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The Elements of Case Management

Third edition

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The Elements of Case Management

Third Edition

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Dedicated to

Judge William W Schwarzer

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Preface

Judge William W Schwarzer, who served as director of the Federal Judicial Center from 1990 to 1995, wrote the first edition of this brief handbook in 1991 with the assistance of former Center staff member Alan Hirsch. In 2006, my immediate predecessor, Judge Barbara Jacobs Rothstein, contributed additional material reflecting the growing impact of electronic discovery and other technological innovations on the nature and cost of civil litigation.

I have undertaken a similar effort in this third edition, primarily to emphasize the point—one that animated the 2015 Amendments to the Federal Rules of Civil Procedure—that just, speedy, and inexpensive resolution of disputes depends upon engaged and active judicial case management. Judge Schwarzer recognized this reality many years ago, and his practical advice remains valuable today. For that reason and for many others, this third edition appropriately is dedicated to his memory.

Jeremy D. Fogel
Director, Federal Judicial Center

Introduction

Rule 1 of the Federal Rules of Civil Procedure describes the goal of the judicial system: "to secure the just, speedy, and inexpensive determination of every action." If judges are to achieve this goal despite limited judicial resources and the rising cost of litigation, particularly discovery, they must manage the litigation process.

Case management means different things to different people, and there is no single way to do it. In fact, there are substantial differences of opinion about many of the subjects we discuss here. But there is general agreement that case management, in essence, involves trial judges using the tools at their disposal with fairness and common sense (and in a way that fits their personalities and styles) in order to achieve the goal described in Rule 1. These tools include the Federal Rules of Civil and Criminal Procedure, the Federal Rules of Evidence, local rules, some provisions in Title 28, and the inherent authority of the court. Although judges operate in an environment largely shaped by local practice and custom, innovation and adaptation to circumstances also contribute to effective case management.

Faced with busy dockets, some federal judges say that they simply don't have time to meet with lawyers to discuss case management. In fact, however, a relatively modest amount of a judge's time devoted to case management early in a case can save very significant amounts of time later on. Saving time also means saving costs, both for the court and for the litigants. Judges who think they are too busy to manage cases probably are too busy not to. Indeed, the busiest judges with the heaviest dockets are often the ones most in need of sound case-management practices.

This manual briefly describes techniques that judges have found effective in managing their cases at various stages of the litigation process. It begins with a discussion of the Rule 16 conference, outlining how proper use of this conference enables judges to establish control of cases at the outset. It then provides separate discussions of several items on the Rule 16 agenda—settlement, discovery, and motions—that continue to play an important role in case management after the conference and are, in any event, important enough to warrant discrete consideration. The manual next turns to case management during the final pretrial conference, and then the trial itself. Finally,

it discusses how judges can make the most effective use of the court's human and material resources. For more detailed analysis of techniques for managing civil litigation and samples of orders and other forms some judges and courts have used, refer to the *Civil Litigation Management Manual, Second Edition* (Judicial Conference of the United States 2010).

This manual is not intended to suggest that there is one preferred approach to case management. Its suggestions are offered as food for thought—a foundation for thinking about techniques and methods that will best suit the individual judge. Finally, a word of caution: local rules and the law of the circuit may affect some of what is said here.

The Rule 16 Conference

A judge's initial contact with the lawyers normally comes at the Rule 16 conference, known in some districts as a preliminary pretrial conference, scheduling conference, or status conference. The purpose of the conference is to launch the case-management process. The specific rules or practices in each district will influence the precise nature and scope of the conference. Regardless of variations, however, the culture of each court should further the central principle underlying Rule 16: that a judicial officer take charge of the case early on and, together with the lawyers, establish a program appropriate for its just, speedy, and inexpensive resolution.

In some courts, that judicial officer will be the judge to whom the case is assigned. Becoming familiar with the case early helps the judge manage it effectively and, if necessary, try it more efficiently. In some courts, however, magistrate judges supervise the pretrial process. For this to work well, the magistrate judge needs the assigned district judge's backing. The district judge and magistrate judge should reach a general understanding about the management of the case at the outset and coordinate periodically. Lawyers should not get the impression that appealing the magistrate judge's case-management rulings is likely to be advantageous.

Timing and procedural matters

Rule 16 requires the court to issue a scheduling order within 60 days after the appearance of a defendant or within 90 days after the complaint has been served on a defendant. It is advantageous to schedule the first conference as early as possible, before the lawyers become bogged down in discovery or motions. Though some cases obviously require less attention than others, it makes good sense to schedule conferences in all cases with potential discovery and motion activity. Some types of cases, such as government collection cases or Social Security appeals, usually are so routine that no conference is needed.

Rule 16 conferences should not be perfunctory scheduling exercises. Judges who use conferences in that way miss out on its substantial benefits. The conference should be a moment of truth for the pleader and an opportunity for thoughtful discussion among the parties. The lawyers responsible for the case—not junior associates—

should be there and should be prepared to explain their claims and defenses and to discuss future proceedings.

Although Rule 16(c) provides an agenda for the conference, judges may think of additional items appropriate for a particular case. Many judges issue a standard status conference order in advance, notifying the lawyers of what is expected of them. Many judges ask the lawyers to submit a joint case-management statement prior to the conference, summarizing the essentials of the case in simple terms, stating their position on the various agenda items, and proposing a joint scheduling plan. In addition to laying the groundwork for a complete and specific conference agenda, this procedure requires lawyers to prepare for the conference, to think about the case, and to reach agreements. This kind of analysis often eliminates meritless claims or defenses. A judge's reputation for insisting that lawyers be on top of a case from the beginning works wonders in reducing dockets and moving them along. Of course, the judge too should be prepared for the conference, having read the pertinent pleadings and the lawyers' statements.

In some cases, it also can be advantageous to have the parties present. This gives them an opportunity to hear opposing counsel and to learn firsthand what may be involved in the litigation, including the likely cost. Such knowledge can engender a more receptive attitude toward settlement. On the other hand, there is a risk that clients' presence will discourage candor on the part of the attorneys, or that some clients will attach too much significance to casual remarks. In some cases, it may be advantageous to have the parties available at the courthouse though not necessarily present during all of the conference.

While some judges hold Rule 16 conferences in open court with a court reporter present, others hold them in chambers and off the record, encouraging greater informality and a more searching and productive discussion.

Some conferences (and even motion hearings) can be conducted by telephone, saving time and money. But there is much to be said for having the case's first conference in person, bringing the lawyers and the judge face to face. Quite often, lawyers will not have talked to each other about the case beforehand. Bringing them together to engage with the litigation early on is one of the most useful aspects of case management.

Establishing jurisdiction and identifying pivotal issues

The primary objective of the Rule 16 conference is for the judge and the lawyers to discern what the case is really about. Pleadings often do more to obscure the real issues than to identify them. Before getting to the issues, however, the judge should always explore subject-matter jurisdiction, the absence of which is, of course, a non-waivable defect. It sometimes happens that the absence of jurisdiction is not recognized until well into a case—occasionally not until the appeal. The pretrial conference can prevent proceedings that will later prove fruitless.

Once federal jurisdiction has been established, the most important function of the conference is the identification of pivotal issues. This process reduces many seemingly complex cases to simple, clearly defined disputes that can be resolved more easily than appeared at first. For example, the Rule 16 conference may reveal that the plaintiff's right to recover ultimately turns on whether a legal defense bars the claim. Resolving that defense by motion, or perhaps by a separate trial, can save time and expense.

Detecting the underlying issues in dispute sometimes requires vigorous questioning of the attorneys by the judge to get beyond the pleadings. Parties may raise assorted claims or defenses that create the impression of a complex lawsuit when, upon probing, it turns out that the entire case hinges on a straightforward factual or legal question—or no triable issue at all.

The Rule 16 conference is also a time for the judge to address the need for, and possible limitations on, the use of expert testimony under Rule 702 of the Federal Rules of Evidence. Under the Supreme Court's decisions in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), and *Kumho Tire Co. v. Carmichael*, 526 S. Ct. 137 (1999), the district judge is the gatekeeper who must pass on the sufficiency of proffered evidence to meet the test under Rule 702. The court should use the conference to explore in depth what issues implicate expert evidence, the kinds of evidence likely to be offered, and potential areas of controversy. For more on the management of expert evidence, see *Manual for Complex Litigation, Fourth*, ch. 23, 469–516 (Federal Judicial Center 2004).

An important function of the conference is to disclose just what relief the plaintiff seeks—what damages it expects to prove and on

what basis, and what other relief is sought. This helps to define what is at stake in the litigation. Undertaking this process at the outset can substantially reduce discovery. A commercial dispute, for example, may turn on an ordinary business record that has never been shown to the opponent. No discovery is needed. The judge can direct that the record be made available promptly and that the lawyers report back by telephone on a specified date. Similarly, if a defendant pleads all of the boilerplate defenses, the plaintiff may be in the position of having to conduct costly and unnecessary discovery; by using the conference to clarify which issues are genuinely in dispute, the judge can prevent such waste.

The Rule 16 conference should also be used to screen out cases or claims that lack any factual basis. While notice pleading means that parties need not allege all the evidentiary detail, it does not entitle them to litigate issues for which they have no evidence. Parties may not look wholly to discovery to make a case or defense. There must be some showing of a factual basis, or at least a strong likelihood of one, as a condition for permitting a party to go forward.

Careful definition of issues early in a case may also disclose issues susceptible to resolution by summary or partial summary judgment. Discussion can reveal some threshold legal issue that may not have appeared clearly to the lawyers or perhaps was swept under the rug by one of them. Judges who familiarize themselves with a case can usually determine whether there are disputed evidentiary facts requiring trial or whether the issue can be resolved on motion.

The conference not only lays the groundwork for motions but also provides an invaluable opportunity to identify and assess the proportionality of the discovery needed before motions can be made, thereby avoiding premature motions and building the foundation for proper ones. The conference can streamline or head off the filing of summary judgment motions that involve disputed factual issues and would only waste the parties' money and the court's time.

Attorneys' fees

The Rule 16 conference can also reduce future litigation over attorneys' fees. After disputes on the merits are resolved, and an award of attorneys' fees is indicated, parties often bitterly dispute the proper

amount of such fees. They contest the amount of time that should have been or was in fact spent on the case and argue about what is a reasonable billing rate. Such disputes can be prevented or at least reduced if the judge lays down ground rules and establishes appropriate record-keeping requirements at the beginning of the case.

Setting dates for future proceedings

Rule 16 directs the judge to set dates for completion of discovery, filing motions, joining other parties, and amending the pleadings. The judge may also modify the times for disclosure under Rule 26 and the extent of discovery, and set dates for a final pretrial conference and trial. It is important that these dates be set at the outset of the case if feasible. Sometimes not enough is known about a case to set meaningful dates, and another conference may be necessary. Some judges set firm discovery cutoff and trial dates at the first conference and never depart from those dates. Such rigidity can be effective for disposing of civil cases rapidly, but it is not always practical for courts whose heavy criminal dockets may affect trial dates for civil cases. However, most judges agree that a firm trial date is the most effective tool in case management. Therefore, every effort should be made to keep the scheduled trial date.

Judges should always set a firm date for the next event in the case, be it another conference, the filing of a motion, or any date requiring action by the lawyers. Every case in a judge's inventory should have a specific date calendared that will bring it to the court's attention.

Setting a firm schedule at the conference is no substitute for defining and narrowing issues. Focusing lawyers' attention on the issues from the outset avoids unnecessary discovery, promotes early settlement, prevents pointless trials, and, where a trial is needed, furthers efficiency and economy.

Settlement

The Rule 16 conference also should explore the possibility of settlement, and in most cases it should include a specific discussion of an appropriate time for and process of alternative dispute resolution. Most cases will eventually settle anyway, but often only after unnecessary cost, delay, and judicial effort. The traditional settlement on the courthouse steps, after much discovery and motion activity, not only is wasteful but also leaves the parties feeling dissatisfied with their experience as litigants. Judges should try to facilitate early settlement where practical.

Lawyers are generally not in a good position to evaluate settlement possibilities at the first conference, knowing too little of the case. Once the issues have been identified and narrowed, however, relatively little discovery may enable them to make a reasonable evaluation. The deposition of the plaintiff and perhaps the defendant or a key witness, and the exchange of a few documents, may be all that is necessary. This can be readily arranged, and the lawyers can be directed to return at a specified date if they have not settled. Such "phased discovery" frequently leads to an early settlement.

At the outset of a case, lawyers have rarely thought much about damages. Judges should focus attention on this subject early because it is crucial to a realistic evaluation. Many lawyers give insufficient consideration to the economics of their case, plunging into litigation without making a cost–benefit calculation. A client may have a meritorious claim, but the time and money necessary to establish it may be out of proportion to the potential reward. The Rule 16 conference should provide lawyers with a "reality check," and discussion about settlement should focus their attention on what would be an acceptable outcome for the client.

The judge's role

It is useful for a judge to inquire about settlement whenever meeting with the lawyers. Lawyers are often interested in settling (particularly in view of the rising cost of litigation), but may consider raising the subject an admission of weakness. A judge's questions offer a graceful opening.

Different judges take different approaches to settlement. Some judges become actively involved in settlement negotiations in their own cases, thinking that another judge would lack the necessary familiarity. Others choose not to, believing it may compromise them if the case goes to trial. This is a legitimate concern, because participation in the negotiations sooner or later may require the judge to evaluate and express a view on the strength of a claim or defense. Doing so will jeopardize the appearance of impartiality in future proceedings, and may cause both the judge and the parties to feel uncomfortable. This is less of a problem in a jury trial than in a bench trial. Nevertheless, in all cases, unless both parties urge the judge to act as settlement judge and waive disqualification, there is much to be said for recruiting a colleague on the court—another district judge or a magistrate judge—as a settlement judge. Many courts also have established alternative dispute resolution (ADR) programs, to which cases may be referred.

Of course, settlement is not desirable in every case. The dispute may involve a principle of importance to the parties or an issue whose resolution on the merits will help guide the conduct of other parties. Moreover, a party with a meritless claim should not be assisted in extracting a nuisance settlement by threatening protracted and costly litigation. Judges who are actively involved in settlement negotiations should be sensitive to such considerations and should avoid using their position of authority to apply undue pressure on parties to settle. Judges should facilitate, not coerce, settlement.

Discovery

Discovery, while often a critically important means of getting at the truth, also is probably the single greatest source of cost and delay in civil litigation. Judges can do much to mitigate this problem. Rule 26(b) gives judges great power and discretion to control discovery. This power can be used to prevent duplication, to require lawyers to use the least expensive way to get necessary information, including discovery of information stored electronically, and, particularly in light of the 2015 amendments to Rule 26(b), to keep discovery costs from becoming disproportionate to what is at stake in the lawsuit.

At the initial conference, the judge should review the lawyers' discovery plans with these considerations in mind and keep the discovery program in line with the objectives of Rule 26(b). Judges generally should not use valuable conference time to develop a detailed discovery plan with the lawyers. Instead, the lawyers should be asked to propose an agreed-upon plan, which the judge should review with care. Although the civil rules limit the number of depositions and interrogatories and the length of depositions, the court may alter those limits. The judge should therefore require justification as to the need for particular discovery and explore alternatives for getting information less expensively. Abuse of the discovery process is a ground for sanctions, but sanctions will rarely be needed when sound case management is applied.

Special care is required to manage expert discovery. The parties will usually exchange experts' reports before their depositions are taken—the reports can focus the deposition, and may even obviate the need for it. An expert should not be permitted to testify at trial unless he or she has been made available for deposition before the trial. Therefore, in some cases it makes sense to defer expert discovery until other discovery is completed, giving the parties a clearer sense of what expert testimony may be needed.

Some district judges assign supervision of discovery matters to magistrate judges. Whoever handles discovery disputes should have a program for keeping them under control. The most effective method may be having the judicial officer available to resolve any discovery dispute by telephone. This is particularly effective when a dispute develops during the taking of a deposition. Knowing that the

judge is only a phone call away has a wonderful tendency to make lawyers more reasonable. It is surprising how quickly disagreements are resolved when they must be presented to the judge in a succinct statement. Telephone conferences eliminate the opportunity to use discovery disputes to obstruct the litigation. Establishing this procedure at the outset of a case greatly reduces the number of discovery disputes.

Many districts have local rules that preclude the filing of discovery motions unless the parties certify that they have met and conferred in a good-faith attempt to resolve the dispute. Even without such a rule, the judge can require that such a conference take place, and such practices are expressly encouraged in the 2015 Committee Notes to amended Rule 26(b).

Motions

Motions play an important role in litigation. They can prevent unnecessary trials or at least narrow issues so as to expedite trials. Pointless motions, however, waste time and money; whenever possible, the judge should discourage them. The classic example is the Rule 12(b)(6) motion for failure to state a claim. More often than not, the asserted defect is readily cured by an amendment. At the Rule 16 conference, the judge can ask the parties to specify any grounds they might have for such a motion and can determine in advance whether a defect is curable. Curable defects should generally be brought to the opponent's attention before a motion is filed. Similarly, lawyers should be discouraged from filing Rule 11 motions. There is a tendency to misuse this rule, which generally should be directed only at abusive conduct.

A hearing is unnecessary if a motion is routine and the outcome obvious. If the motion presents a difficult or close issue, the lawyers should come to court to answer questions and address the judge's concerns. Local rules or the Rule 16 scheduling order will provide a schedule for filing motions and oppositions. The time limits should be observed so that the judge has sufficient time to prepare for a hearing, if there is to be one.

If at all possible, the judge should be prepared to decide the motion from the bench. Most disputes do not become easier to resolve once taken back to chambers. In fact, as time passes the matter becomes cold, and the judge will need more time to refresh his or her recollection. While the litigants are entitled to the court's best effort, they will generally prefer a prompt decision to a perfect but belated one.

Trial courts should write no more than necessary, but often the legal issue involved in a summary judgment motion may be of great importance to the case before the court and to other cases. In those cases a written opinion is necessary. Otherwise, ruling from the bench orally after argument will be adequate and expeditious.

The Final Pretrial Conference

The final pretrial conference can be valuable in two respects. First, it is the last good shot at settlement. Second, it is a dress rehearsal for the trial. Delay and expense in civil litigation result not only from unnecessary trials but also from trials lasting too long and involving too many witnesses and exhibits. At the final pretrial conference, the judge and the lawyers can ascertain in advance what issues have to be tried and what evidence is necessary. This will also help ensure that the lawyers are prepared for trial.

Despite its potential, some judges treat the final pretrial conference as little more than a scheduling conference to set the final trial date. Others go to the opposite extreme and require preparation of elaborate statements, summaries, and stipulations. There is much to be said for a middle course: doing whatever is necessary, given the circumstances of the case, to lay the groundwork for a fair and efficient trial. Here are some of the agenda items the judge should consider.

Defining and narrowing the issues

The judge should have attempted to define and narrow the issues at the initial conference, but by the time of the final pretrial conference everyone will have a clearer understanding of the case. This conference presents the last and best opportunity to prevent waste of valuable trial time on pointless or undisputed matters. A good way to focus the issues is to require the parties to submit proposed jury instructions (or proposed findings of fact and conclusions of law in bench trials) that set forth clearly the governing rules of law and the factors controlling their application.

Previewing the evidence

By hearing and ruling on motions in limine, the judge can head off admissibility disputes during trial. The final pretrial conference provides an opportunity to hold a hearing under Rule 104 of the Federal Rules of Evidence to determine the admissibility of expert testimony under *Daubert*, and to exercise the authority conferred by Rules 403 and 611. The judge can bar duplicative testimony (by limiting each side's expert or character witnesses, for example). So, too, the judge can eliminate testimony about matters not in dispute. For example,

there is no point in having a handwriting expert if there is no dispute over who was the writer. Many foreseeable objections to testimony—such as hearsay objections—can be resolved before trial, as can issues concerning the permissible scope of opening statements.

Proposed exhibits should be previewed with a view to holding down their number and volume. There is little point in inundating jurors with a mass of exhibits beyond their capacity to read and absorb. (In post-trial interviews, jurors often complain that the lawyers presented too much evidence.) The judge may suggest that voluminous exhibits be redacted to eliminate unnecessary portions and cumulative exhibits be eliminated. Sometimes information from numerous exhibits can be presented in a summary exhibit (as authorized by Federal Rule of Evidence 1006). Previewing proposed exhibits can also save valuable trial time, since the judge can rule on evidentiary objections and receive into evidence unobjectionable exhibits.

Considering limits on the length of the trial

Trials that last too long are costly, exhaust jurors, and hinder comprehension. When a trial threatens to be protracted, some judges find it useful to limit the number of witnesses or exhibits each side may offer. Other judges sometimes limit the amount of time allowed each side for direct and cross-examination, using a chess clock or similar means to keep a running account of the time used by each party. Such limits can be helpful to the court and the parties but should be imposed with care and only after consultation with counsel.

Establishing the ground rules for the trial

The final conference can fix the procedures for trial, including the conduct of voir dire and method of jury selection, the order of witnesses, and daily trial schedules.

Considering the use of special procedures

The judge can discuss with counsel and determine the propriety of bifurcation, the return of sequential verdicts by the jury, use of special verdicts or interrogatories, and any other phasing arrangements or special procedures that may be appropriate.

Exploring once more the opportunities for settlement

Now that the parties are completely familiar with the case, they may be ready to settle if the judge provides the opening.

* * *

The results of the final pretrial conference should be memorialized in a pretrial order. To save time, the judge can dictate the order to the court reporter at the end of the conference with counsel present.

Trial

At trial, the court's management power transcends the authority specifically conferred by rules, statutes, and decisions. The judge has broad inherent power over the management of cases, attorneys, and parties. That inherent power, employed judiciously, enables the court to do what is necessary to produce just, speedy, and economical trials.

Although case management brings judges into areas that were once entirely controlled by lawyers, the judge should be careful not to take the case away from the lawyers. While the court can and should set limits, define issues, and establish ground rules, it should leave the case to be tried by the lawyers. The judge needs to appreciate that the lawyers have obligations to their clients, obligations that at times will be in tension with the court's objectives. Also, the lawyers know the case better than does the judge, who is managing many cases. The judge's task is to bring about a reasonable accommodation by formulating a framework within which the adversary process will function constructively. What follow are suggestions for managing the various stages of trial.

Starting the trial

The process of selecting jurors varies somewhat from court to court. The court may seat from six to twelve jurors, depending on the expected length of the trial, and all jurors remaining when the case goes to the jury will participate in the deliberations.

Rule 47 gives the judge the choice of personally conducting the voir dire or leaving it to the lawyers. Most judges conduct the voir dire themselves in order to expedite jury selection. Doing it oneself, however, obligates one to do a thorough job. The judge may have members of the venire complete questionnaires before voir dire, which can facilitate more focused questioning. It is not enough for the judge to ask perfunctory or conclusory questions. Prospective jurors should be questioned individually and invited to give narrative answers about their work, interests, and attitudes on critical matters. This can be done without taking undue time, especially with customized, case-specific questionnaires. In addition, Rule 47 requires that the attorneys be allowed to supplement the examination directly or by submitting questions to the judge. Attorneys will appreciate

the opportunity to ask the jurors supplemental questions directly. Permitting them to do so need not take much time. The judge can limit the time for supplemental questions and not allow repetitious questions, and the extra time will be well spent if it helps avoid mistrials by ferreting out potential problem jurors.

More and more judges have come to recognize the value of giving at least basic instructions to the jury before the trial begins. (Some even give instructions before the voir dire, on the theory that prospective jurors will then be better able to respond to questioning.) Pre-instructions inform jurors about how the trial will be run, how they are to conduct themselves, how to treat the evidence received, and other ground rules. Pre-instructions also educate jurors about the case—the elements of the claims and defenses, and the questions they will have to decide.

Helping the jury

Since jurors are the people expected to decide the case, judges ought to make every effort to help them in this often difficult task. Assisting jurors has become increasingly important in an era of complex litigation. Judges cannot afford to be passive or permissive. They should take various steps to help the jury perform its function well.

Judges should see to it that jurors are treated with respect and consideration. They are entitled to no less, having made a substantial sacrifice to perform a taxing public service. Trials should start on time. Lengthy recesses should be avoided. Jurors should not be sent out to wait while the lawyers argue; matters the jury should not hear can generally be taken up before the start or after the end of the trial day or during a recess. Bench conferences and other trial interruptions should be minimized. Sentencings, pleas, and other matters should be scheduled so as not to disrupt the trial.

The trial should move smoothly, without interruptions or surprises. It is helpful to confer with counsel at the end of each day to preview the next day's witnesses and exhibits, to anticipate evidentiary and other problems, and to make sure the lawyers will not run out of witnesses.

The lawyers should be encouraged to speak (and have their witnesses speak) clearly and in plain language. As witnesses testify about

exhibits, lawyers should help jurors follow by using visual aids. The judge should not hesitate to explain to the jurors any procedures that might be confusing and to recap the progress of the case.

Other aids to jury understanding are also worth considering. Most judges, for example, permit jurors to take notes (subject to appropriate instructions). Some judges prepare notebooks for the jurors containing the names and identification of witnesses and other helpful information. Some judges have found that allowing jurors to submit questions in writing can assist jury comprehension.

Instructions, summations, and deliberations

If the lawyers submit their requested jury instructions or charges at a pretrial conference, the judge will have time to organize and simplify them as the case progresses, and to supplement or modify them in response to developments during the trial and the lawyers' supplemental requests. This procedure enables judges to settle instructions quickly at the close of the evidence and move promptly to final arguments.

Obviously, it is important to make sure the jury understands the jury instructions. The instructions should be written in plain language, not legalese. Judges should not hesitate to rewrite the lawyers' requested instructions in simple, well-organized prose. Rather than being thrown together and read in random order, instructions should be carefully organized in a sequence that reflects the logic of the case. Instructions should be kept brief; a juror's attention span is not unlimited. The court should not give an instruction, even if requested, unless it is needed—too many instructions, given out of habit, merely cause confusion.

Federal Rule of Civil Procedure 51 permits the judge to instruct the jury before or after closing arguments. Many judges find that instructing before the arguments saves time by making it unnecessary for the lawyers to preview the instructions in their arguments; this, in turn, reduces the likelihood of objections. Having heard the instructions first, the jury may get more out of the attorneys' arguments. The lawyers should be encouraged to keep their closing arguments brief—rarely should they exceed one hour per side.

It is difficult for a jury to understand and remember the judge's instructions after having heard them only once. Accordingly, most judges now give a copy of the charge to each juror to take into the jury room. Experience suggests that doing so does not increase the difficulty of reaching a verdict. Storing electronic copies of common jury instructions and adapting them as necessary to the particular case allows a judge to conveniently produce a set of instructions.

The judge should make sure that before any exhibits are sent to the jury room, they have been carefully checked by the courtroom deputy and all counsel. It is critical that no extraneous documents, such as excluded exhibits, are seen by the jury.

Reasonable people differ about the desirability of special verdicts or general verdicts combined with special interrogatories. These devices may reduce the risk of having to retry the entire case following a partially successful appeal, but they increase the risk of inconsistent verdicts. Special verdicts must, therefore, be drafted with great care and the aid of counsel.

During deliberations, the jury may send questions to the judge or ask for further instructions. The judge should always consult with counsel before responding and respond only on the record. Where possible, the jury ought to be given the help it needs to arrive at a verdict, but within limits—for example, the judge should avoid getting involved in lengthy read-backs of testimony. When one is requested, the jury may be asked to narrow its request to specific testimony. Some judges instruct jurors at the beginning of the case that read-backs will not be available, so the jurors must listen carefully.

When the jury advises that it is deadlocked, the judge faces a difficult choice. A mistrial should not be declared until it is clear that the deadlock is hopeless. While it is appropriate to encourage the jury to try a bit longer—the longer the trial, the longer the jury should be given—the judge must not exert undue pressure. The judge may wish to consult instructions to deadlocked juries ("*Allen* charge") that have been approved by the court of appeals.

Bench trials

Although a bench trial is subject to fewer formalities, it should not be allowed to proceed in a careless and disorganized fashion. Since

the judge will be the one to decide the case, he or she has an interest in keeping it under control, limiting the testimony and exhibits to what is essential, and having the evidence presented in an orderly and comprehensible manner. Judges should not receive evidence on the assumption that it can be sorted out back in chambers. Once the trial is over, the judge will be occupied by other things, and by the time he or she gets back to it, the case will be cold.

Except when there are serious issues of credibility, the judge can have the parties submit much of the direct testimony of their own witnesses in the form of narrative written statements. These can be received at trial in lieu of direct testimony, subject to objections, supplementation, and cross-examination. This will improve the quality of the record on both the direct and the cross-examination, save time, and help the judge reach a decision.

As soon as the evidence has been received, the judge can have the lawyers argue the case as they would in a jury trial. Post-trial briefs should be avoided, except in cases involving complex legal issues. If at all possible, the judge should be prepared to dictate an opinion to the court reporter at the end of the closing arguments.

Using the Court's Resources

Effective use of the human and material resources available to the judge underlies every stage of case management. While the precise use of judicial assistants, deputy clerks, and law clerks depends on each judge's style, a few considerations apply universally.

The position of courtroom deputy clerk has enormous (and often unrealized) potential. Courtroom deputy clerks should not simply receive and file papers. They can be administrative assistants, managing the judge's calendar and communications with lawyers. Some judges assign this duty to their judicial assistants. In either case, it is important that lawyers understand the proper channel of communication and that someone on the court staff be prepared to manage it. That person should let the lawyers know what is expected of them and should keep the judge apprised of developments in the case—such as whether it appears likely to settle and whether the lawyers are prepared.

Law clerks, generally heavily burdened by the motion calendar and other research demands, must be used efficiently. Unless properly instructed and supervised, they may invest vast amounts of time on research that is appropriate for law reviews but of little use to the court. Judges should always define the specific problems on which they need help, making sure the clerks understand the practical context in which the problems arise. Judges should touch base with law clerks to ensure that they are on the right track and discourage the generation of unnecessary memos and other papers.

Many forms of technology are available to help judges be more efficient, revise their clerks' work, and keep track of their docket and calendar. Personal computers in chambers and the court's case management/electronic case filing system (CM/ECF) are invaluable tools for caseload management. Evidence presentation aids and other types of courtroom technology can help attorneys to present their cases and jurors to understand the evidence. Judges should learn about the technologies available in their courts and make use of them.

Related Readings

The following publications provide additional information on case management. Copies are available on request.

Awarding Attorneys' Fees and Managing Fee Litigation, Third Edition (Federal Judicial Center 2015)

Civil Litigation Management Manual, Second Edition (Judicial Conference of the United States 2010)

Effective Use of Courtroom Technology (Federal Judicial Center and National Institute for Trial Advocacy 2001)

Guide to Judicial Management of Cases in ADR (Federal Judicial Center 2001)

Managing Class Action Litigation: A Pocket Guide for Judges, Third Edition (Federal Judicial Center 2010)

Manual for Complex Litigation, Fourth (Federal Judicial Center 2004)

Reference Manual on Scientific Evidence, Third Edition (Federal Judicial Center 2011)

For bankruptcy judges:

Case Management Manual for United States Bankruptcy Judges, Second Edition (Judicial Conference of the United States 2012)

The Federal Judicial Center

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By statute, the Chief Justice of the United States chairs the Center's Board, which also includes the director of the Administrative Office of the U.S. Courts and seven judges elected by the Judicial Conference.

The organization of the Center reflects its primary statutory mandates. The Education Division plans and produces education and training for judges and court staff, including in-person programs, video programs, publications, curriculum packages for in-district training, and Web-based programs and resources. The Research Division examines and evaluates current and alternative federal court practices and policies. This research assists Judicial Conference committees, who request most Center research, in developing policy recommendations. The Center's research also contributes substantially to its educational programs. The Federal Judicial History Office helps courts and others study and preserve federal judicial history. The International Judicial Relations Office provides information to judicial and legal officials from foreign countries and informs federal judicial personnel of developments in international law and other court systems that may affect their work. Two units of the Director's Office—the Information Technology Office and the Editorial & Information Services Office—support Center missions through technology, editorial and design assistance, and organization and dissemination of Center resources.