JUDICIAL MANAGEMENT COUNCIL

COMMITTEE ON TRIAL COURT
PERFORMANCE AND ACCOUNTABILITY

Case Management Workshop

Report, June 2001

DRAFT

This is a preliminary review of background and discussion. It does not include analysis and recommendations.

I. Background

A. Workshop

A workshop on the utilization of case management resources was conducted by the Committee on Trial Court Performance and Accountability on May 14 and 15, 2001. The purpose of this workshop was to gain broad input to help define and clarify the concept of case management in the trial courts and to develop recommendations regarding policies on the use of case management resources. This purpose is directed to the establishment of a comprehensive performance and accountability system in the Florida courts.

In addition, the 1998 Revision 7 to Article V of the Florida constitution requires that after July 1 of 2004 counties cannot be mandated to pay for court costs except for those identified by constitution or statute. Therefore, a number of resources currently funded by the counties will have to be transferred to the state by 2004 or discontinued. Case management has been identified by the Trial Court Budget Commission as among those elements that are "reasonably necessary" for the courts to operate, and will be recommended for state funding. The scope and purposes of case management varies across courts and divisions. The clarification of the role and scope of case management would therefore provide a backdrop for the incorporation of case management into the post-revision 7 state budget. Furthermore, articulation of the manner in which various resources – human, technological, and policy – are integrated in case management would provide a foundation for planning and budgeting policies.

B. Workshop Charge

To provide a sound analytical foundation for developing policies and budgets for effective case management, several fundamental questions must be addressed. Put simply, these questions are:

- What is case management?
- How is case management provided?
- How does it benefit the court and litigants?
- Where in the court process does case management take place?
- Who performs case management activities for courts?
- What prevents case management from being done?
- What are some of the different systems to do case management?
- In what areas of the court is case management more critical?

To address these questions, participants in the Case Management Workshop were lead through a series of exercises and discussions designed to generate the following information:

- The identification of what the term "case management" currently means in Florida's trial courts;

- The identification of court events in each court division where case management can facilitate judges and improve the effective and efficient processing of cases;

- The identification of the role of court case managers to the other agencies and organizations associated with the process of the case;

- The identification of impediments and restrictions to the effective utilization of case managers and recommendations to remedy unwanted impediments and restrictions;

- The identification of the organizational and resource options for the delivery of case management support; and

- The identification of priority areas for case management implementation.

C. Workshop Participants

The workshop was facilitated by Judge Alice Blackwell White of the Ninth Judicial Circuit. Participants included fifteen circuit judges, two of whom are current chief judges, two county judges, five court administrators or deputy court administrators, and three masters or hearing officers. Thirteen of the twenty circuits were represented. Participants also represented a

wide range of branch policy committees, including Trial Court Budget Commission, the Committee of Trial Court Performance and Accountability, the Administrative Judicial Section of the Conference of Circuit Judges, Court Statistics and Workload Committee, the Court Technology Commission, the Family Court Steering Committee, the Dependency Court Improvement Committee, the Children's Court Improvement Committee, the Treatment-Based Drug Court Committee, the Commission on Fairness Subcommittee on Guardianship Monitoring and the Florida Court Education Committee.

Participants were:

Paul L. Backman, Circuit Judge, Seventeenth Judicial Circuit
Jennifer D. Bailey, Circuit Judge, Eleventh Judicial Circuit
Mike Bridenback, Court Administrator, Thirteenth Judicial Circuit
Catherine M. Brunson, Circuit Judge, Fifteenth Judicial Circuit
Sheri Polster Chappel, County Judge, Twentieth Judicial Circuit
Dedee S. Costello, Circuit Judge, Fourteenth Judicial Circuit
Brian Davis, Circuit Judge, Fourth Judicial Circuit
Daniel P. Dawson, Circuit Judge, Ninth Judicial Circuit
Mel Grossman, Circuit Judge, Seventeenth Judicial Circuit
Gay Inskeep, General Master, Sixth Judicial Circuit
Robert J. Jones, General Master/Hearing Officer, Eleventh Judicial Circuit
Paul B. Kanarek, Chief Judge, Nineteenth Judicial Circuit
Dixie Knoebel, Senior Deputy Court Administrator, Seventeenth Judicial Circuit
Judith L. Kreeger, Circuit Judge, Eleventh Judicial Circuit
Ted McFetridge, Court Administrator, Eighth Judicial Circuit
Raymond T. McNeal, Circuit Judge, Fifth Judicial Circuit
Manuel Menendez, Jr., Circuit Judge, Thirteenth Judicial Circuit
Stan R. Morris, Chief Judge, Eighth Judicial Circuit
Carol Ortman, Court Administrator, Seventeenth Judicial Circuit
Nancy Perez, County Judge, Fifteenth Judicial Circuit
Keith Schenck, General Master, Fifth Judicial Circuit
Scott J. Silverman, Circuit Judge, Eleventh Judicial Circuit
C. McFerrin Smith, III, Circuit Judge, Seventh Judicial Circuit
Alice Blackwell White, Circuit Judge, Ninth Judicial Circuit
Robin Wright, Senior Deputy Court Administrator, First Judicial Circuit

Workshop Staff: Peggy Horvath, Brian Lynch, and Steve Henley of the Strategic Planning Unit of the Office of the State Courts Administrator.

Others Attending: Dee Beranek, John Dew, Greg Cowan, Sara Dugger, Merica Granger, Debbie Patten, Rose Patterson, David Pepper, Sharon Press, Sharon Ratliff, Kristine Slayden, Jo Suhr, and Greg Youchock, Office of the State Courts Administrator.

II. DISCUSSION

A. What is Case Management?

Common usages of the term

Workshop participants were asked to discuss case management in their courts and to generate definitions of the term "case management." The term is used in Florida courts in a number of contexts, with somewhat different meanings attached. Many courts schedule cases for "case management conferences." These are docketed events, usually unattended by the parties, at which the status of a case is reviewed and attorneys for the parties may indicate whether they would agree to mediation, whether there is some expectation that the case will reach a settlement, or whether the court and the opposing party should expect the case to go to trial. In this sense case management is an event built into the case process generally intended to maintain and monitor progress, and to facilitate settlement. Several rules of court either require a case management conference or allow the court or a party to schedule or request a case conference.[1]

A second use of the term refers to the systematic application of policies and staff to coordinate cases and court activities, and to facilitate coordination of the needs of litigants with community-based resources. This use of the term is common in reference to family courts, but is found in other areas, such as delinquency, drug courts, guardianship and probate. For example, in an opinion concerning a report of the Family Court Steering Committee, which recommended a coordinated management component in all family divisions, the Florida Supreme Court said that to provide useful information to court users, make referrals to legal or social services, and to assist self-represented litigants, "family court division judges must have sufficient case management staff to perform differentiated case management, to coordinate all cases involving a single family, to coordinate and monitor services provided to each family and to collect aggregate data to measure performance of the family division."[2] In this sense the term "case management" generally refers to the activities of court staff to coordinate cases and resources and to ensure that the needs of vulnerable parties are not ignored.

A third common usage of the term concerns the use of computer technology to monitor and organize the movement of cases through the judicial process. Usually the reference is to a "case management system" or "automated case management," referring to the hardware and

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[1] Rule 12.200(a)(1), Florida Family Law Rules of Procedure, allows the court to order a case management conference at any time, and allows a party to request one within 30 days of service of a petition or complaint. Rule 12.200(a)(2), requires such a conference under certain conditions. Rule 1.200(a), Florida Rules of Civil Procedure, allows the court to order a case management conference or a party to request one at any time after responsive pleadings or motions are due.

[2] In Re: Report of the Family Courts Steering Committee (May 3, 2001)

especially to software – often customized – that is used to record, store, and retrieve information about cases.

Each sense of the term is often intertwined with references to policies or systems that call for tracking and perhaps reporting of events. It is a management system or tool. For example, in recent years the Florida Supreme Court has developed requirements for circuit courts to maintain and report certain information about pending capital cases. Currently this is done through paper documentation, but a computer-based system is being developed and in time circuits will be able to enter information into a database, and that information will be extracted at the Supreme Court. In either case, the system is referred to as a "case management system."

There are, then, at least four related meanings of the term, which can lead to confusion at times as different people have different concepts in mind. One meaning emphasizes events and the movement of cases; one emphasizes systematic efforts by judges and court staff to coordinate matters within cases; one emphasizes automated record-keeping systems, and all relate to the idea of applying some scheme of policies regarding the monitoring and movement of cases.

Elements of a case management system

Participants were asked to identify the elements of a sound case management system. This input can be summarized as follows:

A case management system integrates a mix of resources, including personnel, technology, policy and procedures, and judicial leadership and attention. Case management incorporates all of the meanings discussed in the previous section.

A case management system enables a court to control the progress of cases by collecting, organizing and providing to the court critical information about cases, and by identifying and coordinating events. Case management promotes order and attentiveness to critical issues.

A case management system responds to characteristics of cases, including common issues across cases, multiple cases involving the same party or parties, vulnerability of parties, and complexity.

A case management system respects and reinforces due process and the ethical and professional obligations of judges and attorneys.

A case management system incorporates accountability by clarifying responsibilities and by collecting and providing information about cases and caseflow. Case management information allows judicial managers and policy makers to make systematic improvements in the courts.

A case management system is attentive to events and activities that are required by law, rule, or sound practice, and promotes efficiency and timeliness. Consistent management of cases allows courts to create reasonable expectations of what will happen in the progress of a case and how long it will take.

A case management system deliberately works to improve the quality of services provided by prioritizing the use of resources and by identifying external agencies critical to quality and coordinating services and resources.

A case management system builds in warning systems to ensure that cases do not languish and that emergencies are responded to.

A case management system is responsive to the needs, volume, and resources of the court and community in which it is situated. There is no single case management system that is best for all courts and communities; different conditions require different systems.

Definition

Case management is the systematic administration and allocation of resources, including judicial attention and leadership, time, court staff, court technology, and the resources of parties and communities, directed to enhancement of the quality, timeliness, and efficiency of the judicial system. Case management develops and maintains reasonable and achievable policies and practices, identifies, collects and organizes critical case information, responds appropriately to characteristics of cases and parties, organizes the movement of cases, ensures that necessary activities and events occur, marshals and prioritizes court and community resources, promotes reasonable and consistent expectations, provides critical information to judicial leaders and court managers, and promotes accountability and ongoing improvement.

B. How is case management provided?
Who performs case management activities for courts?

Ultimately, case management is the responsibility of individual judges and chief and divisional administrative judges. Chief judges and administrative judges have responsibilities for the overall management of the circuit court or of a division, respectively. These court managers assign judges, set policies for the distribution of cases, and allocate court staff. These management responsibilities embrace "the administration and allocation of resources, including

judicial attention and leadership, time, court staff" at the core of the concept of case management. At this broad level, case management and court management are essentially the same. In addition, some court managers take a more active role in creating case management processes and systems. Finally, individual trial judges are responsible for their caseloads, and manage the time and attention of themselves and staff that work with them.

While ultimate responsibility rests with judges and judicial leadership, many case management activities are delegated to other people. Some of these people are court support staff and some do not work directly for the court but for the clerk of the court or an external entity, such as a state agency or a community-based organization. Some court personnel who perform case management hold positions with the explicit titles of "case manager" or "case coordinator," but many hold titles such as "judicial services coordinator," "program manager," "court program specialist," "ex parte clerk," "court counselor" and so on. Some court personnel who perform a broad range of functions, some of which are case management in nature, hold positions such as "deputy court administrator," "victim coordinator," "domestic violence coordinator," and even "administrative assistant," and "judicial support administrator." In fact, judges personal secretaries – judicial assistants – routinely perform case management activities as part of their duties.

C. How does case management benefit the court and litigants?

Case management enhances the timeliness, quality, and efficiency of the legal process. Where sound case management systems are put into place, case delay is reduced, the decision-making of courts and parties is supported by more complete availability to information and parties receive better services, and inefficiencies in the expenditure of effort and expense are reduced.

Rule 2.085, Rules of Judicial Administration, provides:

> (a) Purpose. Judges and lawyers have a professional obligation to conclude litigation as soon as it is reasonably and justly possible to do so. However parties and counsel shall be afforded a reasonable time to prepare and present their case.
>
> (b) Case Control. The trial judge shall take charge of all cases at an early stage in the litigation and shall control the progress of the case thereafter until the case is determined. The trial judge shall take specific steps to monitor and control the pace of litigation including the following:
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> (1) assuming early and continuous control of the court calendar;
>
> (2) identifying cases subject to alternative dispute resolution processes;
>
> (3) developing rational and effective trial setting policies;

(4) giving older cases and cases of greater urgency priority in trial settings.

This rule is directed at the time it takes cases to move through the judicial process. The rule establishes the principle that in the Florida court system, once a matter has been brought to the court for resolution, the pace of litigation is the responsibility of the court. The mechanisms that the rule specifies are essentially case management techniques. The principle that courts should control litigation and actively manage caseloads replaces the older notion that courts are neutral as to the speed of litigation, and the parties are free to advance cases more or less quickly to suit their interests.

In promoting timeliness, however, the rule is careful to balance the value of timeliness with that of quality – cases should move as quickly *as is reasonable and justly possible*. In other areas, the Florida Supreme Court has emphasized the importance of case management in enhancing the quality of the legal process. In the recent opinion on model family courts, for example, the Court said:

> We also emphasize that case management does not simply mean scheduling cases on a judge's docket. Rather, case management includes multiple aspects such as case differentiation, coordination, and monitoring. . . . Case monitoring requires a continued attention to the needs of the children and family as the case moves through the judicial system so that the appropriate court resources are made available and linkages to appropriate community resources are facilitated.

In Re: Report of the Family Courts Steering Committee (May 3, 2001)

In addition to streamlining the legal process where possible, case management enhances the process by identifying and responding to critical information about individual cases. In fact, under some circumstances more complete analysis and attention to a case slows down, rather then accelerates, the legal process. A case management review activity is in part intended to identify facts or issues that require further attention by the court. For instance, a review of a guardianship case might reveal that a required audit has not been performed, or in a custody matter a pending criminal case might be discovered involving one parent. Under these circumstances the value of expediency must yield to the more fundamental values of due process and deliberation. In this way case management therefore not only promotes both values, but creates the capacity for a more optimal balancing of values on a case by case basis.

Finally, in addition to advancing timeliness and quality, effective case management enhances the overall efficiency in the judicial system. Efficiency is enhanced by systematically examining court processes intended to identify improvements, reducing waste of time and resources. Processes become more rational.

D. Where in the court process does case management take place?

Florida's trial courts are organized into divisions that are responsible for different types of cases. These include in the circuit courts: criminal (felony), delinquency, civil, family (including dependency), and probate and guardianship. County courts handle criminal (misdemeanor), civil (limited) and traffic. The scope and emphasis of case management varies among these divisions; some types of cases are supported by little or no case management, while others are supported by more extensive and directed case management.

Case management activities are also different at different stages in the judicial process. Broadly speaking, the judicial process can be segmented into three phases: initial, pending or active, and disposition. The "initial" phase generally refers to events that occur before a case is filed or soon after. Some activities and services are performed for litigants in matters where ultimately no case is filed, such as in diversion programs. The "pending" or "active" phase refers to the processing of cases through the normal events of the judicial process. The "resolution" phase refers to activities that take place during the completion of a case. In different types of cases, resolution is referred to with different terms: disposition, judgement and sentence, etc.

Generally, activities that occur in the three phases are:

<u>Initial Phase</u>
screening
analysis
classification
referral
- tracking
- processing

mechanisms (availability will change)
coordination
scheduling key early events
prioritization

<u>Pending / Active Phase</u>
monitor events
enforce interim rulings
referral
- to dispute resolution forums, mechanisms
- mediation
- special masters

maintain schedules / identify cases with no activity
monitor status - make sure case is in compliance (and assess why not)
referrals to services
referrals for investigation and evaluation
review docket status
prioritize cases

Resolution
information gathering / file examined for completeness
referral
monitoring
- compliance
- assess capacity of the system
post judgment activities
- examples: criminal, guardianship, dependency, modifications, enforcement of orders
- small claims (party-driven, not judge or system driven -- also true in most county and circuit and county civil cases)

Case management activities follow this general pattern, but take on more specific character in the context of different types of cases. The following tables identify case type-specific activities.

Criminal

Initial	• coordinate with clerk's office
	  ▸ custody status of defendant
	  ▸ offense committed
	• time frames are built in
	• count the number of days from arrest
	• check to see if indigence review has happened
	• check to see if victim reviews have occurred
	• screening to determine if case goes to a specialty division
	  ▸ drug court
	  ▸ domestic violence court
	• monitor those in diversion programs and schedule them back into the system (but this is a state attorney function)
	• review case file and identify special needs
	  ▸ language interpretation or ADA needs
	• secure facility / courtroom
	• double check to make sure that people are not lost in jail
	• identify how many related cases the defendant has
	  ▸ other pending felonies
	  ▸ juvenile cases, others

Pending/Active	• get competency evaluations back • get mental health evaluations back • monitor the number of continuances, and the overall time lapsed • monitor caseloads • monitor discovery process, depositions • monitor the filing of motions • differentiate among cases • arrange pretrial dockets to see that the most critical cases are heard first • speedy trial monitoring (more judge-driven than case manager)

Resolution	ordering receiving, reviewing pre-sentence investigation (PSI)
	• lining up cases for judges to hear
	• check to see if paperwork is ready for defendant to go from jail to prison
	• coordination – match available judges with available cases
	• gather information about related cases
	  ▸ set some matters before the juvenile judge, if appropriate
	• monitor mental health commitment
	• monitor drug court (or other specialty division) cases – determine appropriate treatment
	• statistics gathering
	• re-initiation of cases involving:
	  ▸ 3.xxxs (such as 3.850s)
	  ▸ reversals
	• trial management
	  ▸ check on the availability of jurors
	  ▸ coordinate trial date scheduling with attorneys
	  ▸ make sure defendant gets transported
	  (in many cases the case manger does not perform these functions, but monitors to make sure they get done)
	• plea negotiation: is there a case manager role?
	  ▸ just to let parties know what services are available in order to facilitate negotiations
	• check to see if orders are complied with
	  ▸ violations of probations
	  ▸ status of fines and costs
	• make sure that the attorney knows that he / she has been appointed for appeal purposes (in many instances, if there is a conflict attorney, the PD could be designated as counsel for appeal, but never know about it)

General Civil

Initial	• monitors clerk-generated list of pending cases ▸ which cases are older than 1 year? • review pending files for little or no activity (often provided by a law clerk) • Chapter 51 proceedings – need to get them to trial quickly • screen cases for the need for a case management conference • look through case files
Pending/Active	▸ set status conferences (causes / triggers settlements) • screen cases for appropriate assignment to complex case divisions • review for service • referrals to mediation • in small claims ▸ if service is not effected, let parties know when the case will be dismissed
Resolution	• handle motions for summary judgment ▸ screen to see if the motion is ready to go / the case is ready to proceed • courtroom coordination • compliance with discovery requirements • ensure that cases close

Juvenile Delinquency

Initial	• Case management staff meets with the parents to see if they want / are prepared for the child to go home ▸ make referrals for psychological and other evaluations and services • screen and gather information ▸ check for other cases involving child (including dependency and domestic violence) • risk assessment instrument completed (this is not necessarily a DJJ function) • drug screens are coordinated • monitor to see if the case is progressing in accordance with the law ▸ particularly when the child is detained • gather information about the feasibility of assessing the costs of detention
Pending/Active	• screen information and show to judge • identify those eligible for drug court • identify cases where restitution has not been paid
Resolution	• make sure psychological evaluation has been done • post-disposition - very active • monitor requests for release from detention • monitor progress reports

Juvenile Dependency

Initial	• case managers get involved at the shelter hearing phase
	• coordinate:
	  ▸ counsel
	  ▸ special needs (interpretation, ADA accommodation) and make arrangements
	• check for other pending cases
	  ▸ including child support status
	• monitor time frames

Pending/Active	• recommend referral to general master (more likely in pending / active stage) • coordinate dependency mediation process • coordinate scheduling of depositions ▸ make every effort to expose child to the deposition process one time only, especially in sexual abuse cases • *Note:* GAL case coordinators currently perform some case management functions
Resolution	• referring and monitoring what happens in conflict attorney cases • coordinating drug court referrals (also after dependency adjudication) • ensuring that judicial reviews occur in a timely manner • coordinating supervised visitation • checking for child support cases ▸ send these cases to one forum, not multiple forums • monitoring, tracking, and collecting data and statistics

Domestic Violence

Initial	• assist petitioner in completing / filing for injunction
	• comprehensive records check
	  ▸ DCF file
	  ▸ criminal history check
	  ▸ prior petitions
	  ▸ related cases
	• interview client to determine needs
	  ▸ shelter
	  ▸ services
	  ▸ food stamps
	• case manager does scheduling (not the clerk or JA as in other cases)
	• lethality assessment
	  ▸ initially
	  ▸ at dismissal

Pending/Active	▸ screening of child abuse registry referrals (don't need to do this if it's already done)
	▸ review file for service
	▸ review:
	  ▸ children involved
	  ▸ repeat violence
	  ▸ related filings (this is a continual process)
	  ▸ consider transfer to other divisions, avoid forum shopping
	• contact attorneys
	(don't get surprised when an attorney shows up for a hearing with a witness and there's no time to hear testimony)
	• victim coordination
	  ▸ schedule of hearing
	• monitor financial reporting
	  ▸ preliminary property inventory
	  1. affidavit
	  2. tentative child support calculation
	  3. visitation
	  4. "shuttle diplomacy"
	• check on jail transport needs
	• check on language interpreter needs
	• monitor mandatory referrals (such as batterers' intervention)

Resolution	• monitor compliance, violations • monitor referrals to make sure the State Attorney follows through • consider requests for modification or enforcement (may come in the form of a letter) • prepare orders – injunctions, primarily in court; outside court • checking for and resolving conflicting civil and criminal orders

Other Domestic Relations Cases

Initial	• screening
	• categorizing cases by case type
	  ▸ e.g., those involving children or not involving children
	• identifying related cases
	• referral of parties to legal service providers
	• referral of parties to community resources
	• referral to early mediation (cases with children)
	• look for service of process
	  ▸ financial affidavits
	• monitor compliance (e.g., parenting courses)
	• see that rule requirements fulfilled
	• identify and screen new adoption filings
	• identify cases that are lagging
	• monitor referrals to mediation
	• check to see if financial information is on file
	• monitor other referrals
	  ▸ custody evaluations
	  ▸ psychological evaluations
	  ▸ substance abuse screenings
	• screen to determine which cases can be set for hearing
	• prepare draft orders
	• working with self-represented litigants
	(ALL SELF HELP is case management)

Pending/Active	• limited monitoring of compliance with court orders
	• self help for modifications (same as for new filings)
	  ▸ petition process
	  ▸ service process
	• coordinate supervised visitation process
	• double check child support calculations
	• some monitoring for child support enforcement

Resolution	

Guardianship

Initial	"Audits the audits" performed by clerks • a number of things set in Florida Statutes • identify case characteristics ▸ guardianship, Baker Act • case manager makes sure that the monitoring committee does its work in a timely manner • makes sure hearings take place within time parameters • scheduling

Pending/Active	• when there is the appointment of an emergency temporary guardian, the case manager checks the "shelf life" of the appointment (60 day maximum)
	  ▸ it is often the function of the general master to review petitions to appoint emergency temporary guardians
	• in the initial phase the case manger does not do much of the referral activities that are common in other case types
	• make sure that reports are timely filed (i.e., guardians' annual reports)
	• review accountings
	  ▸ clerk performs accounting
	  ▸ court does sample audits

Resolution	• monitor case plans
	  ▸ ensure appropriateness
	  ▸ ensure compliance
	• call cases to the court's attention
	• respond to complaints about the care of the ward
	• investigations
	• education of family members

Baker Act / Marchman Act

Initial	• tracking time frames
Pending/Active	• monitoring compliance • checking for related cases
Resolution	• information gathering and evaluation

Probate

Initial	• ensure that cases do not stand idle with no activity • ensure that inventories get completed • provide services to parties
Pending/Active	▸ traffic cop functions ▸ pro se assistance ▸ assistance for parties with counsel
Resolution	• ADR referrals • make sure they come to resolution ▸ important review process

County Court Appeals to Circuit Court

Initial	▸ review and let judges know which cases have been pending ▸ screen for the timely filing of appeals ▸ calendar all requirements
Pending/Active	▸ filing of briefs ▸ filing of responses • review cases to check for answer briefs, show cause requests • setting up three-judge panels (movement of judges, files)
Resolution	• get judges the record • prepare memos (traditional staff attorney role) • coordination of draft opinions