

BENCHBOOK FOR TRIAL COURT JUDGES

COURT AND CASE MANAGEMENT: TRIAL COURT PERFORMANCE STANDARDS & MEASUREMENT

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COURT AND CASE MANAGEMENT: TRIAL COURT PERFORMANCE STANDARDS AND MEASUREMENT SYSTEM

1. INTRODUCTION

This System focuses attention on performance, self-assessment and self-improvement on five (5) Key Performance Areas around each of which standards were created. Those Areas are:

- Access to Justice
- Expedition and Timelines
- Equality, Fairness and Integrity
- Independence and Accountability
- Public Trust and Confidence

To determine if a court is meeting its selected performance standard, measurement or evaluation tools have been provided consisting of procedure for systematically collecting and analyzing data and tools for drawing conclusions from collected and collated data and identifying spheres in need of attention. The System is flexible in that a court is free to set up its own performance benchmark and choose the means to find out how it is faring thereon.

Some measures can be applied independently, as in the case of determining courtroom security, while other measures build on others. For example, before a court measures case backlog, it is best to evaluate first the extent in which it is keeping pace with its incoming caseload or clearance rate.

II. KEY ELEMENTS OF MEASURES

- Methods

The Methods are:

Observations
Role-playing or simulation
Interviews
Surveys or opinion polls
Court record reviews
Group techniques

- Tools

The Tools are:

Checklists
Questionnaires
Rating Scales
General public
Inventories
Statistical analyses

- People

The People (that is, the courts' various publics) are:

Judges
Court Personnel
Attorney
Court watchers
Media persons
Local executives
Litigants
Witnesses
General Public

III. CREATION OF CORE TEAM

Having the tools for improvement and making use of them are, of course, two different things. Like the concept of Total Quality Management, TCPSM needs a core team within a court branch that can command respect and resources and maintain the energy to keep it going when resistance is encountered. The team's composition will depend on the size and needs of the court.

The team should be headed by a Coordinator, preferably the judge. S/he should be committed to the court's mission (the court's fundamental expressed purpose) and vision (the court's preferred future that touches and moves all); has the time to devote to the effort; and has the perceived authority to ensure that the process stays on track. The Coordinator must be familiar with the measure, can be the repository of data gathered in their application and can interpret the results of the measure utilized. The core team's efforts are mainly focused on: (a) planning/operation/strategy; (b) making data collection forms; (c) data collection; (d) data analysis; and (e) report preparation

IV. APPLICATION OF MEASURES

1. Court Reviews and Case Data Examination.

Because Philippine courts are courts of record, court and case record reviews are the most familiar of the measures. These reviews require the staff to consult case files, dockets and administrative reports. They provide primarily quantitative information and are more objective than surveys and interviews which usually reflect responded perceptions.

The results of such reviews provide a good insight into such performance standards as (a) compliance with case disposition timeframes; (b) caseflow and case file management practices; (c) compliance with reporting

requirements; and (d) timeliness in implementing changes in law and procedure.

The following illustrates how to arrive at a clearance ratio.

Formula: Case Disposed

Cases Filed

Filings 17 18 19 18 21

Disposition 5 43 16 17 24

Clearance Ratio 0.29 2.39 0.84 0.94 1.14

A consistent trend of 1:1 ratios is evidence that a court is keeping pace with its incoming caseload. A court with clearance ratios well below 1.0 should examine the size and characteristics of its pending caseloads with a view to determining if a backlog is brewing or an existing one is increasing.

2. Observations and Simulations

These measurement tools rate the (a) audibility of court hearings; (b) information about the time and location of proceedings by telephone; or (d) accessibility of the courthouse and of court's facilities.

These methods can be done in combination. The observers and/or simulators or role-players are asked to record in systematically prepared forms what they see and hear. The results are then examined to identify any problem in the area being examined and how to solve it.

It is suggested that whatever information has been observed from questionnaires and checklists be augmented by observer/simulator interview for a more productive qualitative analysis.

3. Surveys and Questionnaires

Surveys or opinion polls seek a variety of information from the court's different publics. While some information elicited from surveys are factual, most surveys are designed to determine opinions, such as the fairness, integrity and equality of court proceedings and actions. A cost-effective type of survey is the exit survey wherein the respondent is asked to rate (e.g. good, bad, no comment) the courts personnel's performance in providing needed services or information. Exit surveys are important tools in Total Quality Management.

4. Interviews

This measurement tool may be used in tandem with other approaches, such as surveys, or as an alternative thereto, particularly where far more detailed responses may result than a written survey might yield, such as (a) employee familiarity with emergency procedures; or (b) situations where court policies or actions are governed less by written than by unwritten practices and rules; or court adherence to laws and procedures.

5. Group Technique

This technique requires the creation of groups preferably of knowledgeable practitioners. A Facilitator to guide the group through their activity has to be appointed. This technique works well in the 4th key performance area of independence and accountability inasmuch as performance in this area requires the exchange of ideas among knowledgeable court users.

TOTAL QUALITY MANAGEMENT

I. CONCEPT

Total Quality Management (TQM) is a management strategy that enlists the participation of all members of an organization in meeting and exceeding the expectations of their clients or customers by integrating quality into every process that is performed, product produced or service delivered by their enterprise. Its basic principles are suitable for private business and government.

Applied to the judiciary, it means continuous improvement of court services by injecting quality thereto to satisfy the needs of those who deal with the courts. Its goal is to provide quality service to court users.

II. RATIONALE

A court is an organized whole or an assembly of interdependent parts so that a change in one part affects the whole system. Its administrative functions and processes are so closely linked with each other such that the proper discharge of one depends on the proper discharge of others. TQM finds applicability in a court system since processing court cases involves a series of administrative steps performed by various court employees from the commencement of an action to its final disposition. Quality can be integrated into these processes to satisfy and delight court users, thus enhancing the effective administration and delivery of justice.

III. ORGANIZING A TQM-CORE TEAM

1. Developing Leadership Qualities

To effectively implement TQM in a court system, the presiding judge must organize a management team composed of him/herself and all court personnel. Because of the nature of the office, s/he is the Team Leader. As such, s/he must cultivate the following leadership abilities:

1.1

S/He must continually search for opportunities to challenge existing processes and improve the court organization. A leader thinks "outside of the frame." S/He experiments and takes risks.

1.2

S/He must inspire a shared vision. A leader thinks in the future tense and has a clear idea of the goals of his/her court. S/He moves the team towards this vision.

1.3

S/He must empower others to act. A leader actively involves his/her team members under an atmosphere of creativity, trust and respect for human dignity.

1.4

S/He must lead the way. Leaders create standards of excellence and set examples for others to follow.

1.5

S/He must recognize the contributions of each team member. A leader celebrates team accomplishments and make his/her members feel like heroes.[1]

2. Applying Teamwork Concepts

The judge must instill teamwork among all members. The word TEAM should mean Together, Everybody Achieves More. The catchword is Together. This stresses the need for "alignment," a situation where persons in a group function as a whole. A team is aligned when the individual energies and intelligence of the members are harnessed and harmonized. This results in a sense of oneness, a shared purpose and vision.

3. Formulating Vision and Mission Statements and Implementing Strategies

The Judge as Team Leader sets a date, time and place for the initial meeting of this TQM-Core Team. The purpose of the meeting is to define the three important TQM concepts of Vision, Mission and Strategy.

3.1

To formulate a Vision Statement, each member of the TQM-Core Team must express what s/he thinks the court should be known for. The ideas of all members must be integrated in a written Vision Statement. This way, each member feels responsible for helping formulate a vision for his court.

3.2

To formulate a Mission Statement, the team leader asks each member his/her idea of why courts of justice exist, what are the purposes of the court and what s/he wants his court to achieve. Again, these ideas are synthesized into a single written Mission Statement.

3.3

The Vision and Mission Statements of the court must be posted at a conspicuous place in the courtroom.

3.4

Strategies are courses of action that the Team should implement to fully achieve the mission of the court. This involves: (a) cooperation; (b) respect for one another; (c) encouragement of personal growth, innovation, initiative and foresight; (d) recognition of the unique nature of the judiciary; and (e) accessibility of the court to everyone.

These courses of action all relate to certain values that must be shared by the team members.

4. Values

Values are beliefs upon which conduct and behavior are based. The Team should be clear and definite about the values by which its court is to be managed. These may consist of respect for the individual, due process, fairness, equality, integrity and accessibility.

IV. SETTING UP AN IDEAL CLIMATE FOR TQM IMPLEMENTATION

The three (3) determinants for setting an ideal climate for implementing TQM are communications, participatory decision-making in the management process, and humane treatment of employees. These mean that communication lines between the judge and staff must always be open. Court employees must be allowed to participate in deciding administrative issues since it is they who will implement the action to be taken. Any decision made should be the consensus of all team members. Each member must be treated with respect and should feel as an indispensable part of the team.

1. The Self-Assessment Process

1.1

Identifying the court users: Each team member

1.1.1

first describes his/her specific functions and responsibilities as a court employee to apprise his/her team members about their respective work assignments;

1.1.2

next identifies the people s/he deals with in the performance of his/her functions;

1.1.3

then describes the most important needs of each court user in relation to the services provided by the court through him/her, i.e., what does the court user expect?

1.2

The team leader then asks each team member:

1.2.1

what result would best meet or even exceed the expectations of the court user?

1.2.2

what is the court doing to meet this expectation? If none, what can the court do to satisfy the user? If there is, what can be done to improve the service?

2. Assessment of Facilities (The Three 'Ps' – Place, Procedure and People)

The Team assesses the availability or adequacy of the following:

2.1

Physical facilities: court directory, telephones, fax machines, photocopiers, special services for the old or disabled persons, women and children, restrooms, waiting areas, courtroom seats, building maintenance, power and water supply, proximity to food services, etc.;

2.2

Process and Procedure: courtroom protocol (behavior and dress code), accessibility to information, hours of service, time management by court employees, fair and reasonable scheduling of cases, brisk calendar call, etc.;

2.3

People: respect and courtesy of court personnel, 'over-the-counter' manners and telephone etiquette, gender-sensitivity, fast, prompt and reliable service, availability of substitute employee, etc.

3. Regular Evaluation Meetings:

The team shall set aside a definite date and time at least once a month to regularly meet, evaluate and assess individual and collective performance. Infusing quality into court services must be a continuing process.

V. CASE MANAGEMENT

1. Concept and Purpose

Case Management in trial courts is a process whereby judicial control over the cases is assumed and exercised,

with maximum efficiency consistent with justice, from the moment of filing to disposition for purposes of reducing litigation costs and eliminating delay.[2]

An essential tool of case management is Caseflow Management which is the process of moving cases swiftly through the court from filing to disposition. It is the heart of court administration. Thus, 'From the commencement of litigation to its resolution, whether by trial or settlement, any elapsed time other than reasonably required for pleadings, discovery and court events, is unacceptable and should be eliminated. To enable just and efficient resolution of cases, the court, not the lawyers or litigants, should control the pace of litigation. A strong judicial commitment is essential to reducing delay and, once achieved, maintaining a current docket.'[3]

2. Objectives of Case Management

2.1

Equal treatment of all litigants by the court;

2.2

Timely disposition of cases;

2.3

Enhancement of the quality of litigation; and,

2.4

Promotion and preservation of public confidence in the courts.

3. Basic Principles

3.1

Case management is the sole and primary responsibility of a judge and court personnel.

3.2

Judges must be actively involved early in the proceedings, i.e., from the time the case is filed.

3.3

Firm judicial control must be maintained throughout the life of each case. The events or stages of a case must be scheduled at the earliest possible time and the time between these events should be as short as reasonably possible. This is called 'short scheduling.'

3.4

Judges must create expectations that trials and other case events will occur as scheduled. They should adhere to a strict 'no-continuance' or 'no-adjourning' policy.

3.5

Judges must establish an adequate information system for each case through an accurate caseload inventory report that shall include, among other data, the age and status of cases, to properly monitor and manage their caseloads.

4. Five Steps to Caseflow Management

4.1

Priming the Participants

The judge must involve all participants in the program. These are the lawyers, prosecutors, public defenders, law enforcers, court personnel and litigants. Explaining to them the caseload process and its objectives and emphasizing the need to cooperate in terms of meeting deadlines and periods set by law will encourage readiness for pre-trial and trial.

4.2

Preparing an accurate inventory of court cases

The inventory should describe nature, age and status of pending cases, the number of cases filed and disposed of, and the age of cases at disposition time.

4.3

Separating day backward (pending) cases from day forward (newly filed) cases.

4.4.

Differentiating day forward cases by means of a tracking system

This technique is called Differentiated Case Management (DCM). It clusters cases according to four tracking systems:

4.4.1

Fast Track – for cases that can be easily disposed of and require minimum court supervision;

4.4.2

Standard Track – for cases that require regular supervision by the court;

4.4.3

Complex Track – for cases that require significant and intensive court supervision; and

4.4.4

Holding Track – for cases that need extended case disposition time.

Generally, day backward cases are not included in DCM and must be treated according to the regular mode of case processing by the court.

DCM rejects the traditional "first-in-first-out" (FIFO) practice. It recognizes that some cases can and should proceed through the court system at a faster pace than others.

4.5

Developing and implementing a Tracking System

The judge and lawyers shall:

4.5.1

Develop a caseflow chart for each track by identifying each key event in the life of a case under the track, and the maximum time prescribed by law or procedural rule between the events. A sample chart for the Fast Track System is appended hereto as Annex A.

4.5.2

Ensure that the time limits are strictly observed by designating a "track coordinator" preferably, the branch clerk; and

4.5.3

Eliminate unnecessary case events and/or add necessary events consistent with timely disposition of the case.

5. Implementing Guidelines

Once case processing and procedures have been formulated through a tracking system, the judge and branch clerk must screen each case immediately after filing, and assign it to its appropriate track. The following guidelines are

helpful in facilitating timely disposition:

5.1

The court must ensure that each scheduled case event substantially contributes to case preparation and disposition.

5.2

The court must ensure that case events occur as scheduled.

5.3

The court must be able to identify through its monitoring system those cases that are in danger of exceeding deadlines.

5.4

Postponements or extensions must be sparingly granted and only on exceptional grounds. These must be closely monitored to determine whether a modification in the tracking system of time frames or events is necessary.

5.5

Sanctions should be imposed by the court for non-compliance with established deadlines.

VI. RECORDS MANAGEMENT

1. Concept

Records management involves the proper maintenance, preservation and accessibility of court records at the least cost and effort.

2. Types of Trial Court Records

2.1

In the Office of the Clerk (OCC)

2.1.1

The Administrative Section

2.1.1.1

Dockets

-

Civil, Criminal and Land Registration

-

Search Warrant

-

Judgment and Entries Book

-

Execution Book

-

Reconstituted cases

2.1.1.2

Case Records

-

Newly filed

-

Appealed

-

Cases with inhibition orders

-

Attendance logbook

2.1.2

Cash Section

2.1.2.1 Accountable Forms

-

Cash Bonds

-

Financial Reports

2.1.3

Property and Supply Section

2.1.3.1

List of supplies, requests and requisitions

2.1.3.2

List of index of accountable properties

2.1.4

Notarial Section

2.1.4.1

Individual records of commissioned Notaries Public

2.1.4.2

Notarial Reports

2.1.5

Sheriff's Office (also called Warrant Section)

2.1.5.1

Logbooks that contain writs from the court itself and from other courts

2.2

In Trial Courts

2.2.1

Dockets of filed and disposed cases

2.2.2

Case Records

2.2.3

Search Warrant Records

2.2.4

Transcripts of Stenographic Notes

2.2.5

Monthly Reports

2.2.5

Attendance Logbook

3. Protection and Preservation of Records

The custody of records must be entrusted to court personnel with the rank of at least Staff Assistant II and has undergone sufficient orientation and training.

The Clerk of Court shall keep a General Docket with numbered pages where all cases are recorded in numerical sequence, together with a description of the case events that have so far occurred in each case so that its particular case history can be readily seen.

Records of newly filed cases are kept by and are under the custody of the OCC until raffled and distributed to the different branches of a multi-sala court. After raffle, upon delivery and receipt by the trial court, responsibility for their custody and safety is shifted to that court.

Section 14, Rule 136 of the Rules of Court prohibits the taking of any court record without the authority of the court. Court records are confidential documents which may not be taken out of the court unless authorized and with the necessary safeguards.

Upon proper request addressed to the Executive Judge or Presiding Judge, the Office of the Solicitor General, the Office of the Provincial or City Prosecutor and the Office of the Public Attorney may be allowed to borrow records of cases in which the particular office has interest. A better and safer course is to photocopy the needed documents and the retention of the original records with the court.

Section 2, Rule 135 of the Rules of Court recognizes that the records of courts of justice are public documents and may be inspected during business hours. However, there are certain records which may not be open to the public. Strict confidentiality is thus observed in the following instances:

- The Investigation Report and Supervision History of a probationer (Section 17 of the Probation Law);
- Cases under Art. 200, of Presidential Decree No. 603 (The Child and Youth Welfare Code);
- Violations of the Dangerous Drugs Act of 1972;
- Proceedings against members of the Philippine Bar except the final judgment; and

- Proceedings against members of the Bench; however, a copy of the decision or resolution of the Supreme Court shall be spread in the records of the judge at the Office of the Court Administrator.

4. Destruction of Records

Supreme Court Adm. Order No. 13 of April 29, 1981 provides that only records of cases terminated for at least fifteen (15) days can be disposed of or destroyed in accordance with the following procedure:

- Publication of notice to dispose/destroy records in a newspaper of general circulation once a week for two (2) consecutive weeks;
- Posting of the notice likewise for two (2) weeks in three (3) public places;
- If so desired, filing by interested party of motion to withdraw any record or exhibit at any time before date of disposal or destruction;
- Disposal or destruction to be done not earlier than one (1) month from publication date, either by selling or burning, or some other practicable method;
- If disposal is through sale, it must be done in the presence of the Executive Judge or Clerk of Court and the resident auditor of the lower courts or, if sale is made in provincial courts, the representative of the Commission on Audit in the area. The Clerk of Court shall issue the proper receipt to the buyer and report the sale to the Court Administrator;
- The Clerk of Court shall remit to the National Treasury the sale proceeds under a separate Remittance Advice to the credit of the Regional Trial Courts, with notice of such remittance furnished the Court Administrator.

All seized, confiscated or surrendered dangerous drugs under the court's custody must be surrendered to the National Bureau of Investigation.

Firearms, ammunition and explosives are to be turned over to the nearest Constabulary Command.

Other pieces of object evidence are to be turned over to the Commission on Audit.

Confiscated money must be surrendered to the National Treasury.

VII. PRE-TRIAL AS COMPONENT OF CASEFLOW MANAGEMENT

1. Nature, Concept and Purpose

Pre-trial is a procedure consisting of conferences between attorneys for the parties to a lawsuit and a judge of the court. Its chief purpose is to prepare the case for an effective trial by formulating the issues, not in abstract terms but with specific facts of the particular case in mind, and stating them in the pre-trial order which then, in effect, becomes the chart for pre-trial.[4]

2. Rules on Pre-Trial

There are only two Rules in the Rules of Court specifically referring to pre-trial: Rule 18, on civil cases, and Rule 118, on criminal cases. These are discussed in the modules on Civil and Criminal Procedure.

3. The Mechanics of Pre-trial

3.1

Stages of Pre-Trial

There are two stages in the pre-trial of a civil case: the negotiation stage and pre-trial proper.

In both stages, the judge is the 'principal actor' and as such must actively wield his legal and moral authority in the proceeding.

3.2

Techniques

While there are no hard and fast rules in the conduct of a settlement, the following techniques may be considered:

3.2.1

As soon as the parties receive each other's pleadings, their lawyers should get in touch with one another to explore the avenues for settlement, or failing this, to determine what facts and evidence, documentary and otherwise, can be admitted during the conference. On the day of pre-trial but before the case is called, counsels for both parties may appear before the branch clerk of court for marking of their exhibits. This saves pre-trial time and effort.

3.2.2

The ideal venue for pre-trial is the courtroom itself with the judge at the bench and the parties seated across each other at the lawyers' table. The judge, however, can be less formal and may sit with the parties and counsel. For cases involving confidential matters where pre-trial in the courtroom is not advisable, the conference may be held in chambers.

3.2.3

If held in chambers, the judge should require the presence of his branch clerk of court, interpreter and stenographer to prevent suspicion of any irregularity. The discussions should be amiable and cordial to create an atmosphere of understanding and goodwill between the parties.

3.2.4

The judge should endeavor to bring the parties to a settlement range. If the parties cannot settle, s/he should determine the reason therefor.

3.2.5

S/He asks plaintiff and defendant separately what possible concessions they can offer to settle the case.

3.2.6

S/He should take care not to appear to have pre-judged the case. S/He may premise his statements on assumptions. Thus, s/he may say: 'Assuming that the allegations of defendant (or plaintiff) in the pleadings are true, can you present more superior evidence?'

3.2.7

The judge must be able to highlight the 'soft spots' in the versions of both parties and exploit these to attain a just and fair pre-trial settlement.

3.2.8

The judge should remain from asking either side to name specific figures or a range of figures, i.e., 'best figure,' 'highest offer,' 'rock bottom figure' or 'irreducible minimum,' because the use of absolutes tend to end negotiation rather than encourage it.[5]

3.2.9

In case of failure of settlement, pre-trial proper follows. The following are suggested techniques:

3.2.9.1 The judge asks plaintiff's counsel if there are proposals for stipulation or admission of facts. The contents of exhibits already marked may be adduced by the lawyer at this point. The defendant is thereafter asked what s/he admits and if admission is refused, the reason therefor. When plaintiff is through with his/her proposals, the defendant takes his/her turn to propose admissions. The same process is observed.

3.2.9.2 Formulation and simplification of issues comes next. This consists of developing a complete statement of all of the actual contentions of the parties as to the law and the facts which have not been eliminated during the admission process. Any issue not raised during pre-trial and therefore not stated in the pre-trial order cannot be tried during trial on the merits.

It is also at this stage that the number of witnesses and the nature of their testimonies are determined.

3.2.9.3 Once the issues have been defined, the judge and counsels next agree on trial dates. Whenever possible, the judge should schedule continuous trials to comply with the rule on mandatory continuous trials.

3.2.10

Criminal cases

Here, the admissions of the accused cannot be used against him unless these are signed by him/her and counsel. The best time for signing is immediately after pre-trial since both accused and counsel are still in court. The stenographer brings the typewriter to the courtroom. The judge then formulates and consolidates the stipulations of facts and issues as proposed by the parties. Once typed, the order is read by the lawyers and the parties who may immediately propose corrections. The signing thereafter takes place.[6]

4. The Pre-Trial Order

A pre-trial order, or, as described in the Rules, the 'record of pre-trial results' is an order which recites the action taken at the conference, the amendments allowed to the pleadings, and the agreements made by the parties as to any of the matters considered. It describes and limits the issues for trial to those not disposed of by admissions or agreements during the pre-trial and cannot anymore be altered; when entered, it controls the course of the trial.

As such, it becomes the Bible of the parties in court.[7]

[1] James M. Rouzes and Barry Z. Postner, Leadership Practices Inventory (1997).

[2] James G. Apple, Case Management in American Courts, The Litigator, (1195, 373-376), Issues of Democracy, USIA Electronic Journal, Vol.1, No. 18, December, 1996.

[3] Standard 2.50, American Bar Standards on Court Delay Reduction.

[4] Josue N. Bellosillo, Effective Pre-Trial Technique, citing Justice Arthur T. Vanderbilt, 9-10 (1990).

[5] Bellosillo, supra, note 4, 200-240.

[6] Bellosillo, Pre-Trial: A View From The Bench, 1998.

[7] Bellosillo, Effective Pre-Trial Technique, *supra*, note 4, 490-500.

ANNEX "A" Sample Chart for Fast Track System

I. Pleading Stage (maximum 2 months)

1 Day

Complaint filed

Date of filing

10 Days

Service on Defendant

Administrative check to see if complaint is served within ten (10) days

20 Day

Answer filed

Date of filing

30 Days

Answer to counterclaim
and/or cross claim

Administrative check to see if issues are joined

II. Pre-Trial Stage (maximum one [1] month)

30 Day

Filing of Pre-Trial Briefs;
Settlement conference/mediation

Pre-Trial proper

III. Trial Stage (maximum two [2] months)

30 Day

Presentation of Plaintiff's evidence

30 Day

Presentation of Defendant's
evidence

IV. Decision-making stage

(maximum of ninety (90) days from submission of case by parties for decision)

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