

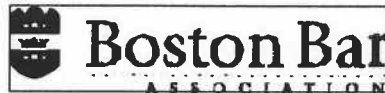
BOSTON BAR ASSOCIATION

Administration of Justice Section

*Enhancing Cost and Time Efficiencies in the Commonwealth's Courts
Through Effective Judicial and Attorney Practices*

**Report of the Work Group on Cost and Time
Efficiencies in the Massachusetts Courts**

November 15, 2005



INTRODUCTION

For a variety of reasons, many of the Commonwealth's judges are burdened by heavy caseloads and a lack of administrative support. At the same time, members of the bar, clients and the public are increasingly voicing concerns about the increased cost and time it takes for litigation to move through the courts. A number of reports and studies have issued in recent years recommending ways to improve the administration of justice in the Commonwealth through organizational and structural court reforms. The Report of the Visiting Committee on Management in the Courts (the "Monan Report") and the December 2003 Report of the Boston Bar Association Committee on the Superior Court Circuit System are just two examples of these efforts.

Wholesale reform of the Commonwealth's judicial system may eventually bring enhanced efficiencies to the administration of justice. However, such changes are unlikely to be immediate. In the interim, members of the Administration of Justice Section have discussed whether smaller scale inefficiencies in the state court system can be identified and remedied through relatively modest changes that can be implemented immediately. Accordingly, this informal Work Group was formed by the Administration of Justice Section in January 2004 for the purposes of identifying cost and time inefficiencies that currently exist in the handling of state court cases, and exploring whether more efficient attorney and judicial practices might reduce those inefficiencies.

In bi-weekly meetings from late January 2004 through June 2004, the Work Group's participants -- William Abbott, Esq., Honorable Judith Fabricant, Julie A. Frohlich, Esq., C. Peter R. Gossels, Esq., Neil Moynihan, Jr., Esq., Andrew Rainer, Esq. and Cynthia A. Robinson, Esq. -- focused on various phases or major elements of civil cases in the Commonwealth's Superior and District Courts. Drawing on our collective experiences as well as informal communications with judges and attorneys, and anecdotal information, we:

1. Discussed whether inefficiencies currently exist in various phases of cases;
2. Discussed factors causing or contributing to the inefficiency; and
3. Developed recommendations to eliminate or reduce the inefficiencies through the adoption of a more efficient judicial practice and/or attorney practice.

By way of obtaining additional background information, Work Group members considered expense and delay reduction studies and efforts undertaken in other courts, including the federal Expense and Delay and Reduction Act and the Expense and Delay Reduction Plan for the United States District Court for the District of Massachusetts. The Work Group concluded that the larger case loads of most state judges and the organizational structure of the Commonwealth's courts do not permit the wholesale adoption of the intensive case management program adopted by the federal courts.

Nevertheless, the Work Group identified discrete practices within the federal system that could be implemented within the existing state court systems.

The Work Group met again between January and April 2005 to discuss recommendations for improving efficiency in criminal cases. Participants in these meetings, in addition to the original Work Group members, included Assistant Attorney General Pamela Hunt, Chief Counsel of the Committee for Public Counsel Services William Leahy, former Superior Court Judge and current AOJ Co-Chair Patrick King, and attorneys Joseph Green and Robert Berger.

In its discussions, the Work Group noted the recent revision of Mass. R. Crim. P. 13 and 14, governing pretrial discovery and discovery motions, as well as the promulgation of new time standards for criminal cases in the Superior Court, the District Court and the Boston Municipal Court. While acknowledging that it was too early to gauge the full impact of these new rules on efficiency in the courts, the Work Group believed that there was still value in making a discrete number of recommendations to improve efficiency on the criminal side of the docket. The Work Group also applauds the efforts being made by the Superior Court to identify possible practices to improve efficiency based on the needs of the dockets in the different counties of the Commonwealth, and expresses the hope that the experience gained in the different counties can eventually be shared so that, ultimately, effective improvements can be made throughout the system.

The remainder of this report sets forth the Work Group's identification of commonly occurring inefficiencies in Superior Court, District Court and Boston Municipal Court cases, as well as recommendations to eliminate or reduce the same. In recommending a particular practice to attorneys or judges, the Group is not asserting that the recommended practice is the only efficient practice or even the "best" practice. Rather, the intent is to identify practices that can be used in the existing court system and may result in lower costs and/or fewer delays on a consistent basis over a wide variety of cases. Moreover, while this report focuses on cases in the Superior Courts, the District Courts and Boston Municipal Court, some of its recommendations can and should be considered for use in other trial courts.

RECOMMENDATIONS

I. PRETRIAL MATTERS

A. Consolidation of Related Civil Cases

1. Superior Court:

Issue – Time and/or cost efficiencies may be gained when related actions are assigned to the same session.

Recommendation - Currently, the Superior Court’s Civil Action Cover Sheet asks plaintiff’s counsel to identify actions pending in the court that are related to the newly filed action; however, in practice the newly filed action frequently is not automatically assigned to the same session as the previously filed “Related Action”. Newly filed actions that are identified on the Civil Action Cover Sheet as being related to a pending action should be assigned by the Civil Clerk’s Office to the same session as the pending “Related Action” identified on the Civil Action Cover Sheet.

2. District Court:

Recommendation - The District Courts do not have a form that allows a plaintiff to identify related actions at the time a new civil complaint is filed. However, District Court Standing Order 1-85, which is applicable to all Divisions, provides for consolidation of related civil cases pending in more than one Division. Accordingly, if an attorney reasonably believes related civil actions have been filed in separate Divisions and efficiencies may be gained by the consolidation of those actions in one Division, then the attorney should consider filing a motion to consolidate pursuant to the provisions of Standing Order 1-85.

B. Civil Case Management and Status Conferences

Issue – In 1988, District Court Standing Order 1-88, entitled “Civil Caseflow Management”, issued for the purpose of establishing procedures and principles to meet the time standards requirements for civil cases adopted by the Supreme Judicial Court.¹ In discussing the background and objectives of civil case management, District Court Standing Order 1-88 states in relevant part:

A. *Background.* Recent research on Superior Court civil filings confirms and underscores what is already known intuitively by those familiar with civil case management generally, namely, that most civil cases are resolved without

¹ Effective August 31, 2004, District Court Standing Order 1-88 was superceded by Joint Standing Order No. 1-04 of the Boston Municipal Court Department and the District Court Department (“BMC/District Court Standing Order 1-04”).

