Recommendations to Improve Performance Management for Florida’s Trial Courts

JUNE 22, 2018
Recommendation One: Establish a Data Quality Workgroup dedicated to improving accuracy of court data. In the interim, temporarily postpone the establishment of baseline data and benchmarks for measuring Time to Disposition, Clearance Rates, and Age of Active Pending Caseload. Until data quality issues can be resolved, references on reports compiled from current available data should be footnoted to express the low confidence in the data. .... 4

Recommendation Two: Continue work on the trial court performance management framework designating case management as the first priority of essential elements in which to develop administrative performance criteria ....... 6

Recommendation Three: Evaluate starting point for trial court time standards to determine if time standards need to begin once a judicial action commences as opposed to the indictment, information, petition, or complaint filing date........ 7

Recommendation Four: Consider new time standards for intermediate court events such as wait times for a hearing, a trial, or a ruling; and number of cancellations, continuances, and stays as party-created events that prevent judges from progressing cases ................................................................. 9

Recommendation Five: Consider the National Center for State Court’s technical requirements regarding case triage, for further Court Application Processing System (CAPS) standards. ................................................................. 10

Final Remarks ........................................................................................................ 11
Supreme Court of Florida
Commission on Trial Court Performance and Accountability

Report and Recommendations from the 2016-2018 Performance Management Workgroup

**Introduction**

In their 2014-2016 term, the Commission on Trial Court Performance and Accountability (TCP&A) established a Performance Management Workgroup (Workgroup) to propose policies on a performance management framework for the trial courts. The result was a report *Recommendations on a Performance Management Framework for Florida’s Trial Courts*, which identified process steps towards using analytics for resource and case management purposes. The TCP&A submitted the report to the Supreme Court of Florida (Court) on June 15, 2016. The Court approved those recommendations charging the TCP&A with moving forward as delineated under Administrative Order SC16-39 In Re: Commission on Trial Court Performance and Accountability.

In the 2016-2018 term, Judge Diana L. Moreland, Chair of the TCP&A, re-established the Performance Management Workgroup (Workgroup) charging them with the following, as delineated under AOSC16-39:

1. Establish baseline data and benchmarks for measuring Time to Disposition, Clearance Rate, and Age of Active Pending Caseload, upon collection of accurate data.

2. Develop a process for correcting court data problems and errors.
3. Prioritize and begin to develop administrative performance criteria for the essential elements of the trial courts, as provided for under section 29.004, Florida Statutes.

4. Review trial court time standards, as a means to identify further performance indicators.

5. If items 1 through 4 above have been achieved, identify new performance indicators and measures/dashboards for integrating performance measures into existing operational policies and procedures.

The Workgroup held meetings on August 24, 2017, September 20, 2017, and March 1, 2018 to review these charges. As an outcome, members discussed concerns such as, 1) the emphasis on efficiency in measuring performance and the unintended impact on effectiveness, 2) the overall low confidence in the available court data, 3) the minimal use of time standards, as set in rule, due to the measures being fixed over a broad set of case categories, 5) the creation of an annual judge report with case weights to more accurately represent judge workload, and 6) the need to develop a plan for addressing data quality issues in the court system. As a result of these discussions, the Workgroup offers the following five recommendations:
Recommendation One: Based upon a review of available recent statistics, the Performance Management Workgroup recommends temporarily postponing the establishment of baseline data and benchmarks for measuring Time to Disposition, Clearance Rates, and Age of Active Pending Caseload. The Workgroup recommends the creation of a data quality workgroup, dedicated to addressing the accuracy of court data, thereby improving confidence in the data. Also the Workgroup recommends that in the interim, until data quality issues are resolved, reports compiled from data should be footnoted to express the low confidence in the data.

Good decisions rely on good data. The trial courts are completing the transition from a paper-based system in which clerks of court received and filed paper documents into folders to an electronic system requiring those same clerks to be data entry specialists and data processors. This transition has not been without challenges. Nearing the end of the transition, there needs to be a new dedication to accurately capturing and entering data on what is happening in the courts, with consequences for inaccuracy. In support of the new digital environment, uniform quality control standards are recommended for data entry and reporting by the courts and clerks of court.

As a court system, the Workgroup feels it is necessary to emphasize fundamental data issues to prevent the judicial branch from facing unfair criticism. Not only is data a crucial commodity for managing projects, assessing performance, and delivering services efficiently, the accuracy of the data being published and reported is a fundamental issue of public trust and confidence. Establishing data quality control standards is vital to building confidence in statistical court measures. Such actions to improve data quality should be tackled as quickly as possible. As noted by a member of the Performance Management Workgroup,

“The efforts to implement a new statewide uniform reporting system are laudable, however, we are just taking the same bad, lead-filled water, and moving it through new pipes.”
To that end, and in response to Charges One and Two of AOSC16-39, the Workgroup recommends creation of a Data Quality Workgroup, which would be responsible for focusing on identifying specific problems and developing solutions aimed at improving the quality of available data. At a minimum, the Workgroup should evaluate data management guidelines, including existing data control and verification processes by both the courts and the clerks of court. Such an effort will ensure a well-functioning information system for the trial courts is based on thorough qualitative criteria, such as:

1. Well-written instructions on data collection, entry, and reporting.
2. Common interpretation of the meaning of the data elements to ensure data indicators are consistently used at all levels.
3. Properly trained designated staff for data collection, entry, aggregation, and reporting.
4. Proper and well-documented data collection, review, and verification procedures and tools.
5. No inconsistency between source data and reports.
7. Universal policy for storage.

Based on a review of available recent statistics, the Performance Management Workgroup recommends temporarily postponing the establishment of baseline data and benchmarks for measuring Clearance Rate, Time to Disposition and Age of Active Pending Caseload until data quality issues can be resolved and more accurate data is available.

Furthermore, appropriate use of time standards requires that data be gathered on the defining criteria for each division under current Florida Rule of Judicial Administration 2.250. For example, in circuit civil, cases should be identified from inception as jury or non-jury, so that the appropriate standard can be applied. Currently, it does not appear this level of information is being captured. Thus, current time standards are of limited utility as there is no effective means to gauge compliance or identify issues on an individual docket or court-wide basis. Such issues should also be addressed by the proposed Data Quality
Workgroup to ensure the defining criteria associated with the time standards is uniformly tracked.

**Recommendation Two: The Performance Management Workgroup recommends continued work on the trial court performance management framework designating the essential element, case management, as the first priority of study and development of administrative performance criteria.**

In 2016, the TCP&A adopted the use of administrative principles as a critical first step towards determining a performance management framework. Administrative principles are the “general beliefs judges and court managers have about how the administrative process should work to fulfill their responsibility to ensure legal decisions are made in a manner that satisfies user expectations.”

With significant focus on the improvement of case management practices and also, the growing pressure to use data from court information systems to measure judicial performance, the first set of administrative principles suitably apply to the case management element. The TCP&A recognizes qualitative processes are critical and that efficiency is not the sole focus of measurement. Thus, the principles for case management include: 1) Every case receives individual attention, 2) Individual attention is proportional to need, 3) Decisions demonstrate procedural justice, and 4) Judges control the legal process.

In response to Charge Three, the Workgroup recommends designating case management as the first priority with recognition to establish performance goals for all other elements, as time permits and data becomes available to evaluate measures. Administrative criteria should be reviewed periodically by judges and court managers to ensure the system as a whole is supporting the needs of court users.
**Recommendation Three: The Performance Management Workgroup recommends that the starting point for trial court time standards be evaluated to determine if time standards need to begin once a judicial action commences as opposed to the indictment, information, petition, or complaint filing date.**

The Civil Justice Initiative Pilot Project\(^1\) at the Eleventh Judicial Circuit, is one of three current national demonstration projects studying the implementation of innovations aimed at reducing costs and delays in civil justice while also preserving fairness, access to courts, and due process. While the Miami-Dade pilot is still underway, it has revealed that, at least in civil cases, a judge has a very limited ability to manage a case until service is executed or motion for default is filed, which can frequently take up to four months under current rules. There is no opportunity for meaningful judicial action until that point.

In examining the current time standards, the Workgroup noted time standards for complex litigation, under Florida Rule of Civil Procedure 1.201, are unique, running from the date the matter is declared complex (not the date of filing) and ending 24 months later. The timeline does not start until the matter is declared complex. This underscores the challenge of determining the appropriate time to start the clock. In a similar example, the time standard for appellate courts, Conference/Oral Argument to Final Disposition, as provided under Florida Rule of Judicial Administration 2.250, is based on how long it takes judges to render a decision. Another factor considered by the Workgroup relates to reopened cases and the fact that when a case is reopened, the date reflected on the pending caseload report is that of the original filing date rather than the reopen. This, in effect, could add years to the time pending and should therefore be collected and reported distinct from the original case. These examples further emphasizes the point that time standards for the trial courts should be evaluated.

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\(^1\) Civil Justice Initiative Pilot Media Advisory, released January 10, 2017 by the Eleventh Judicial Circuit of Florida.
This idea was recommended in a 1997 report by David Steelman, an expert with the National Center for State Courts (NCSC).\textsuperscript{2} As suggested by the NCSC report\textsuperscript{3}, the standards should not be a fixed time, as we have now (ex. Jury cases—18 months from filing to final disposition), but that the time standards “...reflect a recognition that there normally is a large proportion of cases that are disposed with little court involvement; a second proportion that dispose after one or two issues are resolved ...; and the smallest proportion do not resolve without a trial.”

This tripartite model is reflected in many differentiated case management systems. Based on this model, the standards provide a first tier time period within which 75 percent of the filed cases should be disposed; a second tier time period within which 90 percent of the filed cases should be disposed; and a third tier time period within which 98 percent of filed cases should be disposed. The 98 percent tier is key to establishing a backlog measure and setting the expectation of the maximum time within which a case should be decided or resolved. The other two tiers are intended as points of measurement for effective management of pending cases.

In response to Charge Four, the Workgroup recommends that time standards should be set for the first, second, and third tiers of dispositions, as described above, as a percentage of total cases and by the time reflected in our data. The Workgroup acknowledges that without conducting additional analysis it is premature to suggest specific time frames and percentages at this point in time, but agrees it may be useful to use the NCSC proposal as an example of what those standards might look like.

Taking this approach, the Time to Disposition and Age of Active Pending Caseload measures, related to the time standards, will provide not only a realistic statement of the disposition measures, and thus true performance of the courts,

\textsuperscript{2} David C. Steelman, “What Have We Learned About Court Delay, ‘Local Legal Culture,’ and Caseflow Management Since the Late 1970s?” \textit{The Justice System Journal}, 19, no. 2 (1997).

\textsuperscript{3} The NCSC time standards publication, provided \underline{here}, offers standards for measuring cases.
the measures will also be a useful case management tool for judges and case managers.

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**Recommendation Four: The Performance Management Workgroup recommends consideration of time standards for intermediate court events. In other words, should there be a time standard for how long you have to wait for a hearing, a trial, or a ruling; and should courts track cancellations, continuances, and stays as party-created events that prevent judges from progressing cases? Answering such questions will allow gathering of relevant data.**

The Uniform Case Reporting (UCR) project is aimed at computing three performance measures: Time to Disposition, Clearance Rate, and Age of Active Pending Cases. These core measures are based on the CourTools advocated by the National Center for State Courts. The Performance Management Workgroup has been asked to identify additional measures beyond these three core measures. Specifically, those that are meaningful to the Florida court judges for case management, accountability, and for display to the general public for improving trust and confidence. In response to Charge Five, the Workgroup suggests further research in this area to allow gathering of data. While the Workgroup was unable to recommend specific new measures during this term, at a minimum, it is recommended the UCR project also begin capturing:

- Number of active cases per judge;
- Time specifics on when the case is in the judges’ control;
- Number of hearings held per case;
- Number of trial days per case; and
- Number of bench trials per case.
Recommendation Five: The Performance Management Workgroup recommends the National Center for State Court’s technical requirements regarding case triage, be considered for further Court Application Processing System (CAPS) standards.

In their 2016 report, Call to Action: Achieving Civil Justice for All, Recommendations to the Conference of Chief Justices by the Civil Justice Improvements Committee, the Conference supported the implementation of case management practices tailored to the needs of each case. The initial sorting of cases by identifiers of complexity as a triage effort was the subject of subsequent reports suggesting the use of technology to support the human effort. These national technical standards are consistent with the goals related to case management in the Judicial Branch’s 2016-2021 Long-Range Strategic Plan approved by the Supreme Court. The Workgroup acknowledges that creating a technology component to facilitate these efforts requires advanced planning and implementation but recommends consideration of the issue to be included in future requirements of the Court Application Processing System (CAPS) standards.

4 Civil Justice Improvements Committee, Call to Action: Achieving Civil Justice for All, Recommendations to the Conference of Chief Justices by the Civil Justice Improvements Committee. 2016. Recommendations 2, 3, and 10 reflects an approach to case management based on case need. The initial sorting of cases by identifiers of complexity as a triage was the subject of follow-up reports suggesting the use of technology to support human effort. The report is located at: www.ncsc.org/civil Detail is located at: http://www.ncsc.org/~/media/Microsites/Files/Civil-Justice/Automated%20Civil%20Triage.ashx (general description) and http://www.ncsc.org/~/media/Microsites/Files/Civil-Justice/Automated%20Civil%20Triage%20and%20Caseflow%20Requirements%202015-11-30.ashx (technical requirements).
**Final Remarks**

On behalf of TCP&A, the Performance Management Workgroup appreciates the opportunity to present these recommendations to the Court. Both the members of the Workgroup and the TCP&A remain committed to expanding and improving performance management for the trial courts. Together, we stand ready to implement the above five recommendations thereby obtaining reliable case data and improving public trust and confidence in Florida’s trial court system.