IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of: PETITION TO AMEND ARIZONA RULES OF CIVIL PROCEDURE 16, 16.1, 26, 37, 38, 38.1, 72, 73, 74 AND 77	Supreme Court Rule No. R-13-0017 Pima County Supplemental Comment

The Pima County Superior Court has reviewed the Amended Petition and Response to Comments on the Petition to Amend Arizona Rules of Civil Procedure, regarding trial setting, and remains opposed to the amended proposed rule change. The few and minor amendments to the proposed rule change do not address the core objections the Pima County Superior Court has with respect to the proposed rule change.

The Existing Rules

The existing rules governing trial settings, pretrial conferences, and settlement conferences are superior to the proposed rule change. Rule 38.1 sets forth a very basic set of requirements for having a case set for trial. Within Rule 38.1, counties are given three options regarding the completion of discovery before trial. See, Rule 38.1(a), Arizona Rules of Civil Procedure. Rule 38.1 does not restrict a county in how it chooses to set a trial or what is contained in its trial notice. This affords each county the ability to tailor its approach for trial settings to meet the individual needs of its jurisdiction. The current rule recognizes the needs of a one judge county, like Greenlee County, is not the same as Maricopa County with its 100 plus judicial officers. The existing Rule also recognizes that in counties where judges have a mixed calendar of criminal, civil and family law cases, it may not be possible to set early, firm trial dates in civil cases because of the priorities and preferences given to criminal and family law matters. This is as opposed to larger counties that have separate benches for criminal, civil and family law, which can set early trial dates. The existing rules further provide that either the attorneys or the Court can set early pretrial conferences, where scheduling orders are established, if either deems it appropriate. See, Rule 16(b), Arizona Rules of Civil Procedure. The same holds true for settlement conference. See, Rule 16(c), Arizona Rules of Civil Procedure. Thus, the existing rules allow for flexibility between the counties to establish trial setting procedures

that best meet their needs and yet provide, at the parties' or Court's discretion, all of the benefits being touted under the proposed rule change.

In contrast, the proposed rule changes exchange this flexible approach for a one size fits all approach, and that one size fits the approach for the most complex case. Essentially, the model for handling a medical malpractice case would be mandated in every civil case, regardless of its complexity.

This one size fits all approach is the exact opposite of current case management theory. Modern case management theory holds that judges should utilize a differentiated case management (DCM) approach, where the Court distinguishes between different types of cases and devotes judicial resources accordingly. "Court Organization and Effective Case Flow Management Time to Redefine," Hon. William Dressel, National Judicial College, (2010), p. 15, (Attachment D). DCM points out that if judges are required to treat all cases alike it will add costs to the litigants Id. at p. 16. The current rules allow for DCM and the proposed rule change does not.

Alleged Justification for the Proposed Rule Change

The proponents of the rule change claim that several benefits flow from the changes.

First, the proponents argue that the existing rules are not followed in any county of the State and, therefore, the rules need to be changed to conform to the majority practice in the State, i.e. Maricopa County practice. An examination of existing Rule 38.1 does reveal that half a sentence in subsection c is not followed. That one-half a sentence provides that, upon filing a Motion to Set, the Court Administrator or the Clerk of the Court shall stamp a chronological list number which shall generally govern the priority of the case for trial. Since no county follows this one-half sentence procedure, it is far easier to delete this portion of the sentence and the non-compliance issue is resolved.

The proponents of the rule change suggest that Pima County does not follow Rule 38.1 in other respects. This is not true. Pima County observes all of the basic requirements set forth in Rule 38.1. In addition, Pima County includes additional requirements in its trial notice, as is allowed under Rule 38.1 and Rule 16, Arizona Rules of Civil Procedure. As illustrated in the attachments to Pima County's initial comments, Attachments A and B, a basic scheduling order, that is consistent with the existing Rules of Procedure, is automatically included in the trial

notice. This merely highlights the earlier point that the existing rules are flexible and allow the individual counties to develop case management approaches that best fit their local need. As discussed in Pima County's initial comment, the Motion to Set is used as a tool for DCM where simple cases are issued a standard trial setting notice that includes a basic scheduling order that is adequate for a simple case. Where longer trials are requested, a Pretrial Conference is set and an individualized scheduling order is done for the case in much the same manner as is proposed under the proposed rule change. The major difference is the more elaborate and expensive approach is applied only where it is needed in the more complex cases, not the simple cases.

This leads to the question of if the alleged benefit of the proposed rule change is to get the complex case before the Court earlier, then there are far simpler and more effective means of achieving this benefit. Under Rule 16(c), all medical malpractice cases are required to have an early pretrial conference before the Court to schedule out the case. Rule 16 (c) could easily be broadened to include product liability cases or those cases that require a preliminary expert opinion affidavit under A.R.S. § 12-2602. There are other categories of complex cases that could be included. Again, the benefit of an early pretrial conference can be achieved in the appropriate complex case without needing all civil cases to be subject to the same treatment.

The next alleged benefit of the proposed rule change is that there will be a consistency of practice with the Maricopa County practice. Pima County fails to see how that is truly a benefit. What is wrong with attorneys who choose to practice in several counties in the State to familiarize themselves with the local practice? If the proposed rule change is adopted, many attorneys who do not practice in Maricopa County would have to learn Maricopa County's way, even though they do not chose to practice in Maricopa County. In addition, there is some intimation that the Maricopa County way is not working all that well and that is part of the justification for the proposed rule change. The end result is that a less than adequately functioning system is being imported from Maricopa County, along with its fixes under the proposed rule change, to the rest of the State.

In Pima County the Court can provide early, firm trial dates to the litigants in an inexpensive and effective manner. In addition, in 2012 Pima County completed 94% of its cases by 18 months. This is within 2% of the proposed statewide standard of 96% of the cases within

18 months. With little, if any, tweaking within its own methods, Pima County is confident it can comply with the proposed standard of 96% within 18 months.

Another proposed benefit is that the new system will be similar to the Federal Practice. This alleged benefit fails to recognize the civil case loads in Federal Court is a low volume system with approximately 4,000 cases filed statewide per year. In contract, in 2012 over 71,000 civil cases were filed in the Superior Courts of Arizona. This number is down from the 97,000 cases filed in 2011, the 101, 000 cases filed in 2010, and the 93,000 cases filed in 2009. The civil caseload in the Arizona Superior Courts is a high volume system. Further, the civil cases in Federal Court are similar to each other due to the jurisdictional limits imposed for a federal filing. Further, prisoner cases, social security cases and civil rights cases are not subject to the pretrial conference requirements in Federal Court. In the State court system there is a wide variety of cases that are filed. Consequently, what may work in the Federal system may not work in the State system.

Increased Costs

In the initial comment Pima County explained how it determined the proposed rule change could cost litigants up to $20 million per year. The proponents of the rule change do not challenge or argue with any of the numbers used in reaching that $20 million figure. Without citation to any facts or figures, the proponents of the rule change simply assert that the costs will be the same or less. It is not explained as to how the costs would remain the same or be less.

As far as trial settings, every case under the proposed rule change will require that counsel for the parties exchange drafts of scheduling orders with accompanying correspondence (by paper or electronically) and discussions between counsel. This takes time for which counsel will bill at a rate of at least $250.00 per hour. If things go smoothly and the parties can agree, a scheduling order will be submitted that the judge must review and approve. If the parties cannot agree or the Court does not approve, a hearing occurs. This requires additional costs for the hearing to the litigants and time for the Court.

Under the proposed rule change in Pima County it guarantees a pretrial conference before the court will occur in every case if the Court continues to set early, firm trial dates. The scheduling order does not provide for any information about the length of trial, trial preferences, the type of trial (Court vs. Jury) or proposed trial dates. Since the proponents are opposed to any

local rules, this could not be addressed by local rule. This will compel a hearing in every case in order to obtain the necessary information to set an early, firm trial date. This is certainly a more expensive proposition to the litigants.

In contrast, under the existing rules a party merely files a one page, form Motion to Set, where one fills in a few blanks. If the opposing party agrees with the Motion to Set they need do nothing. If there is a disagreement, a one or two page Controverting Certificate is filed. The court then issues the trial notice, which is done by the Judge's Judicial Administrative Assistant without the need to have the judge review it, unless there is a disagreement. Even then the Court resolves the disagreement without further briefing or argument. Included in the trial notice is a standard, basic scheduling order. This is clearly a simpler, less expensive method of setting a trial than the proposed rule change. At this trial setting stage, either party can ask for and receive a pretrial conference or the Court on its own can order one if anyone deems it appropriate.

Under the proposed rule change for those counties that do not set early trial dates as part of the scheduling order, there will be a later trial setting conference. This is an additional expense that would not occur, at least in Pima County.

Again, there is an articulable basis to maintain that the proposed rule change would engender greater expenses to the litigants. The proponents of the rule have yet to explain how the costs would remain the same or be less. Even assuming the estimated cost is off by 50%, that is still an added cost of $10 million per year to the litigants.

Judge Cornelio, the ADR Presiding Judge of Pima County, has filed a separate supplement to his original comment that details the added costs of the mandatory settlement conference requirement. The Pima County Superior Court adopts his comments. This Court would also add that with the additional flood of cases requiring a settlement conference before one can proceed to trial and the limited judicial resources available, the Court will either stop doing settlement conferences completely because it cannot meet the demand or there will be a delay in the trial date because of the back log for settlement conferences. Again, this would only add to the expense to the litigants and extend the time for final resolution, in opposite to the proposed time standards.

Lack of Enforcement

Currently, in Maricopa County a 150 day Notice is sent out by the Court to the parties informing them that Rule 38.1 will be strictly enforced. (See, attachment E). Sometime between that 150 day Notice and the placement on the inactive calendar at the 270 day mark, a Motion to Set is filed and a scheduling conference is set. The proponents of the rule suggest the Motion to Set is typically filed closer to the 270 day. The proponents suggest that the proposed rule change will advance that date. The proponents also suggest that the judge will on their own issue sanctions to attorneys that do not comply. They are wrong.

The proposed rule provides that the parties will submit their proposed scheduling order 14 days after the exchange of their initial disclosure statements or 180 days after the Complaint is filed. There is no way for the Court to monitor the 14 day requirement. As a result, the Court will issue a 180 day Notice that the scheduling order requirement will be strictly enforced and that the case will be placed on the dismissal calendar at the 270 day mark. The parties will then submit their proposed scheduling order closer to the 270 day mark, as they do presently, and the Court will either approve of the submitted order or have a pretrial conference as is done now. The proposed rule change does not alter the current paradigm. There is simply a shift from 150 days to 180 days.

As to the enforcement provision under proposed rule change 16(i), those will be ineffective. Since neither party is submitting the joint proposed scheduling order, the attorneys will not be seeking sanctions against themselves. The proponents then rely on the Courts on their own to sanction both or all counsel for their failure to comply with the Rule. This presents an issue of whether you sanction the party or the attorney. An issue regarding the attorney-client privilege arises in the determination of who to sanction and at the very least will engender another hearing.

This assumes the judges are willing to sua sponte sanction attorneys. For a variety of reasons it is unlikely that the judges will be voluntarily sanctioning attorneys on their own. Factors that would be involved in such a sanctioning could include the judge's familiarity with the attorneys or their law firm, the JPR reviews, the consistency of sanctions between the various counsel, and the consistency of sanctions between judges. In addition, would the attorney have a right to a hearing on the sanctions? This would add yet an additional cost. It would seem if

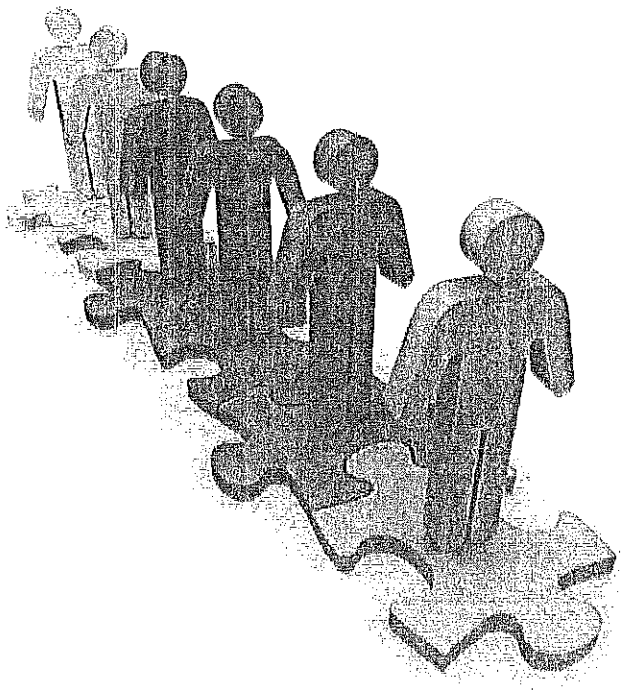
there is a perceived problem of cases not being processed on a timely basis now, why aren't the judges' doing anything about it. If they are not doing anything now, why would they suddenly start sanctioning attorneys voluntarily under the proposed rule.

For all the foregoing reasons the proposed rule change should be rejected. The Pima County Superior Court has no opposition if the Maricopa County Superior Court adopts the proposed rule change as a local rule. This would be consistent with the present rules that allow each County to develop its trial setting procedure to best meet its individual needs.

Charles Harrington
Civil Presiding Judge
Pima County Superior Court

Honorable Kenneth Lee
Associate Presiding Judge for
Sarah Simmons, Presiding Judge
Pima County Superior Court

Attachment D



Court Organization and Effective Caseflow Management

TIME TO REDEFINE

Hon. William F. Dressel (Ret.)
President, The National Judicial College

THE NATIONAL JUDICIAL COLLEGE
Est. 1963

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President, The National Judicial College

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To manage a case effectively, a court must have the fundamental elements of effective caseflow management in place. While experts differ concerning the elements, a combined list is as follows: (1) judicial leadership; (2) early and continuous judicial supervision of case progress including meaningful pretrial court events and realistic pretrial schedules; (3) differentiated case management; (4) firm and credible hearing/trial dates with an appropriate continuance policy; (5) observance of time standards and goals; (6) effective trial management; (7) management of court events after initial disposition; (8) ongoing communication and consultation with all necessary court agencies; and (9) an information system to support caseflow management.[23] All of these elements are addressed below except judicial leadership and commitment which was addressed in a previous section.

Early and continuous judicial supervision of case progress including meaningful pretrial court events and realistic pretrial schedules

For caseflow management systems to work, judges must involve themselves early in cases. This involves educating themselves about case issues and actively managing the litigants. This involvement must continue throughout the life of the case. On a broader basis, judges need to pay attention to the age and progress of cases. "The primary purpose of *early judicial involvement* is to focus everyone on the case at the earliest reasonable time and, more particularly, on the time and resources required to assure a timely and just disposition."[24] In simple terms, judges need to play an active role *early* to all parties evaluate the case and create an agreed upon timetable for future case activities.[25] *Continuous supervision* by judges or their staffs ensures that the parties (1) meet their deadlines; (2) meet to negotiate disposition earlier (not at the courthouse steps on the day set for trial); and (3) file appropriate motions (with issues appropriately limited). In this way, judges cases can rule on motions earlier, which may help to resolve cases.

Differentiated Case Management

To control case progress, judges should utilize "differentiated case management" (DCM). Under DCM, a court distinguishes between different types of cases (e.g., a "fender-bender" tort versus a products liability case) concerning the amount of time and attention they need from judges and attorneys. Obviously, a fender bender case is going to require less attention from the court and the participating attorneys. Judges need to apply different time standards to the cases. Most court systems focus attention on cases according to when the parties file them. "Typically, courts would give attention to cases

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[23] *See* Maureen Solomon, *Conducting a Felony Caseflow Management Review: A Practical Guide* (May 2010) located at http://www.ojp.usdoj.gov/BJA/pdf/AU_FelonyCaseflow.pdf; *see also* Steelman, *supra* note 4.

[24] Solomon, *supra* note 23, at 3.

[25] *Id.*

in the order that they were filed, maintaining that older cases must be disposed before younger cases. Such an approach fails to recognize the differences among individual cases, however."[26] Failing to use DCM will result in a simple case being unnecessarily delayed and a more complex case being rushed. The more complex case will likely require more court appearances because more complex legal issues will be present. If a system requires judges to treat all cases alike, they will not only have too many appearances for a simple case, they will also add to the cost of the case for the litigants. David C. Steelman provides an example of a simple DCM plan, placing cases into three categories:

- Cases that proceed quickly with only a modest need for court oversight
- Cases that have contested issues calling for conferences with a judge or court hearings but that otherwise do not present great difficulties
- Cases that call for ongoing and extensive involvement of a judge, whether because of the size and complexity of the estate involved, the number of attorneys and other participants involved, or the difficulty or novelty of the legal issues presented[27]

As soon as possible after filing, courts should use an early screening process to identify the type of case that the party has filed. The parties should file case information sheets when they file cases, and the judge or court staff member should review them to determine complexity. The court should establish criteria for determining complexity. On the basis of the case screening assessments, the court would assign cases to different case management tracks. "Each track would have its own specific intermediate event and time standards, as well as management procedures."[28] The court would then divide the cases into three "tracks" reflecting their respective management requirements. The time in parenthesis reflects the time that a court may designate for civil cases from case initiation to case disposition:

- An *expedited* track for cases that move quickly with little or no involvement of judges (6 months);
- A *standard* track for those that require conferences and hearings but that are otherwise not exceptional (12 or 18 months), and
- A *complex* track for those requiring special attention (24 months).[29]

A court may determine that its cases require even further differentiation than the three-part scheme can accommodate. If this is the case, the court could develop a management

[26] Steelman, *supra* note 4, at 4.
[27] *Id.*
[28] *Id.* at 5.
[29] *Id.* at 4-5.

system with additional tracks. Experts on DCM have observed, "There is no magic number [of DCM tracks]; the number should reflect realistic distinctions in case-processing requirements."[30]

One of the larger differences between cases is the amount of discovery needed. Cases within the expedited track would have little or no discovery. Conversely, complex cases require a great deal of discovery and may require custom timelines because of the availability of experts, or the complex nature of the legal issues involved.

Firm and Credible Hearing/Trial Dates

Throughout the process, judges need to ensure firm hearing and trial dates. To do so, they need to ensure the planned dates are realistic and that the parties agree to abide by them. "If case participants doubt that trials or hearings will be held at or near the scheduled time and date, they will not be prepared."[31] Conversely, if the parties believe that the dates are not firm, they are much less likely to prepare for that firm date. Because the vast majority of cases are disposed by plea or settlement, reasonably firm trial dates will result in earlier pleas and settlements.[32] Likewise, firm and reasonable dates encourage the litigants to prepare more fully for trial when the case cannot be resolved without trial. "National research shows that a court's ability to provide firm trial dates is associated with shorter times to disposition in civil and felony cases in urban trial courts."[33] Another benefit is cost savings especially in jury cases. For example, "[i]f a court sets a high number of cases for trial, it must provide a jury pool sufficiently large to accommodate the trials scheduled or estimate how many cases will actually go to trial. If the court guesses incorrectly, it may have too few or too many jurors at the courthouse, perhaps perturbing jurors."[34] Predictable trial dates will result in a more certain, smaller number of cases which will save on juror expenses.

Some judges mistakenly believe that firm and credible dates signify that they must deny all continuance requests. Most assuredly, this approach will result in upset litigants because they may have legitimate reasons for a continuance. Consequently, a continuance policy is imperative for a successful caseflow management system. Judges must strike the correct balance between being too lenient, which may result in unprepared attorneys who then seek continuances, and being too strict:

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[30] *Id.* at 5 (*quoting* CAROLINE COOPER, MAUREEN SOLOMON, AND HOLLY BAKKE, BUREAU OF JUSTICE ASSISTANCE DIFFERENTIATED CASE MANAGEMENT IMPLEMENTATION MANUAL 21 (Washington, D.C.: American University, 1993).

[31] Steelman, *supra* note 4, at 6.

[32] *Id.* at 7.

[33] *Id.* (citation omitted).

[34] *Id.*

> If the court grants too many continuances, the docket for the day collapses, and the judge's time is underutilized. If the court is not aware of its calendar dynamics, it may add even more cases to the next day's docket, making for a very long trial list. Attorneys who are low on the court's trial list do not expect their cases to be reached, and they are unprepared. If they are reached, however, they must request continuances, so that the vicious cycle starts all over again.[35]

Observance of Time Standards and Goals

Society entrusts courts with ensuring justice for individuals and organizations that seek resolution of their disputes. Untimely court actions can seriously impair the rights or privileges of those individuals and organizations:

> A trial court should meet its responsibilities to everyone affected by its actions and activities in a timely and expeditious manner—one that does not cause delay. Unnecessary delay causes injustice and hardship. It is a primary cause of diminished public trust and confidence in the court.[36]

Accordingly, courts need to adopt Trial Court Management Standard 2.1 (Case Processing). The Standard requires the trial court to establish and comply with recognized guidelines for timely case processing, while at the same time, keeping current with its incoming caseload.[37] The American Bar Association, the Conference of Chief Justices, and the Conference of State Court Administrators have urged the adoption of time standards for expeditious caseflow management.[38] "Timely disposition" is the elapsed time a case requires for a court's consideration, including the time reasonably required for pleadings, discovery, and other court events.[39] "Any time beyond that necessary to prepare and conclude a case constitutes delay."[40] Timely case processing applies to trial, pretrial, and post trial events. Maureen Solomon, in discussing time standards for felony cases, states:

> In addition to an overall disposition time standard, or "speedy trial" rule, the court's caseflow management system should incorporate (1) intermediate time goals governing the elapsed time between major case events and (2) system management standards concerning such areas as

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[35] *Id.* at 10.

[36] RESEARCH DIVISION, NATIONAL CENTER FOR STATE COURTS, TRIAL COURT PERFORMANCE STANDARDS DESK REFERENCE MANUAL 13(2003) (This 40-page reference book provides an excellent summary of the Trial Court Performance Standards and their requirements).

[37] *Id.*

[38] *Id.*

[39] *Id.*

[40] *Id.*

> continuances and case scheduling efficiency (the ratio of total trial dates set to total trials started). These types of operational goals are helpful in managing case progress and assuring efficiency and effective use of judge, lawyer, and staff time. [41]

In 2009, the National Center for State Courts published a report that identified 41 states and the District of Columbia had established time standards.[42] Courts can use this document to support the importance of time standards. (NCSC is currently leading a review to update the national time standards.) However, it is critical to know what the current standards are in your state.

Management of Court Events after Initial Disposition

A variety of proceedings in a trial court occur after the court enters a disposition/final judgement. Examples include:

- Post-decree motions in divorce cases to enforce or modify custody, visitation, and support
- Placement review, permanency planning, termination of parental rights, and adoption proceedings after findings of abuse or neglect
- Proceedings in probate, guardianship, and conservatorship cases after contested or uncontested appointment of a fiduciary
- Criminal violations of probation (which often involve arrest for new offenses)
- Criminal petitions for postconviction review
- Violations of probation in juvenile delinquency proceedings (which, like adult criminal matters, often involve arrest for new offenses)
- Child support enforcement proceedings after paternity or divorce decisions
- Proceedings to enforce civil judgments
- Collection of judgments in small claims cases
- Enforcement of fine and fee periodic payment schedules in criminal and traffic cases[43]

Courts should include these types of events in their caseflow management systems and ensure timely processing of these events.

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[41] Solomon, *supra* note 1, at 5.
[42] KNOWLEDGE AND INFORMATION SERVICES, THE NATIONAL CENTER FOR STATE COURTS, CASE PROCESSING TIME STANDARDS IN STATE COURTS, 2007 (2009).
[43] *Id.* at 17-18.

Ongoing Communication and Consultation with All Necessary Court Agencies

Judges are uniquely positioned to initiate interagency consultation about policies and practices that affect caseflow management for a number of reasons. First, while the individual agencies are independent, they are part of a "procedurally interdependent system."[44] For example, in a caseflow management review, it is not uncommon for one agency to have adopted internal procedures that benefit the agency but have unintended negative consequences for other agencies. Second, "no single organization, including the court, can create a successful caseflow management system by itself, but the problems of a single agency can negatively affect the entire system."[45] Third, courts should periodically assess their caseflow management systems to keep them on track, even when effective, especially to determine changing needs of other entities. When courts determine that modification is necessary, they should lead the process while ensuring that they encourage "collegial, constructive, and appropriate participation in analysis, design, and implementation."[46] In doing so, the court should convene a multiagency task force or planning council with all significant agencies involved.

Measuring Success

Once the caseflow management system is in place, court staff should periodically measure the success of the system by utilizing a measurement system like CourTools.[47]

Technology

Caseflow management starts at the courthouse door, the virtual courthouse door. Advances in technology and the application of the Internet have moved the courthouse into every law firm, the home of every defendant, and self-represented litigant. It begins with e-filing (electronic filing) of both criminal and civil cases, and advances through automated docket control, master calendaring, and warrant tracking. Caseflow management continues with digital document management systems, image-enabled case documents that can be electronically checked in and out, probation reporting, fee and fine collection, and tracking of the disposition of each case regardless of the complexity of the legal issues involved.

Caseflow management is the bedrock of the well managed court. Technology may provide the tools, but technological solutions must be managed strategically. While technology has the ability to make courts more efficient, the judge, court administrator, court technology officer, and other court staff will be faced with a variety of ongoing

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[44] Solomon, *supra* note 1, at 5.
[45] *Id.*
[46] *Id.* at 5-6.
[47] *See* http://www.ncsconline.org/D_Research/CourTools/tcmp_courttools.htm.

management concerns including staffing, training, scalability, reliability, security, flexibility, and compliance with legislated standards and inter-governmental communication.

Take a moment to look at technology from the view of the bench. A defendant is charged with his third driving while intoxication violation (DWI.) The citation is electronically processed to the court. The first appearance date is scheduled. The case is automatically assigned to the local drug court. Blood alcohol test results are transmitted to the court and the district attorney's office. The defendant's record of prior arrests, convictions, and past court-mandated drug and alcohol treatment plans are automatically included in the case record prepared for the judge. The caseflow management software program, such as FullCourt Enterprise,[48] will track every aspect of the ongoing case and provide only the *relevant details*, on a need to know basis, to the appropriate probation officer, law enforcement agency, and court officials. The judge will have access to all aspects of the case including evidence, motions, probation and treatment reports, and fee and fine collections. Caseflow management software will automatically issue reminders to probation officials to follow-up with the probationer; the court will automatically issue warrants if any probation or treatment benchmark is not achieved.

Technology is not a magic solution for courts facing budgetary constraints. For technical solutions to work smoothly, courts must train court staff. Training is an ongoing process. The court will need to hire and retain information technology professionals with the appropriate expertise. Additionally, the court will need to decide whether to house the technology solution or to outsource the responsibility to a reliable company that will continue to support the solution at an affordable cost. A sample of technological challenges and requirements include the following:

- Determine if the caseflow management solutions negatively affect access to the courts for self-represented litigants, technologically-challenged lawyers, non-English speaking litigants, or court-users with disabilities. Effective caseflow management technology should enhance due process and timeliness while reducing delay.
- Collaborate with all stakeholders (law enforcement, treatment centers, the state bar association, probation, etc.) to ensure the systems communicate across different governmental entities.
- Ensure adequate security to prevent the illegal tampering, deletion of data, and the accidental release of sealed court records.
- Create a backup plan to continue court operations during technological failures.
- Develop a flexible plan to ensure it can handle specialty courts including juvenile courts, mental health courts, family courts, and new developments in problem solving

[48] FullCourt Enterprise, a product of Justice Systems, Inc. is used only as an example and is not endorsed. Each court system should review a variety of court vendor in order to select the solution that is best suited to its needs.

courts. The technology must be scalable to meet the changes and evolution of the judicial branch.

The presiding judge and court administrator do not need to be technology experts, but they do need to be technology detectives. They should apply their expertise about the judicial process to the morass of technological solutions currently available to the judicial branch and determine the best solution for their court system. While technology is only one aspect of effective caseflow management, if the integration process is not management properly, the hopes for cost savings can quickly become cost over-runs. The National Association of Court Management[49] maintains a list of core competencies for caseflow management system and administration.

[49] National Association for Court Managers, Core Competency Technology Management, http://www.nacmnet.org/CCCG/cccg_4_corecompetency_itmgmt_cg4.html (last visited December 16, 2010).

Attachment
E

Office Distribution

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

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10/31/2012
by Superior Court Admin
-on behalf of Clerk of the
Superior Court

4/9/13

Ct. Admin
Deputy

10/27/2012

COURT ADMINISTRATION
BY: J. ORR, DEPUTY

CASE NUMBER: ~~CV2012-008348~~

Dave Parnell

C2013180

V.

George Hayduke Jr.

The Judge assigned to this action is the Honorable Arthur Anderson

150 DAY ORDER

KENNETH LEE

This action was filed more than 150 days ago. If there is any conflict between this order and any order from the assigned judge, the assigned judge's order governs. This order provides notice of requirements, pursuant to Rule 38.1, Arizona Rules of Civil Procedure. Rule 38.1 applies to all civil actions, including those subject to arbitration.

IT IS HEREBY ORDERED:

Rule 38.1 of the Arizona Rules of Civil Procedure will be strictly enforced. The parties shall file and serve on court and counsel the following documents:

1. A motion to Set and Certificate of Readiness or an Appeal from Arbitration shall be filed on or before 2/25/2013 12:00:00AM. (The motion shall include an estimate of the length of trial) If Rule 38.1 is not complied with, the case will be placed on Inactive Calendar on the date shown above and it will be dismissed pursuant to Rule 38.1, without further notice, on or after 4/25/2013 12:00:00AM. *

2. All parties' specific objections to witnesses and exhibits listed by other parties must be submitted with or stated in the Joint Pretrial Statement. Reserving all objections to witnesses or exhibits until time of trial will not be permitted.

LATE DISCOVERY. A Motion to set and Certificate of Readiness certifies that the parties have completed or will have had a reasonable opportunity to complete discovery within 60 days after the motion is filed. [Local Rule 3.4 and Rule 38.1 (f) Arizona Rules of Civil Procedure] Discovery should be completed in accordance with the Rule.

IF THIS IS AN ARBITRATION CASE. If this case is subject to mandatory arbitration, Rule 74 (b) of the Arizona Rules of Civil Procedure establishes the time for beginning the arbitration hearing. In light of the deadlines established by Rule 38.1 (d) of the Arizona Rules of Civil Procedure, counsel should be sure that arbitrators are timely appointed and that arbitrators complete the arbitration process within the time provided under Rule 38.1 (d) for motions to set. As Rule 76(a) of the Arizona Rules of Civil Procedure provides, an Appeal from Arbitration and Motion to Set for Trial serves in place of a Motion to Set and Certificate of Readiness under Rule 38.1 (a), Arizona Rules of Civil Procedure.

Office Distribution

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FILED
10/31/2012
by Superior Court Admin
on behalf of Clerk of the
Superior Court

Ct. Admin
Deputy

10/27/2012

COURT ADMINISTRATION

CASE NUMBER: CV2012-008348

Dave Parnell

V.

George Hayduke Jr.

EXTENSIONS OF TIME TO SERVE PROCESS. If there has been an extension of time to serve the summons and complaint, (a) Rule 38.1 still applies and (b) some parties and counsel may not receive a copy of this order. Plaintiff should send copies to each of them and retain a copy of the transmittal letter.

ALTERNATIVE DISPUTE RESOLUTION. Pursuant to Rule 16 (g), Ariz. Rules of Civil Procedures, counsel for the parties, or the parties if not represented by counsel, shall confer regarding the feasibility of resolving the parties' dispute through alternative dispute resolution methods such as mediation or arbitration with a mediator or arbitrator agreed to by the parties. Counsel shall discuss with their clients the resolution of the dispute through an alternative dispute resolution method prior to the conference with opposing counsel.

*RELIEF FROM RULE 38.1 DEADLINES; CONTINUANCES ON INACTIVE CALENDAR. The *rules require a Motion to Set within nine months after the action is filed. Discovery is to be completed about* two months later (see Late Discovery above). A motion to vacate or abate this order will not change the deadlines. A premature Motion to Set violates Rule 11, Arizona Rules of Civil Procedures.

For good cause, the assigned judge may extend time for dismissal or continue the action on Inactive Calendar to an appropriate date. If an arbitration hearing has been held, or is set in the near future, the date of that hearing should be included in any motion to extend Rule 38.1 deadlines or to continue on Inactive Calendar. Stipulations to continue and delays for settlement negotiations are not good cause. Except in extraordinary cases, the court will not grant trial continuances based on late discovery.