



Recommendation 86-7

Case Management as a Tool for Improving Agency Adjudication

(Adopted December 5, 1986)

Reducing the delay, expense and unproductive legal maneuvering found in many adjudications is recognized as a crucial factor in achieving substantive justice. In recent years, the negative side effects of civil litigation and agency adjudication procedures have begun to receive increased attention, and many judges, informed scholars and other experienced observers now cite lawyer control of the pace and scope of most cases as a major impediment. In the Federal judicial sphere, and increasingly in the state judiciary, a consensus is developing that efficient case management is part of the judicial function, on a par with the traditional duties of offering a fair hearing and a wise, impartial decision. Many Federal district judges have begun to practice and advocate increased intervention to shape and delimit the pretrial or prehearing process.

Some Federal agencies have begun to make regular use of case management processes wherein those who decide cases interject their informed judgment and experience early in the pretrial stage, and consistently thereafter, to move cases along as quickly as possible within the bounds of procedural fairness. One such agency is the Department of Health and Human Services ("HHS"), whose Departmental Grant Appeals Board ("DGAB" or "Board") makes active, planned use of special managerial procedures. The Board, which decides cases brought by State and local governments or other recipients of HHS grant funds, has a three-tiered process that relies extensively on use of action-forcing procedures for completing each stage of a case. The Board adjudicates almost all its cases—well over two hundred dispositions and one hundred written decisions annually with an average "amount in controversy" in excess of one million dollars—in three to nine months. Most disputes before it involve financial issues concerning the allowability of grantee expenditures, but the Board's jurisdiction extends also to disputes over grant terminations and some renewals. A recent study¹ indicates that the Board's process reduces the opportunity for maneuvering by the parties, facilitates an expeditious, inexpensive disposition of all but the most complex cases, and is overwhelmingly approved by most attorneys who practice before it.

¹ This recommendation is based largely on the report "Model for Case Management: The Grant Appeals Board" by Richard B. Cappalli (1986), which explores how the methods described separately below interact in an integrated case management system.



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The Board's success should not be discounted because won in an environment unusually favorable to efficient dispute resolution.² The fact is that similar procedures are now used with apparently equal success at other agencies. They merit the attention of appeals boards, administrative panels, administrative law judges ("ALJs") and all others involved in the decisional process. Though recognizing that many factors affect the procedures to be followed in any particular dispute, the Administrative Conference encourages this trend toward reducing the transaction costs of agency proceedings and believes that this is a key responsibility of all presiding officers and their supervisors. The Conference has, in several contexts, already called on Federal agencies to make greater use of internal time limits,³ alternative means of dispute resolution,⁴ and case management and other techniques⁵ to expedite and improve their case handling. The Conference now calls upon all personnel who conduct or oversee processing of adjudicative proceedings for the Federal government to make more determined efforts to use the kinds of case management methods described below as may be appropriate.

² *E.g.*, a moderate caseload per judge, a shared program objective among all parties and a long-term relationship between the agency and the claimant.

³ Recommendation 78-3 calls on all agencies to use particularized deadlines or time limits for the prompt disposition of adjudicatory and rulemaking proceedings, either by announcing schedules for particular cases or adopting rules with general timetables for their various categories of proceedings, *Time Limits on Agency Actions*, 1 CFR §305.78-3. The Conference has also called on agencies to establish productivity norms and otherwise exercise their authority to prescribe procedures and techniques for accurate, expeditious disposition of Social Security claims and disputes under grants. *E.g.*, *Procedures for Determining Social Security Disability Claims*, 1 CFR §305.78-2; *Resolving Disputes Under Federal Grant Programs*, 1 CFR §305.82-2.

⁴ Recommendation 86-3 calls on agencies to make greater use of mediation, negotiation, minitrials, and other "ADR" methods to reduce the delay and contentiousness accompanying many agency decisions, *Agency Use of Alternative Means of Dispute Resolution*, 1 CFR §305.86-3. The Conference has called previously for using mediation, negotiation, informal conferences and similar innovations to decide certain kinds of disputes more effectively. *E.g.*, *Procedures for Negotiating Proposed Regulations*, 1 CFR §§305.82-4, .85-5; *Negotiated Cleanup of Hazardous Waste Sites Under CERCLA*, 1 CFR §305.84-4; *Resolving Disputes Under Federal Grant Programs*, 1 CFR §305.82-2.

⁵ Many of the practices recommended herein reflect the advice contained in the *Manual for Administrative Law Judges*, prepared for the Conference by Merritt Ruhlen. Recommendation 73-3 advises on using case management in adjudicating benefit and compensation claims. It calls for continuous evaluation of adjudicative performance pursuant to standards for measuring the accuracy, timeliness and fairness of agency procedures, *Quality Assurance Systems in the Adjudication of Claims of Entitlement to Benefits or Compensation*, 1 CFR §305.73-3. In addition, Recommendation 69-6 urges agencies to compile and use statistical caseload data about their proceedings, *Compilation of Statistics on Administrative Proceedings by Federal Departments and Agencies*, 1 CFR §305.69-6.



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The Conference encourages the prompt, efficient and inexpensive processing of adjudicative proceedings. Federal agencies engaged in formal and informal adjudication should consider applying the following case management methods to their proceedings, among them the following:

1. *Personnel management devices.* Use of internal agency guidelines for timely case processing and measurements of the quality of work products can maintain high levels of productivity and responsibility. If appropriately fashioned, they can do so without compromising independence of judgment. Agencies possess and should exercise the authority, consistent with the ALJ's or other presiding officer's decisional independence, to formulate written criteria for measuring case handling efficiency, prescribe procedures, and develop techniques for the expeditious and accurate disposition of cases. The experiences and opinions of presiding officers should play a large part in shaping these criteria and procedures. The criteria should take into account differences in categories of cases assigned to judges and in types of disposition (e.g., dismissals, dispositions with and without hearing). Where feasible, regular, computerized case status reports and supervision by higher level personnel should be used in furthering the systematic application of the criteria once they have been formulated.

2. *Step-by-step time goals.* Case management by presiding officers and their supervisors should be combined with procedures designed to move cases promptly through each step in the proceeding. These include (a) a program of step-by-step time goals for the main stages of a proceeding, (b) a monitoring system that pinpoints problem cases, and (c) a management committed to expeditious processing. Time guidelines should be fixed in all cases for all decisional levels within the agency, largely with the input of presiding officers and others affected. While the guidelines should be flexible enough to accommodate exceptional cases and should maintain their non-obligatory nature, they should be sufficiently fixed to keep routine items moving and ensure that any delays are justified. Agencies should encourage a management commitment by including specific goals or duties of timely case processing in pertinent job descriptions.

3. *Expedited options.* Agencies should develop, and in some instances require parties to use, special expedited procedures. Different rules may need to be developed for handling small cases as well as for larger ones that do not raise complex legal or factual issues.



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4. *Case file system.*

(a) Agencies should develop procedures to ensure early compilation of relevant documents in a case file. This will help the presiding officer delineate the legal and factual issues, the parties' positions and the basis for the action as promptly as possible. The presiding officer may then structure the process suitably and issue preliminary management directives.

(b) Disputes preceded by party interactions or investigations which create a substantial factual record, as in most contract and grant disputes, are especially amenable to this approach. Cases involving strong fact conflicts or in which data are peculiarly within the possession of one party who has motivations to suppress them may be less suitable for a case file system.

5. *Two-stage resolution approaches.* In proceedings where the case file system is less appropriate, as where factual conflicts render discovery important, agencies should consider using a two-phase procedure.

(a) Phase one might be an abbreviated discovery phase directed by a responsible official, with the product of that discovery forming the "appeal file" for the next phase. Alternatively, parties could be channeled into a private dispute resolution mode, such as mediation, negotiation or arbitration, which, even if unsuccessful, can serve to define major issues and to advance development of the record. Before employing this alternative, agencies would have to determine whether the confidentiality rule that normally attaches to arbitration, medication and negotiation is so critical that it cannot be abandoned for the sake of a more efficient second stage.

(b) A second stage, if necessary, should proceed under active case management, as recommended.

6. *Seeking party concessions and offering mediation.* Presiding officers should promote party agreement and concessions on procedural and substantive issues, as well as on matters involving facts and documents, to reduce hearing time and sometimes avoid hearings altogether. Agencies should also (a) encourage decisional officers to resolve cases (or parts thereof) informally, (b) provide their officers training in mediation and other ADR methods, and (c) routinely offer parties the services of trained mediators.



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7. Questioning techniques.

(a) Requests for clarification or development of record. If a party makes a statement in a notice of appeal, brief, or other submission which a presiding officer does not understand, doubts, or wishes clarified, the officer should consider requiring the party to expand upon its position. The ambiguity may relate to a factual matter, or an interpretation of a legal precedent or a document. Similarly, by preliminary study of the case file, the presiding officer could identify missing information and require the party with access to such information to remedy the deficiency. The officer could also issue "invitations to brief" difficult questions of statutory interpretation or the like.

(b) Written questions for conference or hearing. The presiding officer should manage cases so as to limit issues, proof, and argument to core matters. Having ascertained the factual and legal ambiguities in each side's case by careful study of the briefs and documentation submitted, the presiding officer should structure a prehearing conference or hearing as a forum for addressing these ambiguities by seeking responses to carefully formulated questions and providing appropriate opportunity for rebuttal. In this way, and by otherwise seeking to identify the specific questions in dispute early on, the presiding officer would focus parties' attention on key issues and deflect unproductive procedural maneuvers.

8. Time extension practices. Time extensions should be granted only upon strong, documented justification. While procedural fairness mandates that deadlines may be extended for good cause, presiding officers should be aware that casual, customary extensions have serious negative effects on an adjudicatory system, its participants, and those wishing access thereto. Stern warnings accompanying justified extensions have had good success in curtailing lawyers' requests for additional time.

9. Joint consideration of cases with common issues. Whenever practicable and fair, cases involving common questions of law or fact should be consolidated and heard jointly. Consolidation could include unification of schedules, briefs, case files and hearings.

10. Use of telephone conferences and hearings. Presiding officers should take full advantage of telephone conferences as a means to hear motions, to hold prehearing conferences, and even to hear the merits of administrative proceedings where appropriate. While telephone conferences may be either employed regularly for handling selected matters or limited to a case-by-case basis at the suggestion of the presiding officer or counsel, experience suggests



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that maximum benefits are derived when telephone conferences are made presumptive for certain matters.

11. *Intra-agency review.* Any subsequent intra-agency review of an initial adjudicative decision should generally be conducted promptly pursuant to flexible, preestablished time guidelines and review standards.

12. *Training.* Agencies should offer and presiding officers seek, training in case management, mediation, negotiation and similar methods, and should be alert to take advantage of them. The training should be carried out with the advice and aid of other Federal agencies and groups with expertise.

Citations:

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