the one-half of all cases subject to most delay problems. These standards recognize that cases on a docket are not homogeneous, but instead reflect a few complex cases mixed in with a sizeable majority of relatively simple cases.³ Courts need standards which govern all cases, and the incremental time standards recognize the

¹ Trubek et al., *Civil Litigation Research Final Report* at 11-56-59, 41-68 (University of Wisconsin, 1983).

² While few state Annual Reports report time statistics, it is apparent that some individual courts have achieved these standards. For example, Georgia reports several jurisdictions with median disposition times of well under one year. A study of the 1983 Management Statistics for the United States Courts reveals that several districts maintain a five-month median pace for its civil cases.

³ Planet et al., *Screening and Tracking Civil Cases: Managing Diverse Caseloads in the District of Columbia*, 8 JUSTICE SYSTEM JOURNAL 138 (Winter, 1983).

differing procedural complexity of caseloads. Thus, General Civil, Domestic Relations, Felony, and Misdemeanor cases are subject to time standards set for 90 percent, 98 percent, and 100 percent of the cases in each category. The remaining case categories were subjected to one time standard in recognition of the summary nature of the proceedings or a public policy calling for prompt adjudication without exception.

The specific times express a balance among several factors: facilitating vigorous enforcement of the criminal law while protecting individuals from prolonged pretrial detention; promptly resolving legal uncertainty in cases involving personal status while affording litigants adequate opportunity to reach negotiated settlement and adequate time to prepare for trial. The times reflect the varying weight of these considerations but should not be viewed as outside limits since many federal and state courts are resolving cases in less time. While the new standard of twelve months may appear to relax the former six-month standard, it actually tightens that standard by eliminating its broad exception in former Section 2.52 (a)(3)(iii).

The standard set for domestic relations cases will conflict with some divorce statutes requiring either a cooling off period prior to the court taking up the matter or an extended period or delay prior to the court acquiring jurisdiction to enter a final divorce decree.⁴ The wisdom of such statutes is the subject of some controversy, as there is a school of thought that delay in resolving custody and support disputes can increase tension between the spouses and harm the well-being of the children.⁵ Where a jurisdiction has established mediation and conciliation as preconditions to the issuance of a final decree, their invocation should be early enough after the filing of the case to enable compliance with the standard. A stipulation of conciliation should not exempt the case from the standard.

Sec. 2.53—Matters Submitted to the Judge:

Matters under submission to a judge or judicial officer should be promptly determined. Short deadlines should be set for party pre-

4. Freed and Foster, *Family Law in the Fifty States: An Overview*, XVI FAMILY LAW QUARTERLY 289, 315-20 (Winter, 1983).
5. Wallerstein, *The Child in the Divorcing Family*, 19 THE JUDGES' JOURNAL 17 (Winter, 1980).

sentation of briefs and affidavits and for production of transcripts. Decisions where possible should be made from the bench or within a few days of submission; except in extraordinarily complicated cases, a decision should be rendered not later than 30 days after submission.

Commentary

Judges who are not consistently prompt in their decisions cannot expect attorneys to be prompt in their preparation. Lawyers should not be forced to protest delay in the decision of a submitted matter, and yet decisional delay is a major cause of docket delay. The thirty-day standard reflects a balance between the time needed for deliberation and necessary dispatch in decisionmaking. The American Arbitration Association Rules set a similar standard of timeliness for decision by arbitrators.¹

Case management can reduce some aspects of decisional delay.² Deadlines should be set for the submission of briefs, affidavits, and transcripts in forming a judicial decision. Once received by the court, the matter should be decided, if possible, on the papers and without a hearing. If a hearing is necessary, the court should set it promptly and be prepared to decide the matter from the bench or within a few days of submission. In any event, no decision should be rendered more than thirty-days after submission except in extremely complex cases or under extraordinary circumstances. Where decisional delay persists, the presiding judge should take corrective action.³

Sec. 2.54—Court Delay Reduction Program:

Each court should have a program to reduce and prevent delay.

1. Unless otherwise agreed to by the parties or provided by law, the arbitrator is under a duty to render a decision within 30 days of the close of the hearing. AMERICAN ARBITRATION ASSOCIATION, CONSTRUCTION INDUSTRY ARBITRATION RULES 41 AND COMMENTARY ARBITRATION RULE 41.
2. COHEN AND FORD, JUDICIAL CONTROL AND THE CIVIL LITIGATIVE PROCESS: MODEL (Federal Judicial Center: 1979).
3. The U.S. Judicial Conference has adopted the policy that matters held under submission for longer than 60 days must be explained periodically by the responsible judge to the applicable judicial council. U.S. Judicial Conference Resolution, September, 1961.

A. Essential ingredients of the program are:

1. A strong continuing judicial commitment to delay reduction, expressed in written goals and objectives to guide court operations.
2. A published case management plan detailing the delay reduction techniques, ultimate time standards and a transition program for reaching those standards where there is a backlog problem.
3. A system to furnish prompt and reliable information concerning the status of cases and case processing.

B. The program would be enhanced by:

1. Bar support and lawyer cooperation.
2. Adequate resources.
3. Utilization of special expertise.
4. Consideration of alternative methods of dispute resolution which should facilitate an earlier termination of actions.

C. Where unacceptable delay exists, there should be a published transition program designed to achieve these time standards. The transition program should include:

1. Assessment of the current caseload including backlog identification.
2. Analysis of productivity.
3. A conscious effort to use internal resources.
4. Utilization of special expertise.
5. Revision of rules and practices to implement the transition program.
6. A scheduled termination of the transition program with interim goals ultimately resulting in full implementation of Section 2.52 time standards.

Commentary

Maintaining a current docket is neither self-actuating nor self-sustaining. Just like any complex endeavor, delay reduction and prevention requires commitment, planning, and perseverance, each of which is an

essential ingredient of success.¹ Without a lasting and purposeful commitment, the court system will fail to implement a durable delay prevention program because segments of the court system will work at cross-purposes and institutional inaction will lead to a reversion back to inefficient and unproductive practices. Commitment is maintained by accountability, and periodic reports (monthly or even weekly) should show the progress that individual courts and judges are making towards reducing delay. A plan and information are also essential. Without a comprehensive published plan, the court system will fail to neutralize the myriad causes of delay. Without information about the age and number of cases, neither a detailed plan setting forth objectives nor a test of compliance with the standards can be effected by the court.

Delay prevention can be assisted by other ingredients. The cooperation of lawyers and the support of the bar can help, but the absence of bar or lawyer support should not frustrate the implementation of a delay prevention program. Because technological changes may enhance the productivity of the judges and court staff, consideration should be given to such innovations as telephone conferencing, videotaped depositions and trials, electronic recording and transcriptions of court proceedings, word processing, and computer applications to jury management, calendaring, and statistical reporting.² Besides technology, adequate resources in the form of judgeships, support staff, and facilities will help the court achieve its objectives, and the court system should strive to persuade the other branches of government to accept and implement a uniform staffing formula for each such resource.

Inadequate resources does not mean some elements of the plan cannot be implemented. Only common sense is needed to design an effective program, but special expertise can be useful in developing a case management plan.³

1. Gage, *How to Reduce the Docket: What One Judge Alone Can Do*, 23 *The Judges' Journal* 12 (Winter, 1983); Bidomfield, *Delay: How Phoenix is Making it Disappear*, 23 *The Judges' Journal* 23 (Winter, 1984).

2. See generally, *Tomorrow is Here: How Technology Can Serve Justice*, 22 *The Judges' Journal*, No. 3 (Summer, 1983); Stuart and Olson, *Audio and Video Technologies in the Court: Will Their Time Ever Come?*, 8 *The Justice Systems Journal*, 287 (1983).

3. Such expertise is available from the National Center for State Courts, one of whose missions is to assist state courts achieve current dockets.

Most courts have some form of case backlog, that is, more cases pending than the court is able to close out over a given period of time. With a backlog, a court will be unable to maintain the standards of Section 2.52. Reaching those standards can only be achieved by closing out more cases than are filed. This process of reducing backlogs has been studied, and certain ingredients have been identified as essential to its success.⁴

Change must be incremental to be effective and durable. Interim goals of timeliness that are achievable but reasonable should be adopted; these interim goals should ultimately lead to adoption of the Section 2.52 standards. The transition program should be designed after measuring the size and age of the backlog and the productivity of the court given its available resources. The program should attempt to maximize use of internal court resources by delegating management tasks, but additional short-term judicial resources such as use of pro-tem judges may be needed to increase productivity to a level that permits dispositions to exceed filings until the backlog is erased. Alternative methods of court-annexed dispute resolution may facilitate earlier terminations of actions by reducing backlogs while conserving judge time.⁵

Securing special expertise at the state and national level will insure the delay reduction plan is achievable and can provide an objective evaluation of sensitive issues like the utilization and adequacy of resources. Effective program implementation can be prevented by rules and practices; the applicable state or local rulemaking authority must cooperate by making changes needed to permit the program to operate.

Section 2.55—Firm Enforcement:

The court should firmly and uniformly enforce its caseflow management and delay reduction procedures.

A. Continuance of a hearing or trial should be granted only by a judge for good cause shown. Extension of time for compliance with

4. Ryan et al., *Analyzing Court Delay-Reduction Programs: Why Some Succeed*, 65 JUDICATURE 58 (1981). The authors identify several factors believed to contribute to successful introduction of delay reduction programs. See Demos, *Speedy Trial Judges*, 23 THE JUSTICE JOURNAL 38 (Fall, 1983).

5. Shafft et al., *Settling Cases in Detroit: An Examination of Wayne County's "Mediation" Program*, 8 THE JUSTICE SYSTEM JOURNAL 307 (1983).

deadlines not involving a court hearing should be permitted only on a showing to the court that the extension will not interrupt the scheduled movement of the case.

B. Requests for continuances and extensions, and their disposition, should be recorded in the file of the case. Where continuances and extensions are requested with excessive frequency or insubstantial grounds, the court should adopt one or a combination of the following procedures:

1. Cross-referencing all requests for continuances and extensions by the name of the lawyer requesting them.
2. Requiring that requests for continuances and stipulations for extensions be endorsed in writing by the litigants as well as the lawyer.
3. Summoning lawyers who persistently request continuances and extensions to warn them of the possibility of sanctions and to encourage them to make necessary adjustment in management of their practice. Where such measures fail, restrictions may properly be imposed on the number of cases in which the lawyer may participate at any one time.

C. Where a judge is persistently and unreasonably indulgent in granting continuances or extensions, the presiding judge should take appropriate corrective action.

Commentary

The importance attached to the firm enforcement of deadlines is emphasized by the specific guidance set forth in this standard. The section recognizes that firm enforcement of deadlines and settings breaks the cycle in which lawyers expect continuances to be granted, leading them not to be prepared for trial or hearings and in turn leading to further expectations of continuances.

Demand for continuances can be reduced by sound calendaring (see Standard 2.51.F.) and requiring that good cause be the only basis for continuing a trial or hearing. A lawyer has established good cause when the underlying eventuality is unforeseen, is not due to lack of preparation, is relevant, is brought to the court's attention in a timely manner, and does not prejudice the adversary. Deadlines not involving a court

hearing may be extended as long as later deadlines are unaffected by the extension. Good cause must be shown where such an extension would delay the outcome of the case.

Changing lawyer practices with regard to extensions of deadlines may require the measures set forth in Subsection B. One such measure which recognizes that extensions are often solely for the benefit of lawyers requires the client to sign the request. Another recognizes that lawyers often accept cases without considering the demand that their case inventory will place on them at a later date. Computerized case monitoring can yield information needed to detect patterns of abuse. Monetary sanctions, such as the assessment of the expense of court appearances, should be considered by the court as deterrents to requests for continuances; default and dismissal should be considered as reasonable sanctions for the egregious failure to meet court deadlines. Restrictions on the number of cases a lawyer may take is viewed as a stopgap measure courts should undertake when specific lawyers prove incapable of making court appearances due to the size of their practice.¹

Adopting a firm approach towards compliance with time standards may require a change in judicial habits. Leniency begets delay, and a judge who overindulges counsel in extending deadlines and continuing trials will undermine the integrity of a delay reduction or prevention plan. Moreover, such indulgence in master calendar courts often results in a maldistribution of work among judges. The presiding judges should possess the authority to take appropriate corrective action.

¹ See *Model Rules of Professional Conduct*, Rule 1.7 (b) and Comment. [The lawyer's own interests should not be permitted to have an adverse effect on representation of a client. For example, a lawyer's need for income should not lead the lawyer to undertake matters that cannot be handled competently and at a reasonable fee.]

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lored to the case's individual characteristics. Although court rules may serve as the starting point in developing a tailored case preparation schedule, or may be the default schedule if counsel do not feel tailoring is needed, not all cases may need the maximum time allowed in the rules.

Intermediate time standards can be a mechanism for educating the local legal culture about the time standards set by the court. Since many courts adopt standards of at least a year between filing and disposition, it takes a year for parties and counsel to find out whether the court truly is committed, or will be able, to meet the standard. Intermediate time guidelines foster the perception that the court is serious about meeting the overall guidelines.

Many courts that adopt time standards are so far behind at the time of adoption that it will be a number of years before compliance can be achieved. In the face of a large inventory of old cases, a court necessarily must phase in the new standards. Intermediate deadlines facilitate this transition. While the court may be unable initially to meet an overall disposition standard, intermediate time guidelines coupled with supervision of case progress alters attorney expectations and shortens early phases of new cases.

5. *Monitoring and Information Systems*

A caseflow management system that creates deadlines and timetables governing case progress must be supported by an effective information system. In particular, the system must incorporate the capacity to monitor the compliance with deadlines and trigger court action in cases in danger of exceeding disposition time standards. Effective delay reduction programs have been begun with less than the information systems suggested in this description. Similarly, systems that provide an acceptable level of information can be designed to function without using computers. Resources insufficient to provide computer systems should not deter a court from beginning a caseflow management system.

In this section capabilities of a comprehensive court information system are described. This is the system we believe is needed. While it is true that effective delay reduction programs have begun with less than the full range of features suggested, few have sustained success, commitment and enthusiasm without at least the ability to (a) monitor the progress of each case and (b) monitor the degree of success in meeting disposition time standards. The court that is developing an information system—manual or automated—is better served by planning for a maximum system from the beginning. By preparing the plans

for a full system, expensive false starts, program rewrites and uninformed purchasing decisions can be avoided.

Until recently, information accumulated about the court's caseload tended to be statistical information of limited utility for court or case management. Many courts have effective systems for producing aggregate information on the caseload; few have systems that facilitate tracking the progress of cases or monitoring whether deadlines are met. Without this capability and the feedback connected with it, it is difficult to sustain the enthusiasm present at the introduction of the new system. A vital link in the process of building commitment, setting goals and measuring progress is missing.

A complete caseflow management information system should provide at least the following:

1. measures of activity;
2. measures of inventory;
3. measures of delay;
4. measures of case scheduling accuracy;
5. evaluation measures; and
6. individual case progress information.

a. *Measures of Activity*

This category includes aggregate figures for filings and dispositions as well as other specific counts for specific purposes, e.g., the number of continuances per case, the number of pretrial or status conferences held in a given period. In general, information in this category answers "how many" questions. Since counting "how many" may be one of the easiest information gathering exercises, courts often collect the most statistics in this category. These statistics, however, often are not the most useful for caseflow management purposes. For that reason, the amount of information collected in this category should be reviewed to assure that the effort necessary to produce the statistics is justified by the usefulness of the information provided. Possibly the most useful activity measures are those that report "system rates" such as the proportion of filed cases that go to trial or changes in measures such as filings and dispositions over time. Comparative information highlights trends that can be useful for planning.

b. *Measures of Inventory*

The principal measure in this category is the number of cases pending. This measure should be categorized a number of different ways for maximum management usefulness. Possible categorizations include case types, the number of cases pending at each stage in the

caseflow, changes in these categories since the last reporting period, and the number of cases of each type that exceed the court's time standard for disposition.

c. Measures of Delay

Closely related to inventory, and of equal or greater importance to caseflow management, are measures of delay. The most significant measure is the age of the pending caseload, computed for each major case type. This critical measure of delay describes the inventory awaiting processing, i.e., cases whose delay the court can affect. While the time from filing to disposition is popular for its ease of computation and its relationship to system goals, it is less useful for management purposes because it describes history. Closed cases cannot be affected by changes in the caseflow management system as can cases in the pending inventory. Other measures which, while historical descriptors, provide a snapshot of delay are the time intervals between major case events and the time between first assigned trial date and actual trial date.

d. Measures of Case Scheduling Accuracy

These measures can disclose the need for changes to the scheduling system to maximize trial date certainty. They are more fully described in the section concerning case scheduling. Useful statistics in this category are the number of cases scheduled for a specific calendar and time period, and, of these, the number that settled before the trial date, the number that went to trial, the number continued at request of counsel, the number continued because no judge was available, the number held over to succeeding days, and the number disposed of by dismissal. Since assurance of trial on the scheduled date is of prime importance to trial lawyers, it is imperative that the court maintain and review these kinds of data regularly.

e. Evaluation Measures

Court managers should base evaluation measures on the goals of the program under examination. As a general rule, "measure what you want to control" is a useful maxim. For example, if the purpose of a new procedure is to reduce the time between the status conference and completion of discovery, then the time between the status conference and discovery completion must be measured in the evaluation. Further, this same measure should be applied to the period prior to introduction of the new procedure for comparative purposes. A group of cases not subject to the innovation may be used as a comparison.

While definition of the evaluative measures should be based on goals, other measures may be important as well. It is likely that some

aspects of a new procedure should themselves be monitored and evaluated. For example, if the innovation is a status conference, court managers and judges might want to keep track of the length of the conferences, and the effectiveness of the conferences, e.g., what percentage of the cases observe the timetable established at the conference.

f. Individual Case Progress Information

The earlier categories are concerned with cases in the aggregate. The performance of the court's caseflow management system is profiled by the information in these categories. Although aggregate statistics have been titled "management information" in many courts, it should be clear that their utility in managing the processing of cases is negligible.

In contrast, information for managing case progress is not statistical. It is explicitly geared to scrutiny of each individual case. Information in this category should be used by case managers and judges every day. It is case-specific information that allows the courts to actively manage the progress of individual suits. At minimum, it should allow case managers to:

- determine the current status (between what major case events) of each pending case;
- compute and monitor compliance with procedural deadlines for case events, such as filing the answer;
- identify cases that are not in compliance with time deadlines set by the court; and
- audit the information system, e.g., identify cases that do not have all information needed, or do not have future action dates assigned.

In summary, an effective caseflow management information system focuses on the goals of the system, facilitates timely access to needed information and highlights departures from desired results. Standards and goals define the direction of the caseflow management system. Appropriate information enables the court to determine whether progress is being made. But, beyond indicia of system progress, case-specific information allows the courts to actively manage the progress of individual suits.

In view of the falling cost and increasing capacity of small computers, courts should consider computers for caseflow management information systems. However, case management information can be maintained and accessed using manual information systems, and limited resources should not deter development of a caseflow management information system.

6. *Scheduling for Trial Date Credibility*

Achieving trial date credibility should be a primary goal of the court's case scheduling system. Accurate scheduling for trial date credibility and court control of continuances are very closely related. In fact, one cannot be implemented successfully without the other. Accurate scheduling depends in large part on the court's willingness and ability to incorporate a restrictive continuance policy into the caseflow management system and to enforce it in day-to-day calendar management. Conversely, a strict continuance policy cannot be enforced if the calendar routinely is excessively overscheduled. It is through the continuance policy and scheduling practices that the court establishes or alters attorneys' expectations concerning readiness. Doing so depends on the ability to schedule accurately.

"Accurate scheduling" is defined as scheduling planned in a way that achieves the following results:

- the judges available can try all scheduled cases that do not settle;
- the number of continuances is minimized; and
- few cases are held over or reset because they are not reached.

In this definition a distinction is made between continuances requested by counsel and cases reset because the judges could not reach them. In practice, it is difficult to separate these two groups entirely. Although they seemingly arise from different circumstances, they are interdependent. The likelihood of attorneys requesting continuances is dependent to a significant extent on their perception of the likelihood that some cases will not be reached. As discussed in the section concerning court control and limitation of continuances, attorneys are less likely to prepare or have witnesses present if they think there is a strong chance the case will not be tried on the date scheduled. Thus, the impact of avoiding "resets" extends beyond those cases that are reset to all other cases that might have settled or been ready for trial had the lawyers' perception of the system been different.

In view of the many variables that may affect scheduling, a reasonable question is, "How can accurate scheduling be achieved?" While 100 percent accuracy over the long term can never be achieved, most courts can significantly improve through better record keeping, analysis and planning.

To analyze trial scheduling, the following approach is recommended. For the period in question, obtain a listing of all cases placed on the trial calendar. Then categorize them into the following groups:

- continued at request of counsel;
- reset or held over because no judge available;

- settled or dismissed without judicial intervention on or before the trial date;
- settled by a trial judge; and
- trial started.

This information will show the accuracy of the current scheduling system and the extent of continuances and resets. Also, it can be used for future planning. This is not the same data that appears in reports of dispositions; those reports include cases that never appear on the trial calendar. These data are limited to disposition of the cases scheduled on the calendar in question. Some courts may wish to maintain a more detailed breakdown than the one shown here. While initially acquiring the information, the court should institute a method for collecting and evaluating it on a continuing basis.

Once the situation is documented, the methods currently used to determine how many and what type of cases are scheduled should be explored. Although many courts use one or more of these factors as a basis for case scheduling decisions, tradition, number of pending cases and number of cases ready for trial are, in fact, irrelevant to achieving accurate scheduling. Although all of these factors are important in one way or another to caseflow management, accurate scheduling depends on seven factors that do not appear on that list.

The seven factors that can be used to schedule accurately and achieve trial date certainty are:

1. likelihood of trial;
2. length of trial;
3. number of court days;
4. expected judicial complement;
5. judge days available;
6. judicial capacity; and
7. fallout.

The first two factors, likelihood that each case will proceed to trial and length of trial, are matters of informed judgment, less susceptible to scientific analysis or documentation than the remainder of the factors. They typically come into play in individual calendar systems where the judge who conducts status and pretrial conferences will try the case. Under these circumstances, the judge is in an excellent position to evaluate which cases will require a trial, the length of the trial and which cases will settle prior to trial. This determination is always made in consultation with the attorneys in the case. Attempts are being made to develop statistical models to predict which cases will require resolution by trial.⁶ If perfected, such models will be helpful under all types of case assignment systems.

The third through seventh factors, while important in both individual and master calendar scheduling systems, are particularly significant either in master calendar systems or in individual assignment systems where trials are scheduled from a central office and judges serve as "backup" to each other.

The "number of court days" is simply the number of days for which cases are being scheduled.

The "expected judicial complement" is the number of judges assigned to the division minus anticipated and predicted judicial absence. It is important that judges advise the chief judge in advance of vacations and other planned absences. It is helpful to collect historical data on annual absence patterns attributable to illness.

"Judge days" are calculated by multiplying the expected judicial complement by the number of court days in the period. For example, if five judges will be present every day during a single week, then the number of judge days available is twenty-five (five days \times five judges).

"Judicial capacity" is based on historical information about the number of scheduled cases that are tried and settled with judicial participation within the jurisdiction. For example, data in one metropolitan court show that .32 cases on the calendar are disposed of per judge day available. Though this is labeled "judicial capacity," it is not an evaluation of how hard judges are or should be working. It simply is a statistical description of the existing situation. Using historical data, it is possible to develop a statistical profile of the number of (or portion of) scheduled cases that are disposed of per judge day available (which incorporates average trial length). In any situation where a trial of unusual length is expected, judicial capacity must be weighed against the anticipated length of trial and likelihood of trial discussed above.

"Fallout" is the percentage of cases scheduled for trial that are continued, settled or dismissed without judicial intervention. It reveals the level of overscheduling necessary to supply available judges with ready cases. As courts gain ability to predict the likelihood of trial, judicial overscheduling can be used as a technique to facilitate settlement of cases determined to be likely to settle.

"Judge days," "judicial capacity" and "fallout" serve as the guides for scheduling.

Example: If civil division judges historically have been able to dispose of .32 scheduled cases per judge day available (judicial capacity), and it is known that next month twenty-five judge days will be available (expected judicial complement multiplied by court days), then

during that time the scheduling system should produce eight cases for the available judges.

$$\begin{array}{r} 25 \text{ judge days} \\ \times .32 \text{ cases per judge} \\ \hline 8.00 \text{ cases to receive judicial attention} \end{array}$$

Fallout must be taken into account to result in eight cases for the sitting judges. Assume that documentation of the existing scheduling system discloses that the usual fallout is about 55 percent of scheduled cases, as determined in the following manner:

$$\begin{array}{l} 25\% \text{ continued at request of counsel} \\ 30\% \text{ settled or dismissed without judicial} \\ \quad \text{intervention} \\ \hline 55\% \text{ total} \end{array}$$

Since, in this example, 55 percent of the cases scheduled will fall out, the required eight cases represent 45 percent of those scheduled (100% - 55% fallout = 45%). Thus, the number to schedule (N) to result in eight cases for the judges would be about 18 cases.

$$\begin{array}{l} .45N = 8 \text{ cases} \\ N = 8/.45 \text{ cases} \\ N = 18 \text{ cases} \end{array}$$

No scheduling system is a panacea. Continuous analysis of calendar data, judicial absence data and judicial capacity data is necessary. Conditions change and the factors in the formula must change accordingly. For example, since this approach averages the length of trial, if trial length increases substantially, the judicial capacity factor will decrease and must be modified in the formula. Interestingly, in most courts most factors and percentages tend to remain fairly constant over time.

While this discussion may seem technical, it can be simplified for those not mathematically inclined in the following summary: Accurate scheduling requires consideration of the judicial resources expected to be available, the historical capacity of those resources and the expected case fallout after scheduling.

A corollary issue concerns the conundrum often faced by courts with a substantially overscheduled calendar: too few ready cases to occupy the judges and excessive continuances. When a court has too few ready cases for the available judges in spite of scheduling a large number of cases, the panic response usually is to schedule even more

cases. This action decreases the likelihood that attorneys will prepare since they perceive a low probability of trial. Because the calendar is heavily overscheduled, the likelihood that a continuance on the grounds of unpreparedness will be requested increases. Thus, there are still too few cases for the judges.

The correct remedy is to reduce the number of scheduled cases to the point that the lawyers have absolute certainty of trial. Under these circumstances, many of the common bases for continuances can be rejected, and the case can be forced to trial. Accordingly, attorney preparation is assured.

Although many courts have used this approach with notable success, some who have considered it fear that dispositions will decline as the size of the calendar declines. This doesn't occur because, in the face of trial date credibility, the number of settlements increases as the number of continuances decreases. Eventually, increased numbers of cases can be scheduled gradually until the optimum level is reached.

Accurate scheduling is vital to an effective, court-supervised caseflow management system. The effort required initially to obtain the information to design and implement a new approach will be one of the best investments of human and other resources the court undertakes.

7. *Control of Continuances*

Creating an environment that encourages attorney preparation depends on a number of factors discussed in this monograph, including strict limitation and control of continuances. The 1973 monograph stated: "The court must adopt and apply a restrictive continuance policy, administered by a judge." Since that time the significance of continuances (adjournments) to a court's overall case management scheme has become even more apparent.

It is as true today as it ever has been that a court's policy on continuances reflects its commitment to the philosophy of court responsibility for case progress. Through leniency in continuing scheduled trial dates, even a court that has adopted the philosophy of court responsibility loses control of the process. Aside from the obvious fact that continuances result in delay for the cases involved, the court's policy on continuances is linked to two critical aspects of effective court management of caseflow:

- attorneys' perceptions of the court's attitude toward caseflow management; and
- trial date certainty.

A court's posture on continuances creates expectations on the part of the trial bar, which in turn affects attorneys' diligence in prep-

aration. Cases are ready for trial or other hearing only if the attorneys have prepared. Attorneys prioritize the cases to which they will devote time based upon a variety of factors. In the face of a large inventory of cases, prioritization of work is based partly on attorney perception of whether the court is actively supervising the progress of cases, whether scheduled trials and hearings will occur and whether a request for continuance will be granted for unreadiness to proceed.

If the court is lenient on continuances, a busy attorney may be less likely to be prepared or likely to be less prepared. Time will be devoted to the most pressing business, and postponements will be requested for less urgent matters, including cases in which a continuance due to unreadiness can be obtained. Each time the court grants such a request, it reinforces counsels' perception of the court's leniency and lack of case management orientation.

The effect of the court's continuance philosophy and policies on trial date certainty is linked to the effect on attorney expectations and perceptions. A court cannot adopt a restrictive continuance policy if it consistently schedules more cases than the available trial judges can be expected to conclude in the period for which cases are scheduled. Inevitably, cases will be continued on the court's motion due to unavailability of a judge. When this degree of overscheduling occurs repeatedly, attorneys will take the chance that their case will be one of those not reached. They may, for example, announce that they are ready for trial on the trial date but not have witnesses readily available. Or they may simply request a continuance on grounds of unreadiness. The problem is compounded by the fact that when a court frequently is so overscheduled that it must continue cases, expert witnesses are less willing to agree to come to court on the scheduled date or even to be available on call. The consistent absence of trial date certainty conditions not only the lawyers but also certain experts, making it even more difficult for counsel to be ready for trial on the scheduled date.

The possibility of administrative staff, rather than a judge, deciding requests for continuance was raised and rejected in the original monograph. Subsequently, several courts were identified in which judges had effectively delegated this task to the court administrator or case manager. This delegation of authority succeeded when several conditions were met. First, courtwide policies concerning grounds for continuance had been adopted and were available for use by the administrative staff. Second, judges stood behind the decisions of the staff. Attorneys could not appeal to a judge and have the case manager's decision reversed. Third, the staff had the authority to examine attorneys in order to penetrate plausible but insubstantial claims of necessity for continuance. While, on balance, judicial determinations of continuance

requests is the approach of choice, this limited experience suggests that with appropriate planning judges may be able to assign this task to administrative staff without abdicating judicial responsibility or control. This approach might be considered by a multi-judge court desiring courtwide uniformity in dealing with continuance requests.

Care should be exercised to assure that the process of requesting a continuance retains formality and that telephone requests are not allowed. A showing of good cause should be required and reviewed. Stipulation by the attorneys should never be the basis for granting a continuance. Automatic granting of any request for continuance should never be the court practice. Rather, inquiry into the validity of the request and consideration of possible remedial action should be the rule. Some courts require the litigants' signatures on the continuance request, often with significant reductions in the number of continuances requested.

Often, in frustration over attorneys' lack of preparation, courts consider possible sanctions to encourage attorney preparation. While there are a number of sanctions available, sanctions are not a management remedy to the problem. A basic premise of the type of court supervision of case progress advocated in this monograph is that the caseflow management system must be an orderly, predictable process whose reliability encourages and facilitates appropriate preparation and attention to the cases by all involved. Thus, failure to prepare becomes an exceptional occurrence and can be dealt with on that basis. This is quite different from the "rules and sanctions" approach.

This discussion should not be construed as saying that all requests for continuance should be denied, even those in which good cause is substantiated. Rather we suggest that the court supervision system be designed to facilitate attorney preparation for scheduled events, expert witness availability for trials, and anticipation of possible problems.

Emergencies arise, and some cases inevitably will have to be continued. When this necessity arises, the continuance should be to a date certain as close as possible to the original date. No case should ever be continued "generally" or continued to be reset on motion of counsel. Even under circumstances that render the future trial date uncertain (such as the illness of one of the parties), a future date certain should be set for joint review of case status. By following this practice, the court can assure continuity of court supervision of the case and avoid unnecessary delay.

In summary, it is vital to the success of caseflow management systems that the court:

- limit continuances to verified good cause;
- record the numbers of and reasons for continuances so they can easily be consulted;
- track (as part of its scheduling statistics) the rate of continuances requested and granted; and
- when a continuance must be granted, reset the case to a date certain in the near future.

Footnotes

1. R. Dale Lefever, *Address at the Workshop on Reducing Trial Court Delay*, Providence, Rhode Island (May 1, 1987).

2. B. MAHONEY, L. SIPES & J. ITO, *IMPLEMENTING DELAY REDUCTION AND DELAY PREVENTION PROGRAMS IN URBAN TRIAL COURTS: PRELIMINARY RESULTS FROM CURRENT RESEARCH* (1985).

3. However, notable exceptions to this rule include New Jersey, Ohio and Kansas. The growing interest in statewide standards is another exception.

4. Howard P. Schwartz, *Delay Reduction Efforts: Conference of State Court Administrators' Survey* (unpublished report, March 1987).

5. Under the rules adopted by the California Judicial Council, Standard 2.52 will become applicable to the general jurisdiction trial courts on July 1, 1991. Both Colorado and Michigan are in the process of developing standards based upon Standard 2.52 as this book goes to press.

6. Robert Horenstein, *Research Analyst, Multnomah District Court, Portland Oregon, Project Profile—Final Report* (unpublished report, 1986).

7. M. SOLOMON, *CASEFLOW MANAGEMENT IN THE TRIAL COURT* (1973).

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CRIMINAL CASEFLOW DOCUMENTATION AND ANALYSIS METHOD

1. A. ARREST TO FIRST HEARING. Between the arrest the following processes should take place:
 - A.1 The sufficiency of the evidence if not screened at the arrest should be screened by an experienced prosecuting attorney.
 - A.2 The police report should be written and reviewed.
 - A.3 Charges should be prepared sufficient to state the crime that has been committed.
 - A.4 A bail investigation should be conducted
 - A.5 Eligibility for defense aid should be investigated

- 2.B. FIRST HEARING TO ACCUSATION. The principal cause of delay in the period between first hearing and an accusation of the completion of the investigation. The following matters relating to the investigation often need to occur:
 - B.1 Witness must be interviewed
 - B.2 Laboratory results must be obtained.
 - B.3 New reports must be written
 - B.4 New reports must be typed
 - B.5 A formal indictment (or information) must be drafted and reviewed.
 - B.6 Evidence must be organized and reviewed.
 - B.7 Legal research must be completed

- 3.C. ACCUSATION TO ARRAIGNMENT. There is very little reason to delay the arraignment after the accusation has been made. The following procedures are largely clerical:
 - C.1 The arraignment date must be set
 - C.2 The arraignments must be made for a judge and courtroom
 - C.3 The papers must be drafted, reviewed and transmitted to the felony court clerk's office
 - C.4 The persons necessary must be notified of the arraignment.

- 4.D. ARRAIGNMENT TO PRETRIAL MOTIONS. Delay occurs in this process in many instances because rules of procedures require waiting periods between steps in the process. Waiting time is thereby mandatory if motion processes are involved. Typical delays are as follows:
 - D.1 Ten days are allowed after arraignment for the filing of certain motions.
 - D.2 Ten days are allowed to respond to motions.
 - D.3 Five days are allowed to reply to the responses.
 - D.4 A motion is set for hearing ten days after the response time.
 - D.5 Briefs are requested after hearing within a fixed response time.
 - D.6 Evidence, if taken, must be transcribed by the reporter which is often back logged for 30-60 days (this, even though the data entry time for the transcript is less than one day).
 - D.7 Evaluation of the need for psychiatric and physical exams.
 - D.8 Evaluation of the possibility of dispositive motions

- E. PRETRIAL MOTIONS TO CONFERENCE. Conferences are often not scheduled or controlled. The processing that must take place is as follows:
 - E.1 The lawyers must evaluate the difficulties in their case.
 - E.2 The defense lawyer must have a conference with his/her client.
 - E.3 All discovery must be complete by either cooperation or motion.

- F. CONFERENCE TO TRIAL. The delays between conference and trial are often minimal

because the lawyers do not confer until trial time is upon them. Most of the processing between the conference and the trial is in preparation for trial as follows:

- F.1 Witness must be found and notified
- F.2 Attorney schedules must be adjusted and planned.
- F.3 In some cases new trial attorneys must be briefed.
- F.4 New physical or mental evaluations must be had.
- F.5 Everyone must be notified.
- F.6 Courtroom must be made available.
- F.7 A judge must be made available

Arrest to first hearing. 1.

Though there were few delays in the period between the arrest and the first hearing, problems and police department office management were identified and solved by noting a regular delay at this stage. Narcotics cases, for instance, were consistently delayed. In one system, laboratory records were consistently taking excessive time due to inadequate facilities for the police lab. The court intervened with the government to help solve this problem. In the same system, delays in police appearances before prosecution officials were reduced by paying attention to the duty time of officers.

First Hearing to Accusation. 2.

The study of the period between the first hearing and accusation led to several effective changes. Police were able to identify and eliminate more than fifty days of delay at this stage in one system, and the prosecution consistently improved its accusatory review in each of the systems studied. The time spans were so limited that, in most instances, an average improvement of three to five days (out of 20) was considered significant. In each case where administrative queue had formed in the screening process, the delay was shortened by managerial attention

Arrest to Arraignment. 3.

Two of the courts studied faced with substantial delays between arrest and arraignment in felony court (three subsystems) eliminated the lower court process altogether and proceeded with the direct filing a felony cases in the felony court. Early review indicates the speeding up of the process in both of the courts as a result of this change. Direct filing can eliminate 10 to 30 days of transfer time in the system. But more important than the saving of transfer time is the overall effect of appointment for the indigent counsel who can stay with the case from beginning to end.

Accusation to Arraignment 4.

The period from accusation to felony court arraignment has always been a source of delay. In the systems which continued to bifurcate the process, substantial delays were occurring at the stage. Notice was the problem in one system where the larger number of persons had been released on bail pending indictment. Notice of the arraignment required from 10 days to two weeks for service. In addition there more than the usual portion of fugitives developing at this stage. The solution readily identifiable by studying the subsystem was to give notice of the arraignment at the first hearing and mail a cancellation of the notice for those not indicted. To those whom the cancellation was sent always seemed to get the cancellation.

Arraignment to Conference 5.

Most of the delay in the system exists between felony arraignment and conference. In one court, discovery motions are the principal culprit, but in most courts, lawyer conflicts and lawyer economics cause the problem. In another court a shortage of public defender personnel coupled with poor public defender assignment policy caused the delay. In most instances the delays were reduced by careful attention to detail in the scheduling office.

Conference to Trial 6.

The usual practice as noted in more detail below, is to confer about settlement of cases on the eve or morning of trial. The time for conference to trial is, therefore, usually not a time in which preparations can be accomplished or controls can be involved. When held at longer time before trial, lapse time between conference and trial is anomalously an area in which should be

increased to reduce delay.

It would be possible to detail more than one hundred specific delay producing practices in the subsystems studied the monitored. The most common reoccurring difficulties are the subject of a separate section of this report. The important finding for purposes of this subject is the workability of attacking the subsystems as units of delay.

By appointing subcommittees and task forces within the coordinating councils staffed by operating personnel from the subsystems, alternative solutions for many delays were found. When asked to report back within one month, their result was usually a solution rather than a report. Thus, focusing on a particular subsystem problem and fixing responsibility for its solution proved to be an effective delay reduction technique.

This conclusion should not be passed without noting that subsystem problem solving is sometimes dangerous. The propensity of the actors in any subsystem is to optimize their own behavior, which may be at substantial cost to those who may perform after them. The avoidance of this sub optimization and must be in assigned task of the overall court a group whenever the technique is used.

Sec. 17

~~Section 4~~

~~Case Management Plans~~

Identification of factors for Case Management

For each of the delay producing relationships or procedures a critical factor is identified.

The factors cannot be conceived in a simple single variable terms. Before any major adjustment can be made the system must be organized for control. Once some organization exists, goals and standards can be defined. With goals and standards adopted operational procedures can be designed and applied. By monitoring the operations against the goals and standards, the procedures can be evaluated and the results fed back to the performers. Finally procedures can be redesigned and installed which in turn can be evaluated and altered to meet the objectives which the organization has set.

The initiation of system control should be by the judiciary rather than by any other principal participant in the system. This is not to conclude that the court may direct the prosecution and defense in their many procedures. In the ultimate design, control of the process will be a cooperative effort visibly monitored by all of the participants.

The current version of the critical factors is set forth below.

CRITICAL FACTORS

ORGANIZATION FOR DECISION MAKING

Board of Judges

- 1.11 Board of Judges meets at least once each month
- 1.12 Meeting with advanced agenda
- 1.13 Agenda resolved at the meetings

- 1.14 Included report of compliance with adopted standards
- 1.15 Minutes are distributed within 72 hours of meeting

Coordinating Council

- 1.21 Organize a coordinating council of criminal justice system decision makers
- 1.22 Coordinating council meets once each month
- 1.23 Meeting with advanced agenda
- 1.24 Agenda resolved at the meeting
- 1.25 Minutes are distributed within 72 hours of meeting

ORGANIZATION FOR CONTROL

Felony Calendar Judge

- 2.11 One of the judges regularly sitting in criminal cases must be placed in charge of the felony criminal procedure
- 2.12 Select an administrative officer responsible to the Felony Calendar Judge

Felony Court Committee

- 2.21 Appoint a committee of three judges who regularly sit in criminal cases to consult with and advise the Chair Judge and the court on matters relating to the criminal process
- 2.22 The committee should meet weekly to study information indicating compliance or non-compliance with adopted standards

Central Arraignment Procedures

- 2.31 Intake of cases into the felony court controlled by the Felony Calendar Judge
- 2.32 The Felony Calendar Judge holds all arraignments on felony information and indictments before assigning cases to a particular judge for action

- 2.33 All scheduled procedures in criminal cases held as scheduled unless postponed by the Felony Calendar Judge
- 2.34 Holding facilities available near the Felony Calendar Judge
- 2.35 Conference rooms available within the secure area near the Felony Calendar Judge

Counsel for Indigent Appointments

- 2.51 Appointments of counsel for indigent felony defendants in the intake court is under control of the felony court
- 2.52 Through public defender or approved lists counsel is designated at the earliest possible time after arrest to continue through the whole process
- 2.53 Information regarding the work loads of attorneys assigned to represent indigents is regularly made available to the Felony Calendar Judge

ORGANIZATION FOR CASE INVENTORY CONTROL

Monitoring the procedures in the intake court

- 3.11 Felony charged cases receive a felony court number at the time they are first charged
- 3.12 The felony case headquarters is notified by name and number of all cases charged as felonies
- 3.13 The felony case headquarters receives weekly reports of felony case status pending under intake court control
- 3.14 The chair judge of the intake court meets weekly with the Felony Calendar Judge to review the status of cases exceeding the established standards

Arraignments Scheduled

- 3.21 When received by the felony headquarters cases are set for arraignment within three days
- 3.22 Cases in which the intake court binds over for felony trial receive an arraignment time and date before the hearing is adjourned
- 3.23 Felony cases which may be indicted by a process outside the intake court receive notice of the scheduled felony court arraignment at the time of the first intake court hearing (subject to being withdrawn if not indicted)

ARRAIGNMENTS WITH CONTROL

Standard Arraignment Procedures in Felony Court

- 4.11 Trial counsel available with their trial schedules
- 4.12 Counsel for indigent reviewed against case type standards
- 4.13 Prosecutor delivers to the defendant's attorney a copy of the (a) indictment/information; (b) police reports; (c) names and statements of witnesses known to the prosecutor
- 4.14 Court enters a non guilty plea
- 4.15 Clerk hands notice of conference and trial date to defendant

Future Scheduled at Arraignment

- 4.21 Plea discussion conference set for seven (7) days hence at particular time and place
- 4.22 Defendant is required to be present at the conference as at any other scheduled court hearing
- 4.23 Counsel makes complete disclosure of case at the conference
- 4.24 The judge is not present but available

4.25 Pleas of guilty are taken by the Felony Calendar Judge or substitute after the conference when appropriate

4.26 Cases are sent to individual judges for sentence

Trial Settings

4.31 Cases are set for trial fourteen to eighteen days after the dates set for the plea conferences. If cases are individually assigned, trials are set on the morning following the arraignment by the trial judge to who assigned

4.32 Any setting more than 21 days from the conference setting must be explained by the setting judge

OPERATING STANDARDS TO PROVIDE CONTROL

Assignment of Cases for Trial

5.11 Individually calendared cases are reviewed for trial on the morning preceding the date assigned for the trial

Motions for Delay

5.21 Motions for delay are in writing with reasons stated

5.22 Motions for delay when granted are simultaneously rescheduled

Motions to Suppress or Attack the Information/Indictments

5.31 Motions addressed to the information/indictments are made within two days of plea discussion and conference

5.32 Motions are set for hearing within two days of being filed without affecting the schedule trial dates

Psychiatric Examinations

- 5.41 Appointment of psychiatrist or authorization for psychiatric examination is by motion
- 5.42 Time limits for completion of the examination and report (the shortest possible) are fixed at the time the motion is granted

Acceptance of Negotiated Plea

- 5.51 No guilty plea is accepted except to all charges in the indictment or information within two days of the trial setting
- 5.52 Pleas on date of trial are sent back to the Felony Calendar Judge for plea and to the trial judge for sentence

Guilty Pleas by Signed Form

- 5.61 Guilty pleas are taken by a petition to enter guilty plea and an order entering plea
- 5.62 Defense Counsel is responsible for advising the defendant in clear language as to the contents of the form and to certify same

RESOURCES TO SUPPORT COUNCIL

Space for Felony Headquarters

- 7.11 Felony Calendar Judge's courtroom adjacent to holding facility
- 7.12 Conference rooms in the security area near Felony Calendar Judge's courtroom
- 7.13 Room in jail to conduct psychiatric examinations

Prosecution Personnel

- 7.21 Experienced prosecutor, with authority to decide, assigned to plea discussions

- 7.22 Prosecutors assigned immediately to argue motions
- 7.23 Prosecutor assigned in advance of trial date to try the case

Psychiatric Examinations

- 7.31 Psychiatrists appointed from an approved list of those willing to conduct examinations in adequate jail facilities

Counsel Appointment System

- 7.41 Public Defender adequately staffed OR
- 7.42 An organized system of private defenders adequately compensated and supervised to assure an available group of experienced defense counsel

Statistical Information for Control

Information about the Inventory

- Total cases charged in intake court
- Total felony cases disposed in intake court by (a) no probable cause found (b) guilty plea to a lesser cause (c) dismissals or not proceeded against
- Total cases advanced to felony court
- Total cases filed in felony court
- Total cases disposed in felony court
- Age of pending cases in 30 day intervals
- Breakdown of cases by significant characteristics pending more than 60 days
- Separate listing of fugitives in the inventory

Information about the Process (weekly, monthly, quarterly)

- Cases disposed by jury verdict
- Cases disposed by dismissal
- Cases disposed by plea of guilty
- Cases disposed by judge trial to a judgment
- Cases plead on day of trial
- Cases plead after trial commenced
- Cases continued at trial date
- Reasons cases continued at trial date
- Cases continued for conference
- Reasons cases continued for conference

Age of case from Arrest

- Median time to jury trial
- Median time to judge trial
- Median time to information/indictment
- Median time to arraignment
- Median time to conference

Percentage of Dispositions

- By jury verdict
- By judge trial
- By plea of guilty
- By dismissal

200
SH/1

Civil Case Management Plan

A. Purpose

The purpose of this rule is to establish, pursuant to rule 9 of the Rules of Superintendents for Courts of Common Pleas, a system for civil case management which will achieve the prompt and fair disposition of civil cases and provide the court with an efficient means of controlling the flow of civil cases.

B. Scheduling of Events

The scheduling of events begins when a civil action is filed. Thereafter, the cases managed in four steps – Clerical step I, Clerical step II, Judicial step I, and Judicial step II. The clerical steps are performed by administrative personnel. The judicial steps are performed by the assigned Judge or the assigned Judge's staff.

C. Clerical Step I

Service of summons, in accordance with rule 4.1 - 4.6 of though Ohio Rules of Civil Procedures, shall be checked 21 days after the action is filed.

1. If services complete on all parties in the case is an administrative appeal:
 - a. The briefing schedule shall be automatically ordered as follows:
 - i. Appellants assignment of errors brief due 40 days after the filing of the notice of appeal;
 - ii. Appellee's answer brief due 30 days after service of appellants brief;
 - iii. Appellant may file a reply brief due 14 days after service of appelee's answer brief but no later than 3 days before argument;
 - b. Notice that case is ready for decision shall be sent to the assigned judge;
 - c. If no decision is filed within 30 days, a reminder that a decision shall be filed shall be sent to the assigned judge every 30 days.
2. All cases, other than administrative appeals, go to Clerical Step II when services complete.
3. If there is no return of service, Clerical Step I is repeated every 14 days until all returns are filed.
4. If service of summons is incomplete:
 - a. Notice shall be served on plaintiff's attorney directing that, unless service is obtained, the case will be dismissed; and
 - b. 21 days after this notice is served, the action shall be dismissed if no effort has been made to obtain service; or
 - c. If service has been complete indicate shall continue to Clerical Step II.
5. If services being accomplished by publication, then:

- a. After the last publication, the publisher or agent shall file with the Court:
 - i. An affidavit showing publication was made, and
 - ii. A copy of the notice of publication

Both the affidavit and copy of the notice shall constitute proof of service.
 - b. 28 days after last publication, the case shall go to clerical step II.
6. If no defendant has been served:
- a. Counsel for plaintiff shall be served notice directing that unless services obtained the case will be dismissed.
 - b. The case shall be dismissed 21 days after counsel for plaintiff has been served notice to obtain service is counsel for plaintiff as either failed to obtain service or has made no effort to obtain service.

D. Clerical Step II

This step assumes that service upon all defendants is complete. The clerical person shall re-examine the action 28 days after clerical step one has been completed.

- 1. After all party defendants have filed an answer the clerical person shall submit the file to the assigned judge for assignment of a pretrial conference. The clerical person shall continue to monitor the case until the notices served.
- 2. If no answer has been filed in the clerical person shall send counsel for plaintiff notice to either proceed with a default judgment or dismissed the action. If neither action has been taken after 21 days, then an entry dismissing the action shall be submitted to the assigned judge for approval and filing.
- 3. If an extension to plead has been filed and the motion has been granted, the action shall be recycled to Clerical Step II at the end of the extension period.
- 4. Any motion(s) that:
 - a. Requires a ruling shall be taken to the assigned judge on the morning following the day in which the motion(s) is filed;
 - b. Has been pending 14 days or longer shall be sent to the assigned Judge informing him or her that the motion(s) is ready for a decision, the motion(s) shall be re-checked every 14 days until a decision is made; or
 - c. Has been decided in an action in which no answer has been filed shall be recycled to Clerical Step II.

E. Judicial Step I

At the initial pretrial conference, the judge will, among other inquiries, determine the status of the case with reference to settlement.

- 1. In each cases reported settled whether at the pretrial conference or later:
 - a. Counsel shall be instructed to present a termination entry for approval

within 14 days;

- b. The fact that a settlement has been reached shall be transmitted to the clerical person who shall check for the filing of the termination entry at the end of the 14 day period;
- c. If a termination entry has not been filed, then a notice shall be sent to counsel informing them that they have 14 days to file a termination entry; and
- d. If no entry has been filed 14 days after notice has been sent to counsel, then an administrative dismissal entry shall be sent to the assigned Judge for approval

2. In each non-jury case:

- a. The trial date and all other intervening events shall be scheduled; and
- b. The clerical person shall check for a decision and/or a judgment entry 30 days after the designated trial date. If no decision and/or judgment entry has been made, then the clerical person shall send the assigned judge a reminder. thereafter the clerical person shall continue to check for decision and/or judgment entry in shall also send the assigned judge a reminder every 30 days until the judgment entry is journalized.

3. A case may be ordered to arbitration if a jury is demanded and the amount in controversy does not exceed \$25,000.00, unless the action involves title to real estate, equitable relief, or appeals. In the event that the case is ordered to arbitration, a backup trial date shall be set.

4. Every case that has not been reported as settled shall have:

- a. The trial date set; and
- b. The pretrial order served and journalized.

F. Judicial Step II

Beginning 14 days after the assigned trial date, the procedure set forth in the Judicial Step E one shall be followed

G. No event required by this rule shall be deemed complete until the next event is scheduled

Sen. A. G.

CIVIL CASE MANAGEMENT OUTLINE

CASE FILED

DIARY READ 21 DAYS TO CHECK SERVICE.

CASE FILED, NO SERVICE

DIARY 14 DAYS TO CHECK ON SERVICE AGAIN. IF FAILURE OF SERVICE, SEND NOTICE RE: SERVICE TO PLAINTIFF'S COUNSEL AND DIARY 21 DAYS TO CHECK ON SERVICE AGAIN. IF NO SERVICE AFTER NOTICE, SET STATUS CONFERENCE RE: SERVICE

CASE FILED, SERVICE COMPLETE

DIARIES TO SEE IF ANSWERS FILED

AFTER SERVICE, ANSWER NOT FILED

SEND DEFAULT NOTICE TO PLAINTIFF'S COUNSEL AND DIARY 21 DAYS TO SEE IF PLAINTIFF PROCEEDING WITH DEFAULT. IF NOT PROCEEDING, SEND FAILURE TO PROSECUTE NOTICE. IF PROCEEDING WITH DEFAULT, DIARY TO MAKE SURE DEFAULT AND JUDGMENT ENTRY IS FILED.

AFTER SERVICE, ANSWER FILED

SET FOR PRE-TRIAL CONFERENCE.

PRETRIAL CONFERENCE

COMPLETE PRE-TRIAL MEMO.

INTERMEDIATE PRE-TRIAL OR STATUS CONFERENCE

FINAL PRE-TRIAL

CASES SETTLED

DIARY 14 DAYS TO SEE IF ENTRY IS FILED IF NOT FILED SEND NOTICE CASE REPORT SETTLED IN DIARY TO SEE IF ENTRY IS FILED EVENT IS NOT FILED UP ON ENTRY.

CASES NOT SETTLED, TRIAL

DIARY TO MAKE SURE ENTRY IS FILED REFLECTING VERDICT OR DECISION.

Standard 2.79.5
Managing Complex Litigation

Proper management of complex litigation requires early identification, immediate judicial assignment, active judicial control, and allocation of adequate resources, especially computerized case management controls.

- (a) Early identification. The court should have procedures by which complex litigation is identified prior to the filing of the case or cases. These procedures should be adopted by the Supreme Court pursuant to sections 1.31 and 1.32 American Bar Association, *Standards Relating to Court Organization, 1990 edition*
- (b) Immediate judicial assignments and active judicial control. as soon as a complex litigation matter is identified, the Chief Judge should appoint a single judge to preside over the complex litigation with the authority to consolidate and handle all cases involved. This section should be based on experience and ability to handle the type of cases involved. This selection should be based on experience and ability to handle the type of cases involved. This judge should immediately institute case management orders necessary to resolve procedural problems and substantive issues.
- (c) Resource allocation. Allocation of adequate resources should be tailor made for the particular complex litigation involved. essential support should include adequate facilities in a convenient location to expedite the litigation; sufficient staff resources; and whatever computer resources are required.

Commentary

Early Identification and Control

Early identification and control leads to effective definition and resolution of complex litigation. The Supreme Court should adopt procedures by which complex litigation can be identified as soon as possible before the case or cases are filed. For example, the Chief Judge in each judicial district or circuit could be authorized to receive petitions for complex litigation and requests for consolidation and unification. Early identification will make it possible for immediate judicial assignment and to assemble the resources required.

Immediate Judicial Assignment and Active Judicial Control

Following early identification of complex litigation, the Chief Judge should appoint a single judge to handle all aspects of the complex litigation case or cases. Judicial selection should be based on the judge's experience and ability to handle the matters involved. This need for an experienced and well-qualified jurist means that random or traditional methods of judicial assignment should not be used.

Once assigned to the case or cases, the judge should immediately issue case management orders to consolidate cases, if necessary, and resolve other procedural problems and substantive issues. The judge should exercise active leadership decision-making monitoring and firm but their supervision. The judge should recognize that innovation is likely to be the norm and not the exception. The trial judge must implement trial methods to the extent allowed under constitutional mandates, rules of civil procedure, and principles of even handed fairness to all parties. Questions of consolidation of many cases for a single trial, including those from diverse locations within the jurisdiction, should be considered. In addition, once consolidation has occurred, serious questions of bifurcation, trifurcation, reverse trial etc., should be considered. Lastly, methods of ADR resolution should be thoroughly explored, including mediation, arbitration, and mini trails.

Resource allocation

Allocation of adequate resources is necessary and is likely to exceed what is normally provided. The assigned Judge, along with the assistance of the trial court administrator, should first determine staff requirements, such as additional administrative, clerical, and legal staff needed. Each piece of complex litigation will have to be individually evaluated before this determination of additional staff can be made.

Necessary space and equipment must be immediately provided. In many cases the trial judge will be faced with complex litigation which involves scores of attorneys and has a substantially increased need for additional courtroom and administrative space. This space should be conveniently located for all those involved, so that litigation can be facilitated and expedited. Computer service needs should be determined and provided to fit the particular needs of complex litigation involved.

INTRODUCTION

The fundamental task of courts is to administer justice through the examination of civil, criminal, administrative, and other cases in judicial sessions in accordance with established procedural law.

The burden placed upon courts is growing each year in connection with changes in economic and social relations, the rise in crime, the increase in and character of changes in civil disputes, the expansion of potential court complaints involving the illegal actions of public officials, the imposition of court control over the legality of compulsory measures, and other procedural actions during preliminary stages of investigation and inquiry.

In connection with ongoing legal reforms in the Russian Federation, the prosecution of which is proceeding in stages over the course of a specific period of time, the envisioned introduction of court jurors, international judges, the organization of legal affairs based upon principles of competition and equality, the differentiation of forms of legal affairs, the improvement of the system of guarantees concerning independent legal authorities, and legal affairs in the Russian Federation is undergoing and in the future will undergo qualitative changes in order to make the country's system of legal affairs effective and efficacious.

The proper organization of legal affairs is one of the most important conditions of court work, providing for the maintenance of procedural norms, timely examination of legal cases, fulfillment of judgments, verdicts, decisions, resolutions, accumulations of statistical data, and the precise and cultured service extended in court to citizens as well as legal representatives.

In analyzing the activity of the Moscow and Proletariat regional courts of the city of Tver, it is worth noting that:

- court employees are fully occupied with routine work concerning the processing of information resulting from the examination of cases;
- the structure of this processed information is fundamentally reliable in character;
- the procedure of processing information is sufficiently standardized;
- during the course of examination each matter produces a large amount of documentation (according to approved form), the preparation of which proceeds on the basis of information contained in the matter;
- the legal affairs process is accompanied by continuous inquiries in the search for various types of information connected with cases under examination, criminal personalities, submitted complaints, appellations, etc.
- offices prepare various types of documents of an informational character, the processing of which, on account of a large amount of information, is labor-consuming and demands continuous attention.

The following factors influence the organization of the court legal affairs process:

- an increase in the number of cases;
- a complication of the character of cases coming before the court;
- changing legislation;
- significant changes in court practice on all levels arising from modern social processes;
- changes in the structure and character of inquiries from government authorities and organs dealing with the promulgation of new legislative acts;
- the necessity of improving the timeliness and reliability of received information on all levels;
- a need for a lessening of the flow of documents in paper form and the automation of routine processing operations on all levels of the court system.

A qualitative improvement in the level of court work in this area lies in the elaboration of automated court affairs technology.

Current requirements based upon the need to create automated court affairs technology are:

- a need to accelerate the examination of court matters at any procedural stage (acceleration of the preparation of court documents);
- an expansion of technical possibilities for court employees, an improvement in quality and lessening of time involved in the preparation of documents;
- an increase in the time period for the examination of cases;
- a heightening of the level of organization of court workers;
- timely distribution of court practice, primarily connected with continually changing procedural norms and material rights;
- the necessity of a fuller and more operational processing of statistical data;
- an effective search for information;
- the provision of reliability and confidentiality of information;
- the integration of office technology into a unified process.

In connection with this, automated court affairs technology should:

- raise office work to a higher qualitative level, improve management control over the activity of subordinate divisions and judges, ease and raise the quality of work for office employees, shorten the time of passage for matters of instance and lengthen the period of time directly allotted to judges for the analysis of cases at hand;
- provide for the transition to computer technology, the fulfillment of the overwhelming majority of production functions connected with registration, the elaboration and storage of documents, as well as the reception of informational certificates and statistical accounts;
- provide judges with operational access to legislative acts and court practice;

- provide effective informational court cooperation with the Supreme Court of the Russian Federation, the Legal department, investigative organs, procurator, and the Ministry of Justice of the Russian Federation.

Computerization may improve the general efficacy of the court affairs process via a reduction in the number of delays, the better use of resources, and a lessening of the possibility of human error. An improvement in effectiveness might result in additional benefits for a better public perception of the court process, as well as an improvement in the quality of court affairs itself.

FUNCTIONS OF A COURT OFFICE MANAGER

Upon arrival in court, all correspondence is registered in the journal of incoming correspondence (journal No. 1) and to each document is appropriated a number that notes when the document arrived, where it came from, its designation, and to whom it is addressed. All mail is then handed to the court chairman for further distribution. After the distribution of mail the court manager again notes in journal No. 1 to whom each received document (according to incoming number) is distributed, and each document is given to that person. If documents are transferred from one judge to another, a note is again made in journal No. 1 concerning the transfer, and the document is then given to the other judge.

The following documents may be received by the court:

1. Criminal cases

an incoming number is appropriated and the matter is referred to the court secretary for criminal cases for more detailed registration (a card is established for each criminal matter)

2. Civil cases

an incoming number is appropriated and the matter is referred to the court secretary for civil cases for more detailed registration (a card is established for each civil matter)

3. Statements of claim, statements on the issue of court orders, complaints regarding the actions of administrative organs and officials, other statements, individual instructions

all are appropriated an incoming number that registers when, from where, and what was received and following distribution by the court chairman is transferred to judges under inventory for further assignment and examination

4. Inquiries

are registered and transferred for execution

5. Reports, materials, responses to inquiries, and other documents

are similarly registered and transferred to whom they are addressed or to the person who inquired

Copies of incoming mail are made for the entire year, put on file, and at the end of each year this file is submitted to the archive

Furthermore the office manager keeps account of the following files:

1. File of correspondence unrelated to cases and complaints
2. File of decisions on the refusal to accept applications. Decisions on the repayment of state customs
3. File of individual instructions
4. File of abandoned documents
5. File of decisions on the exaction of sums paid out during a search for debtors
6. Complaints
7. Household account (account of money given out for household expenses)
8. File : letters, instructions, and other guiding instructions of the Legal department and related correspondence
9. File: estimates, agreements, applications
10. File: statistical account (semi-annual and annual account of court work)

The office manager keeps a book of orders and copies of all orders are placed on file,

arranges personal cases for all employees and files all copies of orders and related reports concerning a given employee.

arranges, fills out, and keeps employee work booklets and files all copies of orders and related reports concerning a given employee.

arranges, fills out, and keeps employee work booklets, noting shifts in work duties.

The office manager keeps an account of hours worked and at the end of each month sends it to the accounting office for the disbursement of wages.

FUNCTIONS OF A REGIONAL COURT CHAIRMAN

- 1) The assignment of received criminal and civil cases, declarations, complaints, and administrative materials.
 - a) assignment of criminal cases takes into account: the burden upon judges, category of matter. Cases involving the charging of minors are considered only by the court chairman or his deputy, cases are not brought to court which involved the chairman considering complaints for arrest during the preliminary period of investigation. In this case the matter should note which judges examined the complaint for arrest for a particular matter in order to avoid mistakes. Following the return of the matter from supplementary investigation, the matter is passed to the judge, who has been given the matter for additional investigation. The secretary for criminal cases makes a note regarding the return of the matter from supplementary investigation. The criminal matter is given to the judge for combination, the process of which already concerns the matter in connection with the defendant.

The court chairman keeps a journal of the assignment of criminal cases in which are noted the judge's first and last names, the defendant's first and last names, the count of indictment, and the means of interruption. With the aid of this data, upon inquiry the following questions can be answered: how many criminal cases have been handed to each judge, and with which means of interruption.

- b) the assignment of civil cases and declarations proceeds according to a judge's specialization. A list is attached.
- c) administrative materials are assigned equally among all judges.
- d) complaints are assigned depending on the character of the complaint.

The assignment of cases and materials proceeds at the end of the working day following the registration of these cases and materials in the court office. Following the distribution of cases and materials, remarks and transfers of cases to a particular judge return to the court office for processing. It is necessary to automate a journal of the transfer of cases.

- 2) The planning of work concerning the examination of criminal and civil cases.

The planning of work concerning the examination of cases proceeds daily, weekly, and monthly noting the dates of examination, day of the week, number of the matter, name of the person indicted, count of indictment, means of interruption, and name of the civil matter noting the plaintiff and defendant. Access to each judge's stated information permits the non-assignment of many cases in relation to an individual in custody for one day.

The planning of a judge's daily work is entered into a journal of court sessions, in which the secretary of the court session makes notes regarding the results of each matter's examination. During planning, data regarding the examination of cases and the result of examination are simultaneously entered into a database of criminal and civil cases. In this fashion, the entry of information regarding a particular matter is handled by: the court chairman, judges, the judge's secretary, and the court office secretary. The court chairman and judges may close access to information regarding a matter. The court office secretary may close access to corrections.

3) Control over the timeliness and quality of the examination of cases.

Inquiries regarding the examination of criminal cases: of particular judges, during a fixed time period, number of criminal cases in connection with individuals in custody, in connection with minors, women, examined or left without examination, with judgments of guilt or innocence, directed for additional investigation, individuals sentenced to prison, to suspended sentences, handed fines, sentenced to corrective work, examined individually or collectively, the number of appeals or protests, revocations, cases left unchanged, changed, examined on time, not examined on time, remaining in the affairs of a judge longer than one month, longer than three months, longer than six months, longer than one year, and the reasons for a postponement of a legal session (for potential sharing).

Inquiries regarding the examination of civil cases: the number of examined cases of a particular judge, during a fixed time period, and in a fixed category. Examined with announcements of a judgment: satisfactory, refused, discontinued, left without examination, appealed, protested, canceled, left without changes, changed, examined individually, collectively.

The program should provide the opportunity to inquire about information regarding a matter according to information entered into a statistical database in any combination.

- 4) Publication of orders and instructions concerning the organization of court work and court employees.
- 5) Work for the advancement of qualification of judges. Requires a list of judges with qualified classes, date of conferral of this class and date of conferral of the following class.
- 6) Work with popular assemblies. Requires a member list of popular assemblies with notation of their first and last names, year of birth, education, occupation, home address, telephone, date of selection and participation in legal sessions.
- 7) Work regarding complaints of a non-procedural character. Following registration of a complaint in the court office, the court chairman either personally resolves the particular complaint, or assigns it to court workers, establishes a time period for resolution of the complaint, and monitors the maintenance of time periods. Alarm clock.

- 8) Together with other law enforcement organs, administrative organs, management organs, and social organizations. It is also necessary to have a list of directors, telephones, important dates, and correspondence.

It is necessary to maintain a database of local court practice and to have in operational use the court practice of the regional and Supreme courts.

All documents related to criminal or civil cases should be located "together" and be easily accessible.

THE FUNCTIONS OF THE CIVIL COURT CLERK

1. A civil case initiation and a registration-statistical form filling in.

All civil cases, action materials and applications shall be registered in the registration-statistical forms and in the alphabetical index. Before the above-mentioned procedure undergoing all civil cases shall be registered in the journal of incoming mail within 3 days from their coming to the court. Not later than on the next day the civil cases together with the mail journal shall be brought to the Chairman of the court for their distribution between the judges depending on the category of cases, usually considered by each specific judge, and the level of their workload.

After such distribution the civil cases get back to the court office again to enter the mail journals of the judges. This procedure shall be carried out in accordance with the Chairman's resolution on the application (claim, request). Such civil cases shall be handed to the judges to perform a pretrial preparation for the case consideration, pass a determination on the civil case initiation and calling on.

Upon passing the above-mentioned determination the civil case shall be got by the civil court clerk.

A civil case initiation consists in the process, in the course of which the civil court clerk shall confer a definite number on each civil case, the initial figure of the number to be 2 (as it is the code of all civil cases), then after a hyphen the ordinal number of the specific civil case shall be written. The numbers of the cases grow depending on the date of their getting to the civil court clerk. The ordinal number of the case shall correspond to the number of the registration-statistical form of the present case, which shall reflect the following information: the date of the case registration, information about the plaintiff, the essence and the value of action, the case movements in the courts of original and appellate jurisdiction (the reasons of the case suspension, examinations of experts, etc) and the taken decisions. The contents of the registration-statistical form shall correspond to the requirements of the form No 6. The form shall be stored in the court office for the concerned persons could be informed of the case movements. The forms shall be placed in the card index in the order of their numbers growing.

On the expiry of the calendar year the registration-statistical forms for the cases, which haven't been considered by the beginning of the new year, shall be transferred to the card index of the new year. In such situation two ordinal numbers shall be indicated on each registration-statistical form – the number of the previous year and the number of the new one (for example: The case No 2-500.98, the new number is 2-15.99).

Numeration of cases, coming in the new year shall follow the numbers, given to those ones, which are the rest of the previous year. Instead of the removed forms, the forms-substitutes with the ordinal number of the previous year and the new number indication shall be put into the card index of the previous year.

The civil court clerk shall put the civil case into the alphabetic index (a special journal) by the defendant's name; here also the plaintiff's name, the essence of the action, the case number (which shall correspond to the number of the registration-statistical form) and the name of the judge, responsible for the present civil case proceedings, shall be indicated.

The process of a civil case initiation includes drawing up its materials in the form of a book: i.e. the civil court clerk shall make a cover for the presented materials; the title page of the cover shall be drawn up in a due order: in the right

upper part of the page the name of the judge, responsible for the case, shall be indicated; in the middle of the page the name of the civil case and its number shall be put, below there shall be written the name of the plaintiff, the name of the defendant and the essence of the action. At the bottom of the page, on its right side the date of the case registration in the court and the date of the first calling on the case shall be indicated.

The date of the case coming to the court, indicated on its cover, in the registration-statistical form or the registration journal shall reflect the actual time of the case coming to the court.

For the cases and claims, which come to the court by mail, this date shall be indicated in accordance with a mark, made by the court office on the day of the claim's registration; for the cases and claims taken at a private reception, the date of coming shall be indicated in accordance with a mark made by the judge while taking the claim from its initiator.

2. The first calling on a civil case.

In order to call on a civil case the civil court clerk shall fulfill the judge's instructions from the determination on the civil case initiation and calling: he (she) shall send the statements of claim copies to the persons, indicated in the determination; write subpoenas for the persons, due to be subpoenaed. A special mark on the performed operations shall be made by the civil court clerk on the internal side of the back page of the case cover, in the special inquiry list (form No 19).

3. The civil case registration after its moving for the new trial.

The civil cases, moved for the new trial upon repeal of decisions, determinations, resolutions shall be registered in the registration-statistical forms in the same way as the new ones do, and get a new ordinal number. A note with a reference to the previous number shall be made in the form.

In the alphabetical index the repeatedly coming cases shall be registered separately, by with a note on their repeated coming.

4. The functions of the civil court clerk in the course of the case proceedings.

After all above-mentioned operations performance the civil case shall be handed to the Chairman of the court office for making a mark in the journal of incoming mail, and further - to the secretaries of the court session for distribution into the judge's safe between the appropriate dates.

In the course of the case proceedings the functions of the civil court clerk shall be restricted to making marks in the registration-statistical forms on the case postponements and suspension of its proceedings.

Upon the decision passing on a civil case (a decision, a judgement by default, a court order, a determination on the case dismissal, a determination on agreement of lawsuit, a determination on leaving the case unsettled) the civil cases, drawn up in a due order shall be returned to the civil court clerk. The latter shall make a note of this fact in the journal of court sessions, indicate the date of the case return to the court office and put his (her) signature.

5. The civil case execution

Then the stage of the case execution follows. The decisions on the civil cases shall be referred to execution according to a common rule, upon the expiry of the term, fixed for the appeals against the decision (court order, etc) and if the participants of the civil proceedings haven't forwarded any appeals or protests against the decision in the cassation order. For decisions the term of appeals and protests shall not exceed 10 days, for court orders – for the debtors – 20 days. Some decisions on the civil cases are subject to immediate execution, a special mark on it shall be made in the decision. The following types of decisions are to be immediately executed: on alimonies, on the salaries' recovery, on restoration of one's position and some other.

Within the term, fixed for appeals against the civil case decision, the case shall not be obtained on demand or sent from the court.

In the course of the civil case execution the civil court clerk shall write the acts of execution: send the copies of the decisions with the cover letters to the appropriate organizations, offices, enterprises; make extracts from the decision for the litigants. All his (her) operations, relating to the decision execution, shall be indicated by the civil court clerk in the inquiry list for the case, in the registration-statistical form and in the registration journal.

The decisions, determinations, resolutions of the civil court, which have come into force, shall be referred to execution by mean of handing over an appropriate act of execution to the recovering person or to the bailiff-executor at the place of execution.

The copies of the decisions, referred to execution and the acts of execution, issued by the court, shall be certified by the judge presiding in this case, and shall be accurate and literate. Blots and corrections in the act of execution are not permissible. The acts of execution shall be written by the civil court clerk and those, which are subject to immediate execution – by the secretary of the court session.

For the cases, which involve the debtor's search, the exact date and place of his (her) birth shall be indicated: for the cases on alimonies – the child's name and the date of birth.

In relation to the recovering persons and the debtors – juridical persons, the known address of the juridical person's body, the name of the banking institutions – its money keepers and the numbers of their accounts shall be indicated. In the acts of execution, relating to asking for damages, some additional data on the socially dangerous activity of the debtor and the methods of compulsory execution shall be indicated.

If execution is going to be performed in different places or the decision was taken in favor of several plaintiffs or against several defendants, then several acts of execution shall be written with exact indication of the place of execution for the part of the decision, which is subject to execution according to this very act. In the presence of joint responsibility of debtors the acts of execution shall be written according to the number of debtors.

Depending upon the place of execution, the acts of execution shall be sent to the appropriate subdivisions of the bailiffs' service at the debtor's place of residence or work (for the juridical persons – at the place of their body or property location). If the exact name or address of the bailiffs' subdivision is not known, then sending the act of execution to a body of justice of the appropriate state, area, region, city, autonomous region or area is also permissible.

The copies of a decision, resolution, determination, the extracts from the court decisions shall be certified by the judge's and the clerk's signatures and by the official stamp of the court.

The cover letters for the copies of documents and the acts of execution shall be signed by the judge, by the clerk and certified by the official stamp. The copy of the cover letter shall be attached to the case.

While starting a sentence execution and in the course of further execution also, the recovering person shall be informed of the execution acts transfer to the bailiff-executor or sending them to another organization with exact indication of the time and the addressee, whom each act of execution was sent to.

In the situations, when a decision or a determination was changed by a higher court, a special mark shall be made on the appropriate copy.

The copies of determinations or resolutions of the cassation or supervision authorities, upon the request of the concerned persons, shall be attached to the copies of decisions or determinations, changed in the cassation or supervision order.

The copies of private determinations (resolutions) shall be addressed to an appropriate enterprise, office, organization, officer after the decision coming into force and shall be registered in the execution journals according to the form 46.

6. Leaving a civil case in the archives.

Upon a civil case execution its proceedings may be considered finalized and the case becomes a subject to leaving in the archives.

A civil case may be left in the archives only in accordance with the resolution of the judge, the Chairman of the case or the Chairman of the court. Prior to it, the criminal court secretary shall bring the case to the judge, who shall examine it on the point of execution and sign it for leaving in the archives with indication of the date of the proceedings end. Such mark shall be made on the internal side of the back page of the civil case cover.

7. Appeals and protests against the civil case sentence.

A claim or a protest shall include the date of its registration, which shall be put by the person, who receives it. Besides that, an appropriate number of copies shall be attached to them in order to hand them to each participant of the proceedings.

The civil court clerk shall call on the appealed or protested in the cassation order cases on a regional day. Calling on the civil cases shall be performed according to a schedule, in conformity with the cassation days and hours of the cases' consideration by the regional court. The civil court clerk shall notify all concerned persons of a claim or a protest registration, and also of the date and the place of the case hearing in the regional court. All of them shall get the copies of a claim or a protest and also the copies of the written documents attached to them.

All objections or explanations relating to the claim or protest on a civil case shall be filed or sent within one day to a higher court to be attached to the case.

On the expiry of the term, fixed for the appeals against the decision or the determination (in the presence of claims relating to the record of a court session – after their consideration in a period fixed by the law) the case, including a claim or a protest, shall be sent to a higher court together with a cover letter signed by the judge.

The correctness of the case drawing up by the civil court clerk for sending it to a cassation institution shall be checked by the judge, under whose supervision the present case has been considered.

The date of the case sending to a cassation institution and the date of its getting back to the court, the results of the cassation consideration shall be indicated in the registration-statistical form.

In the presence of some drawbacks' disclosure in the course of a cassation claim or a protest registration the civil court clerk shall send a letter with indication of drawbacks, due to be eliminated and the term for their elimination to the claim initiator. If the drawbacks haven't been eliminated within the indicated term, those claims or protests shall be considered invalid and returned to their initiators with a cover letter, signed by the judge.

The cassation claims and protests, relating to the criminal cases with expired date, shall be returned to their initiators.

THE FUNCTIONS OF THE COURT SESSION SECRETARY

1. IN THE COURSE OF CRIMINAL PROCEEDINGS

1.1. The daily, common, organizational actions of the court session secretary throughout the working hours:

1.1.1. To keep all coming criminal cases in a due order, i.e. filed, with pages numbered, and being stored in the judge's safe distributed in accordance with the calling on dates or with the reasons of the cases' postponements or suspensions.

1.1.2. To fill in the journal of court sessions, which shall contain the descriptions of criminal and civil cases with indication of dates and exact time, the persons and the articles of accusation or the essence of civil actions; the results of a case consideration (the resolute parts of the sentence or decision, or the reasons of the case postponement or suspension and the new date of calling on the case); the date of the case transfer from the secretary to the office.

1.1.3. To summon the jurors for taking part in the sanctioned criminal and civil cases consideration, according to the list from the judge's journal of jurors.

1.1.4. To check up the presence of persons, due to appear before the court at the appointed time (the jurors, the prosecutor, the defenders, the defendant, the victim, the witnesses and other subpoenaed persons).

1.1.5. To prepare a place for the court session and ask all the participants of the proceeding to enter the courtroom.

1.1.6. To draw up the record of the court session.

1.2. The actions of the court session secretary in the course of the case consideration on its merits.

1.2.1. In the course of the case hearings the court session secretary shall draw up the record of the session, which shall reflect the following: the place and the date of the case consideration, the time of the beginning and the end of the court session, the full name of the court, its composition, the names of the secretary, prosecutor, defenders, translator, defendant, victim, public plaintiff and (or) defendant, their representatives and the other subpoenaed persons;

The secretary shall also reflect the essence of the case announcing by the Chairman and the details of his presiding over the session: the fact of witnesses' removing from the courtroom, the information about the defendant's identity, the type of preventive punishment (if he (she) is under arrest, then from what date), when the copy of the accusatory conclusion was received. The court's actions shall be reflected by the secretary in the same order, they took place; the court's actions and decisions and also the actions of the other participants of the proceedings, which took place in the course of the court session, shall be reflected by the secretary completely and correctly. The following things shall be necessarily indicated in the record: the composition of the court, the names of the secretary, prosecutor, defender and the other participants of the proceedings announcing by the Chairman; explaining them their right to challenge any other participant of the proceedings; the announced challenges; their reasons and the results of the challenges' consideration; explaining by the Chairman the rights and obligations of the defendant, victim, legal representative and the other persons, subpoenaed in accordance with the criminal-procedural law; finding out whether their rights are clear to them and if there are any

motions; those motions solution. The secretary shall reflect the determinations and resolutions, passed by the court without leaving to the consultative room, or indicate the fact of the determinations and resolutions passing in the consultative room. Then the secretary shall reflect finding out by the Chairman the matter of the subpoenaed persons' presence and the possibility to consider the case in their absence. In such situation the court may, without leaving to the consultative room, pass a determination on the impossibility to consider the case in the absence of the persons, who failed to appear in court, and the necessity to postpone the case hearings with indication of the new session date and the measures to ensure these persons coming. The question of necessity of the case postponement, suspension or return to the prosecutor for additional investigation may be solved by the court in the consultative room, then only the actions, performed by the court shall be reflected in the record. The secretary shall also indicate in the record the fact of the case postponement in connection with the necessity to obtain some new evidence, very often it happens while settling the motions, initiated by the participants of the proceedings.

If the case postponement hasn't taken place, the secretary shall write in the record, that the court came to the conclusion on the possibility to consider the case under such circumstances and in some persons absence and determined, that it is possible to start the proceedings in those persons absence but to come to a final decision on this case only at the end of the judicial investigation. Then the secretary shall make a note on the beginning of the judicial investigation and the order of its performance by the court, with regard for the suggestions of all participants of the proceedings. Then the secretary shall write down in details the testimony of the questioned persons, who were subpoenaed and managed to appear before the court, and of the other participants of the proceedings (the essence of the questions shall be clear to the questioned persons); the questions, the expert was asked, and his replies; the results of examinations and other actions, performed in the courtroom for the purposes of the evidence selection (before the beginning of the court session the secretary shall prepare the material evidence for the examination, which was sent to the court together with the case and was stored by the criminal court secretary of the court office in a special place); the materials of the case, which have been made public; the facts, which the participants of the proceedings asked him (her) to fix in the record; the facts of breaches of the peace in the courtroom, if they have taken place; the name of the person, who committed the breaches of the peace; the brief summary of the pleadings and the defendant's last word; the fact of the sentence making public and the term of appeals against it. Besides that, in the course of proceedings the court session secretary shall ask the removed witnesses to enter the courtroom for giving their explanations to the court.

Not later than within three days after the court session's end the secretary shall draw up the record, sign it and bring to the Chairman for signing.

1.3. The actions of the court session secretary under the sanctioned case postponement, suspension.

1.3.1. If a criminal case with a definite date of hearings has been postponed, all coming persons shall be notified by the secretary about the new date of the case hearings. For this purpose the secretary shall draw up the statements of the coming persons notification about the necessity to appear repeatedly in court on a definite date and time, which shall be signed by the notified persons. The secretary shall also write for them new subpoenas and make a note of the fact of these persons presence in

court (and how long) in the previous ones. The secretary shall make the orders for the defender and the prosecutor to appear in court; or if the defendant has been taken into custody – in the escort company or the IZ-36/1 institution. The secretary shall ask the jurors to take part in this case consideration. If the case has been heard before, but then, upon some reasons, was postponed – those jurors, who took part in the previous consideration, shall be asked to consider it. The secretary shall send the new subpoenas to the plaintiffs, who has failed to appear in court, or the copy of the passed determination on compulsory bringing to the appropriate militia office. or the official letter to the Chairman of the appropriate institution with a request to render his assistance in bringing those persons to the court session.

The copies of these documents, with exception for subpoenas, shall be filed by the secretary after the record of the court sessions and the decisions (determinations, resolutions), passed by the court; the pages shall be numbered, a note about the sent subpoenas shall be made; then the case shall be put into the judge's safe, upon the appropriate date.

1.3.2. If a case has been postponed for the purposes of additional evidence obtaining – the secretary shall type the court's inquiry and send it via the court office to the appropriate institution or organization. A copy of the inquiry shall be filed after the record of the case postponement, the case shall be distributed to the judge's safe – to the separate file of analogous cases - up to getting reply to the court's inquiry. Upon getting the reply, the secretary shall take the case from the office and give it to the judge together with the reply for looking through and calling on it, or inquiring about some more materials and explanations.

1.3.3. Sometimes, the court may suspend the case proceedings, for example – when an examination of an expert is required, or when the persons, in whose absence further proceedings are impossible, are being searched. In such situation, the secretary shall file and number all necessary materials, make up a list of them and send via the court office to the appropriate organization or institution together with the case or the decisions, separately passed by the court, and the accompanying documents. If the case has not been dismissed, it shall be stored in the judge's safe together with the cases, upon which the inquiries have been made.

1.4. The actions of the court session secretary in the course the criminal cases drawing up after their consideration.

1.4.1. If a criminal case has been considered and the final sentence or determination has been passed by the court, the secretary shall draw up the record of the court sessions, bring it to the judge for signing, file all necessary materials (including the final decision of the court) in a due order, number the case pages, make up a list of documents, then hand all these papers over to the criminal court clerk, making him (her) sign for them and put the date of the documents transfer in the journal of court sessions. At the same time the court session secretary shall send a copy of the court's sentence to the IZ-36/1 institution for handing over to the convicted person (if he (she) has been sentenced to imprisonment) and filing. If the defendant hasn't been taken into custody, such operation is not required. In the presence of claims on the record of the court session, initiated by the participants of the proceedings, the judge shall consider these claims, and the secretary shall draw up the record of the court session, which shall be filed and handed over to the criminal

court clerk of the court office together with the judge's determination. If the sentence has been passed in the manuscript form, the secretary of the court session shall type it before transferring to the court office, file after the manuscript version and return to the office together with the copies of the sentence.

1.4.2. In the situations, when a private determination on a case has been passed, the determination shall be multiplied, certified by the judge and the secretary. The secretary shall indicate the full address and pass 2 copies of the determination to the court office – to the record keeper – for sending them to the appropriate instance and the appropriate measures taking. The original of private determination shall be filed by the secretary, and the note on the determination sending to the addressee shall be made on it.

THE FUNCTIONS OF THE COURT SESSION SECRETARY
2. IN THE COURSE OF CIVIL PROCEEDINGS

2.1. The daily, common, organizational actions of the court session secretary throughout the working hours:

2.1.1. The same as the actions of the court session secretary in the course of criminal proceedings, described in the point 1.

2.1.2. At the stage of pre-trial preparation undergoing by the case the court session secretary shall write subpoenas for the litigants

Upon the judge's instruction he (she) shall inquire after the necessary documents on the essence of the case and perform other actions, indicated by the judge in determination on the pre-trial preparation of the case:

Upon the determination on the case sanction passing by the judge the secretary shall bring the case to the civil court clerk of the court office for giving it a number, entering it to the database and form, for shaping the selected documents into a civil case (in the cover) and the first calling on it.

2.1.3. After the case getting back from the court office the court session secretary shall distribute it to the judge's safe, upon a definite date.

2.1.4. On the day of the case consideration on its merits, it shall be entered by the court session secretary together with the other cases into the journal of sessions of a definite judge, with indication of the time of consideration, the number of the case, the names of the litigants, and the essence of the actions. Upon the end of the case consideration on its merits the court session secretary shall also write in the journal the results of the present case consideration: whether it has been postponed and to what date, the reasons of the case postponement; whether the action demands have been completely or partially satisfied; or if the action has been rejected (completely or partially). The court session secretary shall also fill in the column of the journal, where the fact of the case transfer from the judge to the secretary is to be fixed after the decision has been passed. Upon the final decision passing the court session secretary shall hand the case over to the civil court clerk of the court office, make him (her) sign for it and put the date of the transfer.

2.1.5. The duties of the court session secretary for a civil case consideration are the same as those of the court session secretary in the course of criminal proceedings, described in the points 3 and 4.

2.1.6. Drawing up the record of the court session.

2.2. The actions of the court session secretary in the course of the case consideration on its merits.

2.2.1. In the course of the case hearings the court session secretary shall draw up the record of the court session, which shall include the precise statement of the court's actions and decisions, passed in the course of the case hearings; draw up written undertakings on the responsibility for rejection to testify or the deliberately false testimony.

In the record of the court session the following things shall be reflected: the year, the month, the day and the place of the court session; the time of the beginning and the end of the court session; the name of the court, considering the case; the composition of the court; the names of the secretary, prosecutor (if for the case consideration the prosecutor's presence is required), defender (if he (she) is allowed

to take part in the case proceedings): the name of the case; the information on the presence of the persons, taking part in the case proceedings, representatives, experts, witnesses, translators; the fact of the court session opening by the Chairman; the subject of consideration; the fact of the witnesses' removal from the courtroom; the fact of finding out the identities of the litigants and the other concerned persons (the full name, the date of birth, the place of work and the position, the places of official and actual residence); the fact of the court composition and the names of the prosecutor, defender and secretary announcing; the fact of explaining the right of challenge; whether there have been any challenges (if they have, then the court's actions for their settlement); the information about explaining the litigants and their representatives their procedural rights and obligations; whether they are clear to the litigants and their representatives and if there are any motions (in the presence of motions – the method, the order and the result of their settlement shall be indicated); the Chairman's orders and the determinations, passed by the court without leaving to the consultative room; the applications from the litigants and their representatives; the explanations of the litigants and their representatives; the information about the witnesses' identity (the full name, the date of birth, the place of work and the position, the place of official and actual residence); information on the witnesses' notifying of the responsibility for refusal to testify or for the deliberately false testimony according to the Article 307-308 of the Criminal Code of the RF and the appropriate written undertaking signing; the witnesses' testimony; the experts' oral explanations of their conclusions; the results of the oral and written evidence' examination (the evidence, surveyed by the court and the results of survey and the evidence made public by the court); the litigants' additional comments; the resolutions of the governmental bodies, public organizations and labor groups; the contents of pleadings and the prosecutor's resolution; information about the determinations and decision announcement; information about explanations on the contents of the decision, the order and the terms of appeal against it.

Upon the Chairman's order the court session secretary shall include into the record the circumstances, important for the litigant and their representatives, if they have initiated an appropriate motion.

The court session secretary shall draw up the record of the court session at the session itself, put his (her) signature under it and bring it to the judge for signing not later than on the next day after the court session or a separate procedural operation. All alterations, corrections and supplements to the record shall be discussed in a due order.

2.3. The actions of the court session secretary under the sanctioned case postponement, suspension.

2.3.1. If a civil case has been postponed, the court session secretary shall draw up a record on the case postponement, the front page of it to be the same as of the court session record up to the moment of the litigants' identities finding out. Then the secretary shall indicate in the record the reasons, due to which the case consideration at present moment is impossible (the subpoenaed persons' failure to come, powers of attorney absence, upon the litigants' request, etc), and the determinations, passed by the court without leaving to the consultative room or information about the court's leaving to the consultative room and the determination passing. Upon the case postponement the court session secretary shall perform all necessary actions for the new calling on it: make the inquiries, when necessary; send the determinations or the

case itself for an experts' examination performance. While determining the date of the new court session the secretary shall write the subpoenas for the persons, due to be subpoenaed, and to the prosecutor, if necessary: file the copies of the sent documents and inquiries: make notes about the subpoenaed persons. Then the case shall be distributed to the judge's safe upon the appropriate dates.

2.3.2. The case may be postponed even after the litigants' identities finding out upon the initiated motion. In such situation the record shall be drawn up according to a common rule, used for the case consideration, but it shall be finished upon the determination on the case postponement passing by the court.

2.3.3. The civil case proceedings may be suspended, in this situation the appropriate record of the court session shall be drawn up (it shall meet the common requirements), the case shall be filed and distributed to the judge's safe in the capacity of a suspended one.

2.4. The actions of the court session secretary in the course the civil cases drawing up after their consideration.

2.4.1. Upon the end of the case consideration the secretary shall file all the documents, attached to it, the witnesses' written undertaking, the record of the court session, the decisions and determinations, passed by the court: number the case pages and make a list of materials. In the presence of an order on immediate execution of the decision or its part the secretary shall write the acts of execution, make a note on their drawing up and refer them for execution via the court office. Then the secretary shall hand the case over to the civil court clerk and make him (her) sign for it in the journal of the court sessions.

THE FUNCTIONS OF THE CIVIL COURT CLERK

1. A civil case initiation and a registration-statistical form filling in.

All civil cases, action materials and applications shall be registered in the registration-statistical forms and in the alphabetical index. Before the above-mentioned procedure undergoing all civil cases shall be registered in the journal of incoming mail within 3 days from their coming to the court. Not later than on the next day the civil cases together with the mail journal shall be brought to the Chairman of the court for their distribution between the judges depending on the category of cases, usually considered by each specific judge, and the level of their workload.

After such distribution the civil cases get back to the court office again to enter the mail journals of the judges. This procedure shall be carried out in accordance with the Chairman's resolution on the application (claim, request). Such civil cases shall be handed to the judges to perform a pretrial preparation for the case consideration, pass a determination on the civil case initiation and calling on.

Upon passing the above-mentioned determination the civil case shall be got by the civil court clerk.

A civil case initiation consists in the process, in the course of which the civil court clerk shall confer a definite number on each civil case, the initial figure of the number to be 2 (as it is the code of all civil cases), then after a hyphen the ordinal number of the specific civil case shall be written. The numbers of the cases grow depending on the date of their getting to the civil court clerk. The ordinal number of the case shall correspond to the number of the registration-statistical form of the present case, which shall reflect the following information: the date of the case registration, information about the plaintiff, the essence and the value of action, the case movements in the courts of original and appellate jurisdiction (the reasons of the case suspension, examinations of experts, etc) and the taken decisions. The contents of the registration-statistical form shall correspond to the requirements of the form No 6. The form shall be stored in the court office for the concerned persons could be informed of the case movements. The forms shall be placed in the card index in the order of their numbers growing.

On the expiry of the calendar year the registration-statistical forms for the cases, which haven't been considered by the beginning of the new year, shall be transferred to the card index of the new year. In such situation two ordinal numbers shall be indicated on each registration-statistical form – the number of the previous year and the number of the new one (for example: The case No 2-500.98, the new number is 2-15.99).

Numeration of cases, coming in the new year shall follow the numbers, given to those ones, which are the rest of the previous year. Instead of the removed forms, the forms-substitutes with the ordinal number of the previous year and the new number indication shall be put into the card index of the previous year.

The civil court clerk shall put the civil case into the alphabetic index (a special journal) by the defendant's name; here also the plaintiff's name, the essence of the action, the case number (which shall correspond to the number of the registration-statistical form) and the name of the judge, responsible for the present civil case proceedings, shall be indicated.

The process of a civil case initiation includes drawing up its materials in the form of a book: i.e. the civil court clerk shall make a cover for the presented materials; the title page of the cover shall be drawn up in a due order: in the right

upper part of the page the name of the judge, responsible for the case, shall be indicated; in the middle of the page the name of the civil case and its number shall be put, below there shall be written the name of the plaintiff, the name of the defendant and the essence of the action. At the bottom of the page, on its right side the date of the case registration in the court and the date of the first calling on the case shall be indicated.

The date of the case coming to the court, indicated on its cover, in the registration-statistical form or the registration journal shall reflect the actual time of the case coming to the court.

For the cases and claims, which come to the court by mail, this date shall be indicated in accordance with a mark, made by the court office on the day of the claim's registration; for the cases and claims taken at a private reception, the date of coming shall be indicated in accordance with a mark made by the judge while taking the claim from its initiator.

2. The first calling on a civil case.

In order to call on a civil case the civil court clerk shall fulfill the judge's instructions from the determination on the civil case initiation and calling: he (she) shall send the statements of claim copies to the persons, indicated in the determination; write subpoenas for the persons, due to be subpoenaed. A special mark on the performed operations shall be made by the civil court clerk on the internal side of the back page of the case cover, in the special inquiry list (form No 19).

3. The civil case registration after its moving for the new trial.

The civil cases, moved for the new trial upon repeal of decisions, determinations, resolutions shall be registered in the registration-statistical forms in the same way as the new ones do, and get a new ordinal number. A note with a reference to the previous number shall be made in the form.

In the alphabetical index the repeatedly coming cases shall be registered separately, by with a note on their repeated coming.

4. The functions of the civil court clerk in the course of the case proceedings.

After all above-mentioned operations performance the civil case shall be handed to the Chairman of the court office for making a mark in the journal of incoming mail, and further - to the secretaries of the court session for distribution into the judge's safe between the appropriate dates.

In the course of the case proceedings the functions of the civil court clerk shall be restricted to making marks in the registration-statistical forms on the case postponements and suspension of its proceedings.

Upon the decision passing on a civil case (a decision, a judgement by default, a court order, a determination on the case dismissal, a determination on agreement of lawsuit, a determination on leaving the case unsettled) the civil cases, drawn up in a due order shall be returned to the civil court clerk. The latter shall make a note of this fact in the journal of court sessions, indicate the date of the case return to the court office and put his (her) signature.

5. The civil case execution

Then the stage of the case execution follows. The decisions on the civil cases shall be referred to execution according to a common rule, upon the expiry of the term, fixed for the appeals against the decision (court order, etc) and if the participants of the civil proceedings haven't forwarded any appeals or protests against the decision in the cassation order. For decisions the term of appeals and protests shall not exceed 10 days, for court orders – for the debtors – 20 days. Some decisions on the civil cases are subject to immediate execution, a special mark on it shall be made in the decision. The following types of decisions are to be immediately executed: on alimonies, on the salaries' recovery, on restoration of one's position and some other.

Within the term, fixed for appeals against the civil case decision, the case shall not be obtained on demand or sent from the court.

In the course of the civil case execution the civil court clerk shall write the acts of execution: send the copies of the decisions with the cover letters to the appropriate organizations, offices, enterprises; make extracts from the decision for the litigants. All his (her) operations, relating to the decision execution, shall be indicated by the civil court clerk in the inquiry list for the case, in the registration-statistical form and in the registration journal.

The decisions, determinations, resolutions of the civil court, which have come into force, shall be referred to execution by mean of handing over an appropriate act of execution to the recovering person or to the bailiff-executor at the place of execution.

The copies of the decisions, referred to execution and the acts of execution, issued by the court, shall be certified by the judge presiding in this case, and shall be accurate and literate. Blots and corrections in the act of execution are not permissible. The acts of execution shall be written by the civil court clerk and those, which are subject to immediate execution – by the secretary of the court session.

For the cases, which involve the debtor's search, the exact date and place of his (her) birth shall be indicated; for the cases on alimonies – the child's name and the date of birth.

In relation to the recovering persons and the debtors – juridical persons, the known address of the juridical person's body, the name of the banking institutions – its money keepers and the numbers of their accounts shall be indicated. In the acts of execution, relating to asking for damages, some additional data on the socially dangerous activity of the debtor and the methods of compulsory execution shall be indicated.

If execution is going to be performed in different places or the decision was taken in favor of several plaintiffs or against several defendants, then several acts of execution shall be written with exact indication of the place of execution for the part of the decision, which is subject to execution according to this very act. In the presence of joint responsibility of debtors the acts of execution shall be written according to the number of debtors.

Depending upon the place of execution, the acts of execution shall be sent to the appropriate subdivisions of the bailiffs' service at the debtor's place of residence or work (for the juridical persons – at the place of their body or property location). If the exact name or address of the bailiffs' subdivision is not known, then sending the act of execution to a body of justice of the appropriate state, area, region, city, autonomous region or area is also permissible.

The correctness of the case drawing up by the civil court clerk for sending it to a cassation institution shall be checked by the judge, under whose supervision the present case has been considered.

The date of the case sending to a cassation institution and the date of its getting back to the court, the results of the cassation consideration shall be indicated in the registration-statistical form.

In the presence of some drawbacks' disclosure in the course of a cassation claim or a protest registration the civil court clerk shall send a letter with indication of drawbacks, due to be eliminated and the term for their elimination to the claim initiator. If the drawbacks haven't been eliminated within the indicated term, those claims or protests shall be considered invalid and returned to their initiators with a cover letter, signed by the judge.

The cassation claims and protests, relating to the criminal cases with expired date, shall be returned to their initiators.

THE FUNCTIONS OF THE COURT SESSION SECRETARY
2. IN THE COURSE OF CIVIL PROCEEDINGS

2.1. The daily, common, organizational actions of the court session secretary throughout the working hours:

2.1.1. The same as the actions of the court session secretary in the course of criminal proceedings, described in the point 1.

2.1.2. At the stage of pre-trial preparation undergoing by the case the court session secretary shall write subpoenas for the litigants

Upon the judge's instruction he (she) shall inquire after the necessary documents on the essence of the case and perform other actions, indicated by the judge in determination on the pre-trial preparation of the case;

Upon the determination on the case sanction passing by the judge the secretary shall bring the case to the civil court clerk of the court office for giving it a number, entering it to the database and form. for shaping the selected documents into a civil case (in the cover) and the first calling on it.

2.1.3. After the case getting back from the court office the court session secretary shall distribute it to the judge's safe, upon a definite date.

2.1.4. On the day of the case consideration on its merits, it shall be entered by the court session secretary together with the other cases into the journal of sessions of a definite judge, with indication of the time of consideration, the number of the case, the names of the litigants, and the essence of the actions. Upon the end of the case consideration on its merits the court session secretary shall also write in the journal the results of the present case consideration: whether it has been postponed and to what date, the reasons of the case postponement; whether the action demands have been completely or partially satisfied; or if the action has been rejected (completely or partially). The court session secretary shall also fill in the column of the journal, where the fact of the case transfer from the judge to the secretary is to be fixed after the decision has been passed. Upon the final decision passing the court session secretary shall hand the case over to the civil court clerk of the court office, make him (her) sign for it and put the date of the transfer.

2.1.5. The duties of the court session secretary for a civil case consideration are the same as those of the court session secretary in the course of criminal proceedings, described in the points 3 and 4.

2.1.6. Drawing up the record of the court session.

2.2. The actions of the court session secretary in the course of the case consideration on its merits.

2.2.1. In the course of the case hearings the court session secretary shall draw up the record of the court session, which shall include the precise statement of the court's actions and decisions, passed in the course of the case hearings; draw up written undertakings on the responsibility for rejection to testify or the deliberately false testimony.

In the record of the court session the following things shall be reflected: the year, the month, the day and the place of the court session; the time of the beginning and the end of the court session; the name of the court, considering the case; the composition of the court; the names of the secretary, prosecutor (if for the case consideration the prosecutor's presence is required), defender (if he (she) is allowed

to take part in the case proceedings): the name of the case: the information on the presence of the persons, taking part in the case proceedings, representatives, experts, witnesses, translators: the fact of the court session opening by the Chairman; the subject of consideration: the fact of the witnesses' removal from the courtroom: the fact of finding out the identities of the litigants and the other concerned persons (the full name, the date of birth, the place of work and the position, the places of official and actual residence); the fact of the court composition and the names of the prosecutor, defender and secretary announcing; the fact of explaining the right of challenge: whether there have been any challenges (if they have, then the court's actions for their settlement): the information about explaining the litigants and their representatives their procedural rights and obligations: whether they are clear to the litigants and their representatives and if there are any motions (in the presence of motions – the method, the order and the result of their settlement shall be indicated); the Chairman's orders and the determinations, passed by the court without leaving to the consultative room: the applications from the litigants and their representatives; the explanations of the litigants and their representatives; the information about the witnesses' identity (the full name, the date of birth, the place of work and the position, the place of official and actual residence): information on the witnesses' notifying of the responsibility for refusal to testify or for the deliberately false testimony according to the Article 307-308 of the Criminal Code of the RF and the appropriate written undertaking signing: the witnesses' testimony: the experts' oral explanations of their conclusions: the results of the oral and written evidence' examination (the evidence, surveyed by the court and the results of survey and the evidence made public by the court); the litigants' additional comments: the resolutions of the governmental bodies, public organizations and labor groups: the contents of pleadings and the prosecutor's resolution: information about the determinations and decision announcement; information about explanations on the contents of the decision, the order and the terms of appeal against it.

Upon the Chairman's order the court session secretary shall include into the record the circumstances, important for the litigant and their representatives, if they have initiated an appropriate motion.

The court session secretary shall draw up the record of the court session at the session itself, put his (her) signature under it and bring it to the judge for signing not later than on the next day after the court session or a separate procedural operation. All alterations, corrections and supplements to the record shall be discussed in a due order.

2.3. The actions of the court session secretary under the sanctioned case postponement, suspension.

2.3.1. If a civil case has been postponed, the court session secretary shall draw up a record on the case postponement, the front page of it to be the same as of the court session record up to the moment of the litigants' identities finding out. Then the secretary shall indicate in the record the reasons, due to which the case consideration at present moment is impossible (the subpoenaed persons' failure to come, powers of attorney absence, upon the litigants' request, etc), and the determinations, passed by the court without leaving to the consultative room or information about the court's leaving to the consultative room and the determination passing. Upon the case postponement the court session secretary shall perform all necessary actions for the new calling on it: make the inquiries, when necessary; send the determinations or the

case itself for an experts' examination performance. While determining the date of the new court session the secretary shall write the subpoenas for the persons, due to be subpoenaed, and to the prosecutor, if necessary; file the copies of the sent documents and inquiries; make notes about the subpoenaed persons. Then the case shall be distributed to the judge's safe upon the appropriate dates.

2.3.2. The case may be postponed even after the litigants' identities finding out upon the initiated motion. In such situation the record shall be drawn up according to a common rule, used for the case consideration, but it shall be finished upon the determination on the case postponement passing by the court.

2.3.3. The civil case proceedings may be suspended, in this situation the appropriate record of the court session shall be drawn up (it shall meet the common requirements), the case shall be filed and distributed to the judge's safe in the capacity of a suspended one.

2.4. The actions of the court session secretary in the course the civil cases drawing up after their consideration.

2.4.1. Upon the end of the case consideration the secretary shall file all the documents, attached to it, the witnesses' written undertaking, the record of the court session, the decisions and determinations, passed by the court; number the case pages and make a list of materials. In the presence of an order on immediate execution of the decision or its part the secretary shall write the acts of execution, make a note on their drawing up and refer them for execution via the court office. Then the secretary shall hand the case over to the civil court clerk and make him (her) sign for it in the journal of the court sessions.

THE RULES OF COURT SESSIONS ON CRIMINAL CASES

1. THE PREPARATORY PART OF A COURT SESSION

A court session's opening consists in the following: the Chairman declares that the session of the court (the full name of the court to be declared) is open. Then he states the case, which is going to be considered, the name of the defendant and the law, under which the defendant is a subject to criminal proceedings.

Checking of presence and failure to appear in court shall be performed by the session secretary prior to its opening on the basis of the list of accusatory conclusion. The secretary's report shall be heard after the session has been open. As soon as the secretary finishes, judges and the other participants of the trial may ask the secretary some verifying questions, provided the Chairman permits; and the court may take measures for finding out the reasons of some persons' failure to come. (The Article 268 of the Criminal Code of the RF).

The translator starts performing his duties just after the court session has been opened, that is why he is the first who gets explanations on his duties. He shall be notified of the responsibility for evasion of his duties performance and for the deliberately incorrect translation, a special mark on this to be made in the record of the session. Upon the request of the participants of the trial court examination, who are empowered to express their opinion on the possibility of proceedings in the absence of the persons, who failed to come, the translation of the secretary's report on presence and reasons of some persons absence shall be made, in spite of the fact that this report had already been heard before the translator got the explanations on his duties. (The Article 269 of the Criminal Code of the RF).

The witnesses shall leave the court room just after the court session has been open in order to avoid consideration of motions on additional evidence obtaining, an additional investigation mounting, or on challenges in the witnesses' presence. The Chairman shall give the witnesses the instructions to leave. The Chairman shall also take measures to avoid the possibility of communication between the witnesses, who has been questioned, and those, which hasn't. The witnesses, who are at the same time the victims or the legal representatives, shall not leave the courtroom. (The Article 270 of the Criminal Code of the RF).

The question of the public prosecutor and the public defender admittance shall be solved upon the court determination.

The Chairman shall ascertain the defendant's identity by mean of finding out his full name, the place and the date of his birth, his address, occupation, education and marital status. Then the Chairman shall ask the defendant whether he (she) has got the copy of the accusatory conclusion and when did he get it. If, while considering the matter of a court session setting, the accusation or the preventive punishment or the list of persons to be subpoenaed change, the defendant shall get the judge's resolution also.

For the cases stipulated in the Articles 115, 116, 119 and 130 (part 1) of the Criminal Code of the RF, provided additional investigation was not pursued on them, the defendant shall be handed the copy of the victim's application.

While checking the copies' handing it is necessary to keep in mind the following:

- If the defendant doesn't know the language of the legal procedure, the copies shall be translated into his native language or some other language, he knows quite well.

- The copies shall be handed to each defendant separately.

- Only the full versions of copies, not only the extracts from the documents, shall be handed.

- The case consideration at a court session shall not begin earlier, than three days after those documents have been handed to the defendant. The day, the copies were handed and the day of the session shall not be taken into account; if the last day of the copies handing comes to a weekend, it also shall not be taken into account.

Those rules violation shall entail the case hearings putting off until the above-mentioned documents handing in a due order and look. (The Article 271 of the Criminal Code of the RF).

The Chairman shall declare the composition of the court, report who is the defendant and who is the prosecutor, secretary, expert, specialist and translator; give the defendant and the other participants of the proceedings proper explanations on their right to challenge the composition of the court or a judge, prosecutor, secretary, expert, specialist or translator.

If a reserve juror takes part in the court session, the Chairman shall inform everybody of this fact. The reserve juror also may be challenged.

A judge is not empowered to take part in the case consideration in the following situations:

1. He is the victim, the public plaintiff, the witness, or he (she) took part in this case in the capacity of the expert, specialist, translator, inquiry holder, investigator, prosecutor, defendant, the legal representative of the defendant, the victim's representative, the representative of the public plaintiff or the public defendant.

2. He is a relative of the victim, of the public plaintiff, of the public defendant or their representatives, a relative of the defendant or his (her) legal representative, a relative of the prosecutor, the defender, the inquiry holder or the investigator.

3. There are some other circumstances which give grounds to think that the judge personally, directly or indirectly is concerned with the present case.

The persons being related to each other are not empowered to enter the composition of the court.

4. The judge, checking the legality and the validity of the arrest or the term of being under arrest extension, shall not take part in the same case consideration in the court of primary or appellate jurisdiction or in the order of supervision, but he is empowered to consider the repeated claim in the order, stipulated by the Article 220-2 of the Criminal Code of the RF.

In the presence of the above-mentioned circumstances the judge shall challenge himself. On the same grounds he (she) may be challenged by the prosecutor, defender, defendant, and also by the victim and his (her) representative, the public plaintiff, the public defendant and their representatives.

The challenge shall be motivated and made prior to the beginning of the judicial investigation. The later challenge is acceptable only if the challenging person got informed of the reasons for it after the judicial investigation had begun.

The challenge to a judge shall be resolved by the other judges in the absence of the challenged one, who at the same time is empowered to give the other judges the explanations on his challenge beforehand. If the votes are equally divided the judge is considered to be challenged. In the situation, when two judges or the whole composition of the court are challenged, the challenge shall be resolved by the court with its full complement by a simple majority of votes. The question of challenge shall be solved by the court in the consultative room. The challenge to the judge, considering the case on the individual basis, shall be solved by the same judge.

The opinions of the other participants of the proceedings and the prosecutor's resolution on the matter of challenge may also be heard.

The court's or the judge's decision on the challenge shall be motivated and made public at a court session. The decision on rejection of a challenge may be appealed by the participants of the judicial proceedings together with the verdict (determination, resolution).

The question of challenge to the prosecutor or the session secretary on above reasons shall be solved by the court, considering the case.

The problem of challenge to the translator, besides on the above-mentioned reasons, can arise due to his incompetence, for example: bad knowledge of dialect used by the participants of the proceedings, bad knowledge of the proceedings language, or simultaneous presence of the different drawbacks. The question of challenge to the translator shall be solved by the court, considering the case.

The expert is not empowered to take part in the judicial proceedings in the presence of the above-mentioned circumstances (his previous participation in the case shall not be a reason for challenge) and also in the following situations:

1. He (she) has been or goes on to be in the state of official or other dependence on the defendant, the victim, the public plaintiff or the public defendant.

2. He (she) made an inspection on the present case, and its materials served as a ground for the criminal proceedings start.

3. He (she) took part in the case in the capacity of a specialist with an exception for a doctor's participation – the participation of a specialist in the sphere of medicine for the external examination of a dead body.

4. His (her) incompetence has been discovered.

The question of challenge to the expert, taking part in a court session, shall be solved by the court, considering the case.

The grounds for the specialists challenging are the same as for the experts.

The defender, a representative of a public organization, shall not be empowered to take part in the case in the capacity of the defender or the representative of the victim, the public plaintiff or the defendant, if he (she) has rendered juridical assistance on this case to a person whose interests are contrary to those of the person, who applied to him with a request to carry on this lawsuit: or if he (she) previously took part in the proceedings in the capacity of a judge, prosecutor, investigator, inquiry holder, expert, specialist, translator or witness and also if blood relationship connects him to the officer, taking part in the investigation of consideration of the present case.

While solving the question of a defender's challenge, the court shall hear the opinions of the participants of the lawsuit on this matter. The question of a defender's challenge shall be solved just after its entering and drawn up by mean of a determination pronouncement. If a judge is considering the case on an individual basis – a resolution shall be passed. (the Article 272 of the Criminal Code of the RF).

The Chairman shall give the defendant proper explanations on his rights in the judicial proceedings, namely:

- the right to know what he(she) is accused of and to give his explanations on it;

- the right to present evidence;

- the right to make motions or challenges;

- the right to have a defender from the moment of accusation or from the moment of the record of the detention or the resolution on the other preventive punishment announcement:
- the right to take part in the court session:
- the right to make claims on the court decisions:
- the right to defend his (her) rights and interests by all other means and methods, which are not contrary to the law:
- the right of the last word (the Article 273 of the Criminal Code of the RF).

The Chairman shall give the victim, the public plaintiff, the public defendant and their representatives proper explanations on their rights in the judicial proceedings.

The victim is empowered to right to:

- present evidence, make motions, get acquainted with the case materials from the moment the preliminary investigation ends: take part in the judicial proceedings, make challenges, claims on the court's actions and also on the verdict and determination of the court or on the resolution of the judge.

In the cases of personal accusation (the Articles 115, 116, 129 part 1, 130 of the Criminal Code of the RF) the victim is empowered to suggest, directly or via his (her) representative, reconciliation with the defendant. But reconciliation is acceptable only prior to the court's leaving to the consultative room.

In the cases, where the victim's death is the consequence the above-mentioned right gets over to the victim's relatives.

The public plaintiff and his (her) representative are empowered to:

- present evidence; make motions; take part in the judicial proceedings; ask the court for taking measures, providing their action's security; support the civil action; get acquainted with the case materials from the moment the preliminary investigation ends; make challenges, claims on the court's acts and also the claims on the verdict and determination of the court in the sphere, relating to the civil action; he (she) is also obliged to present upon the court's request all the documents at his (her) disposal, relating to the present action.

The public defendant and his (her) representative are empowered to:

- raise objections to the presented action; give explanations on the essence of the presented action; present evidence; make motions; get acquainted with the materials of the case in the sphere, relating to the civil action, from the moment of the preliminary investigation; take part in the judicial proceedings; make challenges and claims on the court's acts; and bring the claims on the verdict and determination of the court in the sphere, relating to the civil action.

The Chairman shall give the expert proper explanations on his rights and obligations and notify him (her) about the responsibility for making a deliberately false conclusion and for rejection to make it (the Articles 307-308 of the Criminal Code of the RF).

The expert is obliged to appear in court upon getting a subpoena and give an impartial conclusion on the question, his (her) attention will be brought to.

The obligation to reject making conclusion on the matter, going out of the special knowledge of the expert, relates to the situations, when the expert's attention

is brought to the questions of the sphere of knowledge he is not competent in, for example – the sphere of law; or when some materials, necessary for making a conclusion are missing. The expert shall notify the court in the written form about the possibility to make a conclusion.

The expert is empowered to:

- get acquainted with the materials of the case, relating to the object of the expertise: (The expert's rights do not apply to the object of investigation, and the information about its disclosure, withdrawal, storage etc: the information about the conditions and the mechanism of some specific process proceeding, some acts fulfillment or some definite tracks origin. The expert's getting acquainted with the case materials out of those limits can entail doubts in the impartial nature of the conclusion.)

- make motions on providing him with some additional materials, necessary for making a conclusion:

- take part upon the court's permission in the judicial acts performance and ask the defendants some questions, relating to the object of the expertise. (the Article 275 of the Criminal Code of the RF).

Making and solving motions. The motions may be made either in oral or in written form, they must be motivated. The question: "are there any motions?" shall be asked each of the participants of the judicial proceedings separately.

Upon having heard the opinions of the other participants of the judicial proceedings, the court shall discuss each motion and satisfy it, if the circumstances to be found out are important for the case: or pass a motivated determination on the motion's deny.

The court is empowered, irrespective of a motion's existence, pass a determination on the new witnesses subpoena, a new expertise setting, the other documents and evidence obtaining.

The determination on referring the case to additional investigation: starting proceedings on a new accusation or in relation to a new person: on the case cessation: on selection, change or cancellation of the preventive punishment: on challenges: on an expertise setting and personal determinations shall be passed by the court in the consultative room and drawn up as the separate documents, signed by the whole composition of the court.

All other determinations may, at the court's discretion, be passed in the above-mentioned order or after the judges' discussion just on the spot, the passed determination to be entered into the record of the court session (the Article 276 of the Criminal Code of the RF).

If some of the participants of the judicial proceedings fails to appear at the session, the court shall hear the opinions of the other participants of the lawsuit, the prosecutor's conclusion and passes a determination on the proceedings continuance or its postponement.

The possibility of making public the testimony of a participant of the lawsuit, who is not able to appear in court in the nearest future for valid reasons (a serious disease, a long business trip etc) shall be discussed (the Article 277 of the Criminal Code of the RF).

II. JUDICIAL INVESTIGATION

The beginning of a judicial investigation.

A judicial investigation shall begin with the accusatory conclusion making public. If the accusation has been changed by the judge, while solving the question of a court session setting, the judge's resolution shall also be declared.

If the preliminary investigation or inquiry on the case hasn't been held, the judicial investigation shall begin with the announcement of the victim's application.

The Chairman shall ask each defendant, if the accusation is clear for them, sometimes explains the essence of the accusation to the defendant and asks him (her), if he (she) pleads guilty. In accordance with the defendant's desire the Chairman gives him (her) a chance to motivate his (her) answer (the Article 278 of the CC of the RF).

Fixing the order of the evidence investigation.

The law doesn't strictly regulate the order of the evidence investigation, leaving it at the court's discretion. It depends upon the specific circumstances of the case, the position of the defendant and the victim, the quantity of the criminal activity episodes, the quantity of witnesses etc. Choosing the correct in the tactic sense order of investigation helps the courts to arrive at the truth.

Upon having heard the opinions of the participants of the lawsuit in the order of the evidence investigation, the court shall pass a determination, conferring on the spot. The participants of the judicial investigation are empowered to motivate their opinion (the Article 279 of the CC of the RF).

The defendant's questioning.

Offering the defendant to testify, the court shall at the same time give him the explanations on the Article 51 of the Constitution of the RF, according to which nobody is obliged to testify against himself, his (her) wife (husband) or close relatives.

The defendant's questioning consists in two parts: the free narration of the defendant and asking him in the following order – by the judges, prosecutors, victims, public plaintiffs, public defendants and their representatives, defenders and the other defendants and their defenders.

The Chairman is empowered to reject some questions. The leading questions and the questions having nothing to do with the present case are subject to rejection. Rejection of the questions on the other matters is not permitted. The judge is empowered to ask the defendant questions at any moment of the judicial investigation.

In the exceptional cases, in the interests of the truth finding out, the court has a right to pass a determination (resolution) on the defendants' questioning in the absence of each other. It relates to the situations, when the other defendants' presence can influence the questioned one's testimony; or when it is necessary to perform a detailed questioning of the defendants on some specific circumstances of the case, in the presence of the facts, showing that the defendants made attempts to arrange about giving some definite testimony; or when they suggest some new versions on the circumstances of the crime.

While questioning the defendant in the absence of the other one, the Chairman, upon the removed defendant's getting back to the courtroom, shall inform

A judicial investigation shall begin with the accusatory conclusion making public. If the accusation has been changed by the judge, while solving the question of a court session setting, the judge's resolution shall also be declared.

If the preliminary investigation or inquiry on the case hasn't been held, the judicial investigation shall begin with the announcement of the victim's application.

The Chairman shall ask each defendant, if the accusation is clear for them, sometimes explains the essence of the accusation to the defendant and asks him (her), if he (she) pleads guilty. In accordance with the defendant's desire the Chairman gives him (her) a chance to motivate his (her) answer (the Article 278 of the CC of the RF).

Fixing the order of the evidence investigation.

The law doesn't strictly regulate the order of the evidence investigation, leaving it at the court's discretion. It depends upon the specific circumstances of the case, the position of the defendant and the victim, the quantity of the criminal activity episodes, the quantity of witnesses etc. Choosing the correct in the tactic sense order of investigation helps the courts to arrive at the truth.

Upon having heard the opinions of the participants of the lawsuit in the order of the evidence investigation, the court shall pass a determination, conferring on the spot. The participants of the judicial investigation are empowered to motivate their opinion (the Article 279 of the CC of the RF).

The defendant's questioning.

Offering the defendant to testify, the court shall at the same time give him the explanations on the Article 51 of the Constitution of the RF, according to which nobody is obliged to testify against himself, his (her) wife (husband) or close relatives.

The defendant's questioning consists in two parts: the free narration of the defendant and asking him in the following order – by the judges, prosecutors, victims, public plaintiffs, public defendants and their representatives, defenders and the other defendants and their defenders.

The Chairman is empowered to reject some questions. The leading questions and the questions having nothing to do with the present case are subject to rejection. Rejection of the questions on the other matters is not permitted. The judge is empowered to ask the defendant questions at any moment of the judicial investigation.

In the exceptional cases, in the interests of the truth finding out, the court has a right to pass a determination (resolution) on the defendants' questioning in the absence of each other. It relates to the situations, when the other defendants' presence can influence the questioned one's testimony; or when it is necessary to perform a detailed questioning of the defendants on some specific circumstances of the case, in the presence of the facts, showing that the defendants made attempts to arrange about giving some definite testimony; or when they suggest some new versions on the circumstances of the crime.

While questioning the defendant in the absence of the other one, the Chairman, upon the removed defendant's getting back to the courtroom, shall inform

him of the contents of the testimony, given in his absence and offer him to ask his own questions (the Article 280 of the CC of the RF).

The testimony reading out.

Reading out the testimony of the defendant, given by him (her) in the course of the inquiry or the preliminary investigation, and also the reproduction of the sound record of his testimony, attached to the total record of testimony, may take place in the following situations:

1. in the presence of essential contradictions between those testimonies and the testimonies, given in the courtroom;
2. if the defendant refuses to give testimony in the courtroom;
3. when the case is considered in the defendant's absence;

This rule also applies to the situations, when the defendant's testimonies, given in the courtroom are to be read out.

The reproduction of a sound record of the defendant's testimony is forbidden without preliminary reading out the testimony, fixed in the appropriate record of testimony or in the record of the court session. A special mark on the reproduction of a sound record of testimony shall be made in the record of the court session.

The witnesses' questioning.

Prior to a witness's questioning the Chairman shall ascertain his (her) identity, explain to him (her) his (her) civil duty and obligation to say earnestly all, that he (she) knows about this case and notify him (her) about the responsibility for refusal to give testimony or for the deliberately false one.

The Chairman shall make sure of the witness's identity by mean of getting acquainted with the documents, proving his (her) identity or by mean of asking him (her) control questions. Questioning the participants of the judicial investigation on the point of the witness's identity is also possible. a special mark in the record of the court session to be made about it.

The witness shall sign a statement, where it is written that he (she) has heard the explanations on his duties and obligations. The statements shall be attached to the record of the court session.

If the witness is, for example, blind or ignorant, what makes signing the statement impossible, then the secretary of the court session shall mark the reason of the signature absence in the record of the court session and in the appropriate line of the form for the witnesses' signatures.

The witnesses shall be questioned separately and in the absence of those who hasn't been questioned yet.

The Chairman shall find out the witness's attitude towards the defendant and the victim and offers him (her) to say everything he (she) knows about this case. After that the witness shall be questioned by the judges, the prosecutors, the victim, the public plaintiff, the public defendant and their representatives, the defenders and the defendants.

If a witness is subpoenaed upon the motion of the one of the judicial investigation participants, this participant shall be the first to question the witness. The Chairman shall reject the questions, having nothing to do with the present case.

The judges are empowered to ask the witnesses questions at any moment of the judicial investigation.

The witnesses, who has been questioned shall stay in the courtroom and shall not leave it before the judicial investigation ends without the court's permission.

The Chairman may permit the witnesses, who has already been questioned, to leave the courtroom before the investigation comes to its end only upon hearing the opinions of the prosecutor, the defendant, the defender, and also of the victim, the public plaintiff, the public defendant and their representatives.

THE FUNCTIONS OF THE CRIMINAL COURT CLERK

1. The criminal cases registration and filling in the registration-statistical form.

All criminal cases coming up before the court shall be registered in the registration-statistical forms and the alphabetical index.

The registration shall be made with on the date of their coming to the court.

Not later than on the next day the criminal cases shall be received by the Chairman of the court together with the mail journal for further distribution between the judges, depending on the degree of the workload.

After such distribution the criminal cases shall again come to the court office for entering the mail journals of the judges. It shall be performed in accordance with the resolution of the Chairman on the front page of the criminal case. Then such cases shall be received by the judges for each case examination, checking the possibility to start proceedings on a case and pass the resolution on the case calling.

Upon passing the above-mentioned determination the criminal case comes to the court office, to the criminal court clerk.

Initiation of a criminal cases consists in the process, in the course of which the criminal court clerk confers each case a definite number, the initial figure shall be 1, as it is the code of all criminal cases; then after a hyphen the ordinal number of the specific criminal case shall be written. The case number grows depending on the date of its coming to the criminal court clerk. The ordinal number of the case shall correspond to the number of the registration-statistical form on this case, in which there shall be reflected the date of the case coming to the court, the information about the defendant, the accusation article, the information about the case' movement in the courts of original and appellate jurisdiction (about the reasons of the case' postponement, the expertise setting on the case and suspension of the case etc.) and about the decisions taken on the present case. The registration-statistical form contents is determined by the pattern of the form No 5. The form shall be kept in the court office for the concerned persons could be informed of the case movement. The forms are placed in the card index in the order of their numbers growing. So, the number of a criminal case shall include an appropriate index and an ordinal number by the registration-statistical form or the registration journal.

At the end of the calendar year the registration-statistical forms for the cases, which haven't been considered by the beginning of the new year shall be transferred to the card index of the new year. In such situation two numbers shall be indicated on the registration-statistical form and the case – the number of the previous year and the number of the new one. (For example: Case No 1-500.98, the new number 1-15.99).

The numeration of the cases, coming in the new year shall begin from the numbers, following those, the cases coming from the previous year. Instead of the withdrawn forms, the forms-substitutes with the previous year numbers and indication of the new ones shall be inserted into the card index.

For the criminal cases, into which several defendants are involved, the registration-statistical form shall be made in the appropriate quantity of copies with the ordinal number for each person.

In the card with the ordinal number 1 the data of all issues shall be entered, in the other ones – only the issue "B" "The information about the involved person" shall be filled in.

The criminal court clerk shall put the present case into the alphabetical index (a special register) by the name of the defendant; here also the accusation article, the number of the case (which shall correspond to the number of the registration-statistical form) and the name of the judge, responsible for the present case shall be indicated.

If several persons are accused of the crime, the alphabetical index shall be conducted for each involved person.

The proceedings on the representations and the motions, solved in the order of the sentences carrying out shall be registered in a special journal, including the sections, differing by the essence of those representations and motions. The section 1 reflects the representations, relating to the convicted persons, serving their sentences by mean of imprisonment (pre-term discharge, change of the order and the conditions of the punishment; the matters of application, prolongation and cessation of compulsory treatment of alcohol and drug addiction). The section 2 reflects the representations and the motions relating to the persons, put on probation. The section 3 reflects the representations and the motions, relating to the persons serving their sentences by mean of corrective work. The section 4 reflects the representations and the motions, relating to the persons, condemned to the other types of punishment (penalty, deprivation of the rights to take up some positions, to be engaged in some sorts of activity, confiscation of property). The section 5 reflects the representations and the motions of the other nature (the sentences' execution postponement due to a disease or the domestic reasons; setting a punishment for several not executed sentences; non-execution of a sentence, pre-term expunge of previous convictions; amnesty announcements; release from punishment or its mitigation in accordance with a new criminal law). Depending on the quantity of the coming materials, the quantity of sections in the journal may be changed, and some new journals may also be introduced. Thus, due to the great quantity of motions on revision of the court's decision, which came into force in accordance with the new Criminal Code of the RF adoption, the criminal court clerk made up a special journal for that category of materials. In this journal registration is made in the alphabetical order, and the additional alphabetical journal is not required. In this journal the following data is indicated: the number of the material; information about the accused person; the date of the sentence revision; the results of the sentence revision; the number of the criminal case, the sentence of which is going to be revised (if the case was considered in the court, which passed the sentence); the name of the judge, who is going to revise the sentence.

In the Moscow district court of Tver, besides the journal described above, the second journal or materials and motions is being filled in by the criminal court clerk. It consists of 15 sections:

- for the representations from the correction institutions on pre-term discharge by mean of the punishment replacement by a probation;
- for the representations from the imprisonment institutions on the point of conditional pre-term discharge;
- for the representations from the correction institutions on the replacement of the punishment, not connected with imprisonment (suspended sentencing, corrective work etc) by imprisonment;

- for the representations and the motions on release from the additionally set punishments:

- for the representations from the correction institutions on the punishment cancellation by mean of postponement of the real sentence serving or release from the further sentence serving.

- for the representations from the administration of educational institutions on the accused persons moving to the correction institutions for the further sentence serving due to coming of age:

- for the representations and the motions on discharge from the further sentence serving due to a disease.

- for the representations and the motions on the matters application. prolongation and cessation of compulsory treatment of alcohol and drug addiction:

- for the representations on expunge of the previous convictions:

- for the representations from the administration of the sentences serving institution on the accused persons moving to the colonies-settlements for the further sentence serving:

- for the representations on the replacement of the set punishment by imprisonment:

- for the motions from the medical institutions on psychiatric examinations of the accused persons:

- for the representation and the motions on amnesty announcement:

- for the representations from the correction institutions on entrusting the accused persons with some definite obligations.

The alphabetical index shall be common for all sections.

The date of a criminal case' coming up before the court, which is indicated on the front page of the case, in the registration-statistical form and in the registration journal, shall reflect the actual date of the case' coming up before the court.

While registering the criminal cases and the other materials the criminal court clerk shall use the rough list of indexes: 1 – the criminal cases; 4 – the materials on the representations and the motions in the order of the sentences execution; 7- the materials on the compulsory measures of medical nature application; 8 – the materials on sending the persons under age to the special educational institutions. The list of indexes may be changed or supplemented at the court's discretion, if the present legislation changes (for example: after the Criminal Code adoption a new category of materials came into existence – “on bringing the sentences to the correspondence with the Criminal Code of the Russian Federation).

For the criminal cases, coming from the bodies of preliminary investigation with an accusatory conclusion, the same cover may be used, provided it kept a proper quality. The criminal court clerk shall make the necessary marks on the cover, namely: the name of the court, the ordinal number of the case, the date of the proceeding on the case in this court start, etc. If the case gets a new cover, the old one must be kept.

On the covers of the cases, upon which the defendants are taken into custody, a special mark “taken into custody” shall be made by the criminal court clerk.

On the internal side of the back page of the criminal case cover the criminal court clerk shall place an “inquiry list”, where all the court's acts, relating to the present criminal case shall be entered.

2. The first calling on a criminal case

In order to call on a case the criminal court secretary shall fulfill the judge's instructions from the resolution on the first calling: he (she) shall subpoena the defendants for making them sign for the copies of the "accusatory conclusion" or register a letter: write "subpoenas" for the persons to be subpoenaed. A special mark shall be made by the criminal court secretary about all his (her) actions in the inquiry list on the back page of the case cover (form No 19).

3. The criminal case registration after its moving for the new trial

The criminal cases, moved for the new trial upon repeal of sentences, determinations, resolutions, and the criminal cases, repeatedly coming up before the court from the investigation institutions, shall be registered in the "registration-statistical" forms in the same way, as those, which come for the first time, and get a new ordinal number. A special note shall be made in the form with a reference to the number of the previous registration.

4. The functions of the criminal court clerk in the course of the case proceedings.

After all above-mentioned actions the criminal case shall be transferred to the Chairman of the court office for making a mark in the journal of incoming mail on the point of what judge this case was referred to: then – to the secretaries of the court session for distribution to the judge's safe according to the appropriate dates.

In the course of the case proceedings the functions of the criminal court clerk are limited by making marks in the registration-statistical forms on the point of the case postponement, its proceedings suspension.

After the final decision passing on the criminal case (the sentence, the determination on the case closing) the case, drawn up in a due order, shall be handed over to the criminal court clerk. Taking a case, the clerk shall make a mark in the court sessions journal, indicate the date of the case' coming to the court office and put his (her) signature).

5. The criminal case execution

The next stage is the stage of the case execution. The sentences, determinations and resolutions of the criminal court shall refer to execution after their coming into force, not later than in three days. The criminal court clerk shall conduct the correspondence, relating to the sentences, determinations and resolutions on criminal cases execution. He (she) shall also make special marks about all actions, relating to carrying out the sentence, determinations and resolutions execution in the inquiry list, registration-statistical forms and registration journals.

While carrying out execution of an accusatory sentence or a "not guilty" verdict, determination (resolution) on a criminal case cessation, a certificate on the results of the case consideration for each defendant shall be filled in and sent by the criminal court clerk to be body of internal affairs at the place of the criminal case registration.

Sometimes, for the cases with a big quantity of involved defendants and crimes, an appropriate body of internal affairs may get the copy of sentence or determination from the criminal court clerk.

Within the time limits, set for the appeals against the sentence, determination or resolution on the criminal case, the case shall not be obtained on demand or sent from the court.

Upon the sentence, which has got no appeals, coming into force for a person, condemned to imprisonment and staying under arrest, on the expiry of the appellation period the criminal court clerk shall send an "order on the sentence execution" signed by the judge (form No 47) to the Chairman of a detention institution.

In the presence of cassation claims or protests in relation to some accused persons in a group case the sentence for the whole group, provided it hasn't been repealed by a higher court, shall come into force and refer to execution by the criminal court clerk only upon the case consideration by a cassation institution.

While carrying out the sentence execution for a person, condemned to imprisonment, but not taken into custody, not later than within three days after getting the determination from the higher court on leaving the sentence unchanged (or on the expiry of the appellation period, if there haven't been any appeals against the sentence) the criminal court clerk shall send the order on the sentence execution (form 48) to the appropriate body of internal affairs at the place of the convicted person's residence. In the order on the sentence execution (2 copies of the sentence and the conviction certificate to be attached to it) the date of the sentence coming into force shall be indicated. The criminal court clerk shall sign this order and bring it to the judge for signing.

In order to carry out execution of a sentence, which has come into force, for a person, condemned to correction works, the criminal court clerk shall send two copies of the sentence to the correction institution of the internal affairs bodies together with the convicted person's written undertaking to appear in this institution.

If the court passes a resolution on the not served correction works' replacement by imprisonment, the criminal court clerk shall refer this resolution to execution in the order, established for execution of sentences for the persons condemned to imprisonment but not taken into custody. The copy of the resolution, even in the presence of a rejected representation, shall be sent by the criminal court clerk to correction institution.

If the defendant has been put on probation or condemned to correction works, the copy of the sentence (in order to control his behavior) shall be sent by the criminal court clerk to body of internal affairs at the place of his (her) residence, for the persons under age – to the special commissions for the persons under age also.

In all situations of the persons under age sentencing to the types of punishment, which are not connected with imprisonment, and application of compulsory measures of educational nature, the criminal court clerk shall send a copy of the sentence to the special commission for the persons under age at the place of the convicted person's residence. Together with the copy of the sentence a certificate-reference shall also be sent by the criminal court clerk.

While carrying out a sentence on deprivation of rights to be engaged in some certain sorts of activity the criminal court clerk shall send a copy of the sentence to the administration of an enterprise, office, organization at the place, the convicted person works; to the body of internal affairs at the place of the convicted person's residence; to the bodies of the State Automobile Inspection, if the convicted person has been deprived of the right to drive means of transport.

In the situations, when a penalty shall be paid in the capacity of an additional punishment – the criminal court clerk shall send an act of execution to the place, the

convicted persons' property is located, or to the institution of bailiffs at the place of the convicted person's residence or at the place of the sentence serving.

In relation to the sentences, which have come into force for the men liable for call up or for the men called up for military service, the criminal court clerk shall send a notice to the district (local) commissariats at the place of the convicted person's residence with the judge's and the clerk's signatures and the official stamp. (Form No 49)

In relation to the court resolutions on the matters of the sentences execution the criminal court clerks shall do the following:

- in the presence of an imprisonment delay the criminal court clerk shall send 2 copies of the resolution to the correction institution and the body of the internal affairs at the place of the convicted person's residence:

- in the presence of a pre-term discharge from imprisonment the criminal court clerk shall send a copy of the resolution to the correction institution for execution: if the pre-term discharge took place due to a psychiatric disease an additional copy shall be sent to an appropriate medical institution:

- if the terms of imprisonment have been changed, the criminal court clerk shall send 2 copies of resolution for execution to the corrective settlement, which passed the representation;

- for the other types of resolutions, passed in the order of a sentence execution, the criminal court clerk shall send a copy of resolution to the appropriate bodies, which the law entrust execution of such resolutions to.

- when proceedings on a criminal case are being ceased the criminal court clerk shall send a copy of resolution after its coming into force for execution of:

- an arrest – to a body of the internal affairs at the place of the delinquent's residence;

- correction works – the a correction institution at the place, the delinquent works;

- a penalty – to a territorial subdivision of the bailiffs' service.

Asking for damages under the sentence shall be carried out by the criminal court clerk not later than within three days after its coming into force, or getting back from a cassation institution. For that purpose the criminal court clerk shall write the acts of execution and send them to the appropriate territorial subdivisions of the bailiffs' service. A copy of the sentence, or an extract from it relating to the damages, shall be attached to the act of execution.

The criminal court clerk shall notify all concerned persons about the acts of execution sending.

The copies of the sentences, determinations and resolutions, referred to execution, and the acts of execution, issued by the court shall be certified by the signatures of the judge, the Chairman of the case and by the official stamp of the court. They shall be accurate and literate. Blots or corrections are inadmissible.

In the acts of execution, relating to asking for damages, some additional data on the socially dangerous activity of the debtor and the methods of compulsory execution shall be indicated.

If several persons are bearing responsibility for the damages, the acts of execution shall written for each debtor with indication of the total sum of damages and all persons responsible for it in each one.

The criminal court clerk shall indicate in an act of execution the method of its execution: by mean of addressing the debtor's property, by mean of deductions from his (her) salary of some other incomes of the debtor.

A claim or a protest shall include the date of their registration, which shall be put by the person, who receive it. Besides that, an appropriate number of copies shall be attached to them in order to hand them to each participant of the proceedings.

The criminal court clerk shall call on the appealed or protested in the cassation order cases on a regional day. Calling on the criminal cases shall be performed according to a schedule, in conformity with the cassation days and hours of the cases' consideration by the regional court. The criminal court clerk shall notify all concerned persons of a claim or a protest registration, and also of the date and the place of the case hearing in the regional court. All of them shall get the copies of a claim or a protest and also the copies of the documents attached to them.

The convicted persons, taken into custody, shall be notified of a claim of a protest registration, and also about the time of the case consideration via the Chairman of the appropriate detention institution.

All objections or explanations relating to the claim or protest shall be filed or sent within one day to a higher court to be attached to the case.

On the expiry of the term, fixed for the appeals against the sentence, resolution or determination (in the presence of claims relating to the record of a court session – after their consideration in a period fixed by the law) the case, including a claim or a protest, shall be sent to a higher court together with a cover letter signed by the judge.

Together with the criminal case the criminal court clerk shall send to the higher court the statistical cards for the defendant and all other persons, convicted or justified under this case, or in relation to whom the case has been ceased; and also for the persons of diminished responsibility.

The correctness of the case drawing up by the criminal court clerk for sending it to a cassation institution shall be checked by the judge, under whose supervision the present case has been considered.

The date of the case sending to a cassation institution and the date of its getting back to the court, the results of the cassation consideration shall be indicated in the registration-statistical form.

The copies of the court resolutions and the cover letters for the cases referred to a higher instance, shall be stored in the special file up to their coming back.

The cassation claims and protests, relating to the criminal cases with expired date, shall be returned to their initiators.