

1985

Working With the Individual Judge Assignment System

Roger J. Miner '56

Follow this and additional works at: http://digitalcommons.nyls.edu/court_conf

 Part of the [Courts Commons](#), and the [Judges Commons](#)

Recommended Citation

Miner '56, Roger J., "Working With the Individual Judge Assignment System" (1985). *Court Conferences and Events*. 4.
http://digitalcommons.nyls.edu/court_conf/4

This Article is brought to you for free and open access by the Speeches and Writings at DigitalCommons@NYLS. It has been accepted for inclusion in Court Conferences and Events by an authorized administrator of DigitalCommons@NYLS.

State/Federal Judicial Council
"Working with the Individual Judge Assignment System"
May 14, 1985

I. The Northern District

The United States District Court for the Northern District of New York exercises federal jurisdiction in a thirty-two county area extending to the Canadian border in Upstate New York. The District covers nearly 41,000 square miles and includes three and one-quarter million inhabitants. Sessions of the Court are held in the Cities of Albany, Utica, Syracuse, Auburn and Binghamton. The business of the Court is conducted by three active judges, one chambered in Albany and two chambered in Syracuse. We are soon to be joined by a fourth judge, who will occupy a new seat created by 1984 legislation. It is expected that the chambers of the new judge will be situated in Binghamton. There are two senior judges. One no longer accepts trial work, and the other takes jury trials at the request of the active judges.

II. Advent of the Individual Calendar to N.D.N.Y.

On January 1, 1982, the master calendar system was abolished and the individual calendar system was adopted in the Northern District. The entire calendar of pending cases was divided into

thirds, with each of the three active judges taking one-third. Since then, cases have been assigned by the Clerk on the basis of geography, with an artificial line dividing the District into eastern and western sectors. Cases arising in the eastern sector are assigned to me at Albany, and cases in the western sector are assigned to my two colleagues in Syracuse. Cases are shifted among the judges from time to time to even the caseload, to accommodate recusals and to obviate hardships to parties. We anticipate that individual assignments will be made on the basis of strict rotation when our fourth judge is seated. It may be necessary, however, due to the Federal Criminal Rules, to continue the assignment of criminal cases on a geographic basis. Some shifting of civil cases will still be necessary for the reasons given.

III. Benefits of the Individual Calendar

The use of the individual calendar system has produced dramatic results in the Northern District. In the fiscal year before the system was adopted, the active judges of the court disposed of an average of about three hundred cases each. In fiscal 1984 we disposed of an average of about five hundred each. Case management is the name of the game, and I am convinced that if a judge takes control of a case at an early stage and

maintains that control, disposition by settlement or trial will occur much sooner. In his seminal study entitled: "Case Management and Court Management in the United States District Courts," our own Steve Flanders and his project staff arrived at the following conclusion: "In matters not governed by time limits in the rules -- particularly discovery -- there are huge differences in preparation time between courts that vigorously control their dockets and courts that do not. We found that a court can handle its caseload rapidly only if it takes the initiative to require lawyers to complete their work in a timely fashion." My experience in the State Supreme Court leads me to concur with that conclusion. Obviously, the individual calendar system provides an important method for a judge to seize the initiative and monitor the continuing progress of the cases.

IV. Implementation of the Individual Calendar - Civil and Criminal

(a) The Federal Rules require that the trial judge enter a scheduling order in civil cases within 120 days after a complaint is filed. My practice is to issue an order directing counsel to submit a joint status report indicating the nature of the case, the discovery completed, the discovery remaining, motions pending and contemplated and other information designed to acquaint me

with the status of the case and the legal and factual issues. Following receipt of the joint report, I issue a scheduling order. In this order I set a cut-off date for discovery. The order also provides that dispositive motions must be made within twenty days after discovery is complete and establishes a date and time for a final pre-trial conference to be held thereafter. Papers directed to be filed at the time of the final pre-trial conference include a detailed stipulation, briefs and requests to charge. Deadlines established by the scheduling order cannot be extended except by formal motion on a showing of good cause. The important point is that deadlines are established in each case and are monitored by the judge to whom the case is assigned.

(b) My practice in criminal cases is similar. At the time of arraignment, a written order is issued. Counsel are required to confer regarding discovery matters and liberal disclosure by the Government is encouraged. The order fixes a date for a conference to set a time for any hearings required and for trial. Also fixed is a cut-off date for motions. Close monitoring of criminal cases is essential in Federal Courts because of Speedy Trial Act constraints. My colleagues in the Northern District maintain control of both civil and criminal cases in a less formal way by the use of status calls at which counsel are required to appear, to report on pending cases and to receive deadlines to complete various phases of pre-trial.

V. The Discovery Bottleneck

In moving a civil case to settlement or trial, the greatest bottleneck is discovery. The individual calendar system permits the judge to address delays in discovery and to keep the action moving. My orders provide that deadlines fixed for discovery will be extended only in extraordinary circumstances and upon a showing that discovery has been actively pursued. In the Northern District, as in most Federal Courts, there is a local rule requiring counsel to certify that they have conferred in a good faith effort to resolve discovery issues. If a problem remains, my pre-trial order directs that a conference be scheduled between court and counsel, preceded by letter-briefs outlining the discovery issues to be resolved. No discovery motions are permitted, and all rulings on discovery matters are made at the conference. This procedure stands in sharp contrast to my experience at Special Term Part I in Albany, where it was not uncommon to have three hundred discovery motions, with decisions reserved on most. I once wrote a decision directing a further response to one item in a demand for a bill of particulars and found that my decision had been appealed. The appealability of discovery orders should be eliminated in New York as the first step toward court reform. Those interlocutory

appeals are the greatest engine of delay in the whole New York court system.

VI. The Motion Bottleneck

The case familiarity gained in the individual calendar system serves to expedite the resolution of dispositive and other motions as well as of discovery issues. Lawyers sometimes made elaborate arguments before me in Supreme Court, warning that my decision on a particular motion would affect a prior decision of a fellow judge. A determination then would have to be made whether to refer the motion. The lawyers had another great gimmick for delay known as "motion pending." Just before I called a trial calendar in Albany, the lawyers would fan out to the other six counties in the Third Judicial District to make motions before other judges regarding matters on the trial calendar. They then could answer the trial calendar with "motion pending," and I would pass the case for fear of stepping on the toes of a colleague. A great waste of time at trial term in Albany resulted from the assignment of a different judge every month to the conference and assignment part. The same cases were conferenced by the same lawyers month after month. The only thing that changed was the judge. All of that can be eliminated under the individual calendar.

VII. Sanctions

In order to make effective use of the individual calendar system, every case should have deadlines. The judge can monitor and control the progress of the case in this manner and impose sanctions for failure to comply with the deadlines. Various Federal Rules allow for the imposition of sanctions upon parties and counsel for frivolous applications and pleadings and for failure to comply with court orders for the progression of the case. These sanctions are not used very often, but the fact that they are available is an important element in the success of the individual calendar plan. They include various monetary and non-monetary penalties and are designed to control discovery abuse and misuse and spurious motions and pleadings. The crying need for the availability and utilization of sanctions for these purposes is convincingly argued in an article entitled "Reflections on Six Months' Active Duty" by Jeffrey G. Stark, in the February 1985 issue of the New York Bar Journal.

VIII. Criticisms

1. Competing for lawyers - downtime
2. Comparison of dispositions - pressure for numbers

3. Problems in keeping caseloads even
4. Burdens on the Judge
5. Geographic considerations - upstate
6. Producing incarcerated defendants
7. Balkanization in the courts
8. Misuse of talents and capabilities
9. Administrative problems in caseload shifting
10. Perceptions of prejudice - settle or try - J. Cooke

IX. A Comparative Study

Pending at the end of 1984:

3rd J.D. - 2,500 - 12 judges - 208 average per Judge
N.D.N.Y. - 3,000 - 3 active Judges - 865 average per
Judge (2600)

Disposition for 1984:

3rd J.D. - 2700 - 12 Judges - 225 per Judge
N.D.N.Y. - 1600 - 3 active Judges - 465 per Judge (1400)

Median time - Filing to Disposition N.D.N.Y. -

Criminal - 4 months
Civil - 14 months

Median time to disposition measured by standards and goals
calendar in 3rd J.D. substantially in excess of N.D.N.Y.

X. Conclusions

Flanders - "Courts with fast disposition times and high
termination rates are characterized by routine, automatic

procedures to assure that answers in every civil case are received promptly, and that discovery begins promptly, is completed expeditiously, and is followed by an early trial if needed."

In my opinion, the individual calendar system is the most effective and responsible way to assure compliance with the procedures necessary to effectuate effective case management.