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**ALLEGHENY COUNTY (PA) ORPHANS' COURT
MANAGEMENT REVIEW**

March 1989

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March 27, 1989

Mr. Charles H. Starrett, Jr.
Court Administrator
Court of Common Pleas
Room 621, City-County Building
Grant Street
Pittsburgh, PA 15219

Dear Mr. Starrett:

We are pleased to transmit to you our final report entitled, Allegheny County (PA) Orphans' Court Management Review (March 1989). Enclosed is one bound copy as well as an unbound copy of the report for duplication purposes.

We hope that this report will assist Allegheny County in their efforts to improve the overall administration and management of the Orphans' Court.

Sincerely yours,



David C. Steelman
Regional Director

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Enclosures

**ALLEGHENY COUNTY (PA) ORPHANS' COURT
MANAGEMENT REVIEW**

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ALLEGHENY COUNTY (PA) ORPHANS' COURT
MANAGEMENT REVIEW

1.0 INTRODUCTION

In 1987, the four judges¹ assigned to Allegheny County's Orphans' Court conducted over 750 hearings relating to decedents' estates, processed over 6000 civil commitment orders and managed more than 350 adoption cases.² While processing and managing this impressive caseload, the Court also moved to its modern location on the 17th floor of the Frick Building. The relocation to the Frick Building offered the Court a better physical plant to perform its judicial functions; it also offered the Court an opportunity to enhance its administrative and management activities.

In order to maximize the effectiveness and efficiency of these move-related enhancements, the Administrative Judge of Orphans' Court, the Honorable Paul R. Zavarella, and the Allegheny County Court Administrator, Mr. Charles H. Starrett, Jr., decided that the time had come to address the court's management and organizational problems created by an ever-increasing caseload.³ By addressing these problems at this time, it was anticipated that all of the perceived benefits of the Frick-Building move would be realized.

1. Three judges are regularly assigned to Orphans' Court and there is one senior judge.

2. Court of Commom Pleas Allegheny County, Pennsylvania, Annual Report, 1987.

3. Id.

The Court, therefore, contacted the Northeastern Regional Office of the National Center for State Courts regarding Center assistance in improving the overall administration and management of Orphans' Court.

On July 29, 1987, the Center submitted a concept paper that discussed a project in which the Center would examine and comment upon various attributes of case and financial management in the Court. The concept paper was revised and resubmitted on June 14, 1988, and described a management review or "management audit". The goal of the management audit was to identify ways in which the Court could better use current staff through application of more efficient processes, eliminate unnecessary procedures, and revise, where applicable and required, organizational structures. During the course of the review, the Center would address management issues and give recommendations for improvement (if any) in the following key areas:

- o Case processing and caseload management;
- o Records and forms management;
- o Financial management;
- o Organization and management structures;
- o Personnel administration and staffing; and
- o Management information and statistics.

During the week of June 23, 1988, the National Center's project team was in Pittsburgh to conduct the management audit. The team consisted of: Mr. James R. Maher, senior staff attorney, and Mr. Daniel J. Valluzzi, senior staff associate from the Center's

Northeastern Regional Office in North Andover, Massachusetts; and Mr. T. K. Farley, senior staff associate from the Center's Williamsburg, Virginia, headquarters.

1.1 Methodology

The Pittsburgh site visit provided the National Center team with an opportunity to collect necessary information and documentation to complete this audit. During the site visit, the Center team observed daily court operations, interviewed the Administrative Judge and other Court personnel, and held discussions to ascertain current Court practices and problem areas. While on site, the management review team also observed selected Court operations and examined Court records and documentation in areas where major improvements might be achieved.

Following the site visit, a member of the management audit team held an exit meeting with the President Judge of the Allegheny County Court of Common Pleas and the Court Administrator. At this meeting, the audit team member reviewed preliminary findings and possible recommendations.⁴ During this exit briefing, the Center team member also discussed appropriate improvements that could be implemented immediately by the Court without any additional assistance. To complete the project, the Center staff was to prepare a final written report containing all of the site team's conclusions and recommendations.

4. The Orphans' Court Administrative Judge was unable to attend the exit briefing. The preliminary results of the onsite review were given to him some days later by telephone.

1.2 Scope

The onsite team evaluated only those processes that are associated with case processing and case management. The team did not evaluate whether departmental budgets were adequate, nor did the site team address salary issues. Additionally, while this report discusses case information issues⁵, it is not the intention of the National Center staff to supercede or replace in any way the effort done in this area by MAXIMUS, Inc., the Pennsylvania Supreme Court's automation consultant.

2.0 FINDINGS

As stated in the Introduction, the Orphans' Court Division of the Court of Common Pleas of Allegheny County, Pennsylvania, processes a large caseload. This caseload consists of estate cases, civil court commitments, adoptions, minors' cases (minors' personal injury), and incompetents (guardianship) cases. In terms of volume, 5,000 estates are created annually, of which 50 percent are probate and 50 percent are intestate. Approximately 600 cases a year involve incompetents and minors and generate 1600 orders of court. Civil court commitments constitute approximately 6000 cases a year and generate about the same number of orders. Adoptions make up approximately 400 to 500 cases a year, and, like their minors and commitments counterparts, result in 1,600 orders each year.

5. Case information issues are addressed particularly in the discussions relating to financial management and required management information reports.

The Court's caseload is, by any standard, large.⁶ Most of the cases associated with this large caseload do not have clearly defined final dispositions. Estate cases, guardianships, and minors' cases, in which large amounts of money may be involved, can remain "on the books" for decades without a final resolution or disposition. Some estate cases may, in fact, remain pending even though they have met all the requirements for closure. There appears to be no clear statutory requirement to close an estate case through the Court.

In many estate cases, the only required filing⁷ is an estate inventory that must be filed within a certain time-frame (usually three months) after appointment of a personal representative. Inventories are also required to be filed in incompetency and other cases, although, according to some Court staff, these inventories frequently are not filed. The statute governing other filings for estates that indicate closure (i.e., a final accounting), was changed in 1974 from being "required", to being "allowed" (i.e., changed from "must" to "may")⁸. Since there is a fee for filing, this change from a mandatory to discretionary filing requirement has

6. In 1986, for example, Allegheny County had almost 20% of all the fiduciary accounts filed in Pennsylvania, with almost three times the number of cases filed in the next highest county. See Administrative Office of the Pennsylvania Courts, 1986 Annual Report, p. 88.

7. See Pa. O.C. Rule 6.12. (As to citation, see Pa. O.C. Rule 17.)

8. See 20 Pa.C.S.A. §3501, repealed and replaced by §3501.1, under Act 1974, Dec. 10, P.L. _____, No. 293, §7, imd. effective.

caused a significant drop in the number of case filings and an associated decline in revenues for the Register of Wills.

These situations and developments reflect some of the reasons why case processing and case classifications in Orphans' Court are both different and, in many respects, more complicated than traditional court cases with filings and dispositions which occur within a reasonable period of time. This case complexity (and the associated administrative demand) has been the particular concern of the National Center staff --- both from the stand-point of improving the work burden and from the standpoint of generating management controls.

In the sections that follow, each of the six key areas listed above in the Introduction are examined and discussed in light of these case-processing concerns. The major focus of this examination and discussion will be the administrative and management functions performed within Orphans' Court.

2.1 CASE PROCESSING AND CASE MANAGEMENT

In this section a brief description of each of the case-processing and case-management activities in each of the departments or Court functional areas is provided. This is followed by various conclusions and recommendations regarding the activities and how they can be improved.

As an introduction to the analysis of the case-processing and case-management functions performed within Orphans' Court, the Center believes it is useful to make an important distinction between these two activities.

Case processing refers to those activities that are directed toward providing the actual output of the Court, i.e., the completed case. Case processing requires that dockets be created, cases be indexed, notices be sent, hearings be scheduled and held, and orders and judgments be prepared. In the analysis of the Court's case-processing activities, the onsite team considers and weighs methods that eliminate duplication, increase the accuracy of the information recorded and generally reduce the overall effort required to move a case to final disposition.

Case management, on the other hand, is directed toward improving management decisionmaking and is the process whereby the Court: a) assures itself that resources are obtained and used effectively (e.g., that courtrooms are available when required); and b) incorporates controls so that, insofar as feasible, the actions taken by the members of the Court and the bar conform to the Court's plans and policies.⁹ In the analysis of Orphans' Court case-management activities, the onsite team looks to the availability of information regarding the controls and decisionmaking points in the process (as opposed to operations in the case-processing activity) that provide the necessary feedback to insure that the Court's strategies are accomplished.

2.1.1 Register of Wills

The Register of Wills office is located on the ground floor of the City-County Building (across the street from Orphans' Court) and is the main recordkeeping office for Orphans' Court records. The

9. See generally Anthony, R. N., Management Accounting - Text and Cases (1969) at pp. 8 - 12.

transfer of case files from the Register of Wills office to Orphans' Court is done by messenger.

The Register of Wills office maintains an estate "index docket." This is a series of large bound books where decedents' wills are recorded and alphabetically indexed using the Russell Index system. Once the will and petition for probate are filed, they are recorded¹⁰ in the "counter docket" that lists the cases in case number order and contains all case-related information.

In addition to the index docket and the counter docket, there are two other principal dockets: the "claims docket"; and the "proceeding docket". The claims docket records all claims filed against an estate and is indexed alphabetically by decedent last name. The claims docket records the case number, the date the claim is filed, the claimant name, and the amount claimed. The proceeding docket records all proceedings held in each case as well as the date of the proceedings, the name of the decedent, the case number, the year filed and the microfilm roll and frame number.

In the past, other docket books were maintained by the Register of Wills. They included an "inventory docket", a "partition docket", a "register docket", and a "citation docket". Evidence of these books are found in various places throughout the Register's office. These old dockets contained photocopies of documents filed and were indexed by decedent last name. The documents kept in these books are now microfilmed and the original documents are kept in individual case file folders.

10. 23 Pa.C.S.A §921.

2.1.2 Adoption

The adoption department maintains both an index and a docket for adoption cases. These books, in addition to all adoption records, are confidential and are kept in file cabinets. Access to these records may only be granted by court order.¹¹

The index book contains two indices. In the front of the book is an alphabetic list by each adoptee's last name; in the back is an alphabetic list by each set of adopting parents' last name. Besides the names, the index contains the book and page numbers where the docket information is located.

The docket is an abstract of each case. The clerk records all papers filed and all proceedings for each case. The adoption docket contains the following information:

- Case number;
- Name of adoptee;
- Name of attorney;
- List of each document filed;
- Name of individual(s) filing the document;
- Court events scheduled and their date;
- Results of scheduled court events;
- Investigator's name; and
- Decree information.

11. 23 Pa C.S.A. § 2905.

2.1.3 Incompetents' Cases

The procedure for adjudication of incompetency (appointment of guardian) usually begins with a petition. The petition is filed and a preliminary order for a hearing is signed by the judge. The return date and date of hearing are entered on the order. The hearing information and the names of the incompetent and the attorney are entered in the incompetents' hearing list, under the date set for hearing. If it is a temporary hearing, the initials of the judge are also entered. Information for statistical analysis is recorded on a yellow sheet. The petition is entered in the Court's minute book and then sent to the Clerk of Orphans' Court for fees.

The Clerk's Office prepares the citations and notifies the attorney to pick up the petition, the citation and to pay the fees. The Clerk's Office also assigns the case a number.

When the petition is returned to the incompetency department, the case is docketed in the "Incompetents' Estates Docket". The name of the incompetent is listed alphabetically in the front of the docket book and the name of the petitioner is listed alphabetically in the back. The page number where the docket information is written is placed in both indicies. The docket book and page numbers, the hearing date and judge are written on the case folder.

The case folders are filed alphabetically by date of hearing. Citations and other case papers returned prior to the hearing date are placed in the case folders. Case files are kept at the Court until final adjudication of the case.

Approximately two days prior to the scheduled hearing date, the hearing list is prepared and given to the judges. Copies of the

hearing list are then distributed to the Court reporters, tipstaves and to the file.

Upon final adjudication the Court returns the case file to the Clerk of Orphans' Court. When cases are returned after the hearing, with a signed final order, the final order is entered in the incompetents' estates docket, the statistical yellow sheet and the minute book. The final order information is also entered on the file copy of the hearing list.

A case where there has been only a temporary order of guardianship issued is placed back in the hearing-file drawer until there is a permanent order for guardianship. The case is not sent to the Clerk of Orphans' Court if a bond has not been posted with the Court. Rather, the case is held in a "hold drawer" until bond is received.

The incompetency department keeps the case files in lateral drawer file cabinets. The filing system consists of cases awaiting hearing and cases awaiting order action or bond. The incompetency department does not have a system to track compliance of orders, i.e. awaiting guardian's bond, and, as a result, cases may languish in this file until compliance with the order.

2.1.4 Civil Commitment Department

This department schedules civil commitment hearings upon receipt of a petition from the Allegheny County Mental Health and Mental Retardation Agency. Hearing are scheduled at the mental health facilities in the county hospitals. The hearings are scheduled after checking doctors' schedules to avoid conflicts in scheduling.

The cases are heard by hearing review officers. All hearings are recorded and the tapes are stored in case number order in the civil commitment office on the 17th floor of the Frick Building.

The commitment office maintains a index card for each case. The cards contain respondent name and case number and are filed alphabetically by respondent last name. A unique case number is assigned each case and contains a prefix of CC, a sequential number and the year of filing.

Documents pertinent to each case are kept in a case file folder. These folders are labeled for identification and each label contains the respondent name and the case number.

Open case files are filed separately from closed files. The open cases are filed alphabetically by respondent last name and are stored in four-drawer file cabinets. Closed cases are filed numerically by case number and are stored in lateral-drawer file cabinets.

2.1.5 Conclusions

The Court, the Clerk's Office and the Register of Wills are precluded from accurate and timely case-processing information by the diverse manner in which case events are recorded. As a result significant time and effort is required to search, sort and compile information from the many and sundry case dockets and records. Additionally, the Court's messenger service for transferring information to and from the case files and dockets in the Register of Wills is unable to give efficient and timely access to case records. As a result, Orphans' Court personnel have resorted to over duplication of case files in indexes and dockets in an attempt to respond to the needs of the clients and Court.

2.1.6 Recommendations

In the sections that follow, specific recommendations are made with respect to Orphan's Court case-processing and case-management activities.

2.1.6.1 The Court should begin a comprehensive program of automation.

The Court should expedite automation of its case-processing and case-management functions. In particular, the Court should focus its automation efforts in the areas associated with the following activities:¹²

- o Indexing
- o Docketing
- o Noticing
- o Calendaring and scheduling
- o Management and statistical report generation

Indexing

The Center's onsite investigations discovered that the staff in the Register of Wills office and the Court receive numerous inquiries regarding the particular status of specific cases. In order to obtain the requested information, clerical staff manually

12. The automation discussion contained in this section is based upon an analytical framework the National Center has employed successfully in a variety of courts. See Bumsted, et al, Iowa Automation Requirements Analysis and Master Plan (Williamsburg, VA; National Center for State Courts, 1987); Farley, et al, Technical Assistance Evaluation of the Computer System in the Framingham District Court (North Andover, MA; National Center for State Courts, 1988); Maher, et al, Dayton (OH) Municipal Court Automation Feasibility Report (North Andover, MA; National Center for State Courts, 1988); and Maher, et al, Illinois Circuit Court Automation Requirements Analysis (North Andover, MA; National Center for State Courts, 1988).

search the large index books and card files to locate the docket number for a case, and then search the docket file to determine the status of the case.

This inquiry and case-locating process can and should be automated. Automated indexing enables the Court to reduce case-searching time to a matter of seconds. For example, in an automated format, a specific case record can be obtained almost instantly by online system access through a variety of case locators called "keys." These "keys" may include one or more of the following: the decedent's or claimant's name, the date the will, petition or claim is filed, and the docket number. When a "key" is entered at the computer terminal, the system will produce the case file with all required case information.

Docketing

By automating the docketing activity, the Court and the Register's office is able to take advantage of pre-coded data entry (versus free-form entry). This pre-coded format is important because it establishes the data uniformity in the system files that is a prerequisite of uniform, consistent and accurate preliminary orders, hearing lists, notices, schedules, statistics and general case-management reports. Additionally, automated docketing eliminates many of the problems associated with the manual recordation of case events. For example, the manual recording of each case event is both tedious and time-consuming. Manual recordation of events is also unstructured and encourages the proliferation of nonuniform, nonvalidated case entries in the Orphans' Court dockets. Perhaps the main difficulty with manual recordation of case events, aside from the proliferation of entry

errors, is that Orphans' Court user staff is precluded from using the automated indexing and inquiry function described above.

Entering data in a computer is less time-consuming than manually recording docket entries, principally because a computer can be programmed to accept codes and default values to generate predetermined and uniformly consistent entries for most of the case events being recorded. These codes and default values dramatically reduce data-entry time, improve the accuracy of the information being entered, and promote higher productivity.

Noticing

Computerizing the noticing function permits the automatic generation of preliminary orders, minutes, etc. This function is closely related to the calendaring function, which is described below, and can be used to automatically update a case history (docket) and schedule a case at the same time.

The noticing activity of a computerized system is capable of generating the entire range of notices produced by the Register of Wills and the Court. Automated noticing also has the capability of reviewing all pending cases to determine their current status and, if necessary, generate the appropriate forms for mailing to the parties and attorneys in a manner that expedites case processing. This specific feature has particular relevance in Orphans' Court where ongoing Court supervision of cases is particularly burdensome.

To date, the "noticing" activity in the Court has been expedited as far as possible through the use of preprinted forms. Each of these preprinted forms, however, must have the relevant case information, i.e., the case caption, addresses and docket number,

manually recopied onto the notice. This is a time-consuming process that can and should be automated.

Calendaring/Scheduling

Automated calendaring and scheduling is able to assign initial cases to the appropriate courtroom and judge for estate and incompetent cases and to the appropriate mental health facilities and doctors for civil commitments. A computerized calendaring system can substantially reduce scheduling conflicts between or among judges, attorneys, courtroom locations, doctors, hearing review officers, and court reporters. In sophisticated calendaring and scheduling systems, continuances once granted can be automatically reassigned to open times on the calendar.

If linkages are established with the Court's indexing, docketing and noticing activities, the scheduling and calendaring function is the point where an integrated system begins "to put it all together." By automating the scheduling and calendaring activities, Orphans' Court will begin to achieve significant benefits of automation, and dramatic contributions will be made to the overall effectiveness of the Court's case-processing and case-management activities.

These benefits include:

- o Elimination of the difficult and time-consuming task of preparing court hearing lists and schedules;
- o Elimination of the necessity for updating other case scheduling records;
- o Rapid response to questions regarding upcoming case events;
- o Automated production of case status reports required for case monitoring; and

- o Identification of patterns that cause inefficient scheduling.

Statistics and Case Management

Automated statistics and case-management reports offer the Court the ability to identify and group cases (particularly estate cases) that have either exceeded pre-established case-processing guidelines or have met other pre-imposed conditions.

By merging both the data and the processes from all the other modules described above, and by sorting and reformatting existing data, the statistics and case-management function produces comprehensive reports and statistics required by the Court to effectively manage its operations. These applications are described in more detail in Section 2.6.2, below. Suffice to say at this point that the Court and the Register of Wills office should be able to interrogate the data base for cases that meet specific predefined criteria.

The onsite investigations revealed that it is almost impossible for the Court's clerical personnel to generate anything other than the most rudimentary management reports. As a result, there are very few operational and case-management reports available to Orphans' Court managers. A reporting system (illustrated in Exhibit 1) that enables the Court to expedite case processing is available only through computerization.

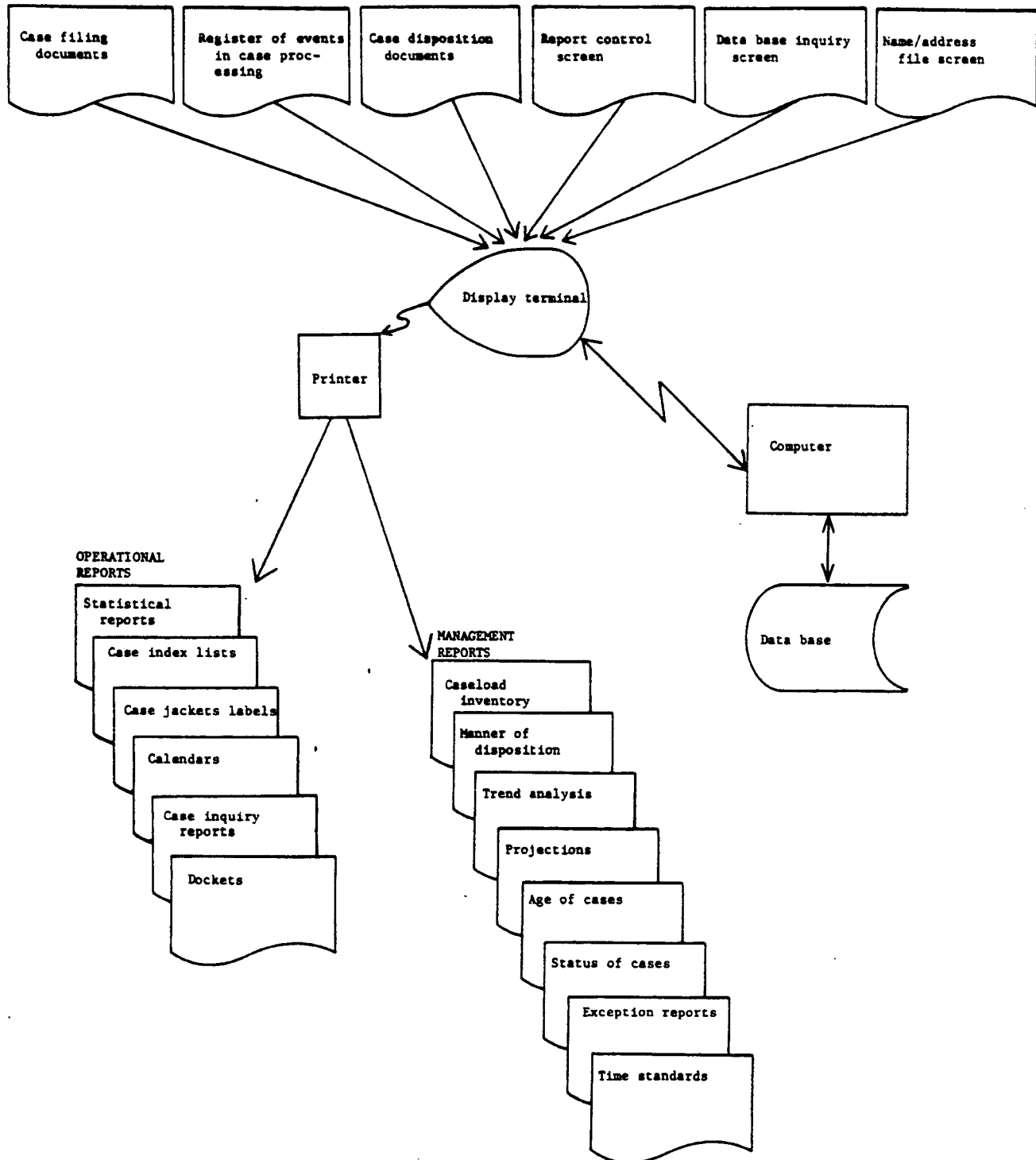
Implementation Considerations

For the purpose of achieving the above described benefits, Orphans' Court should work within the guidelines established by MAXIMUS for the statewide automation system.

The Court should also note that various court computer systems are currently available that operate either on a single

Exhibit 1

ONLINE INFORMATION FLOW FOR A TYPICAL COURT CASE-REPORTING SYSTEM¹³



13. See Clifford, M. L., et al, Court Case Management Information Systems Manual, Williamsburg, VA: National Center for State Courts (1983), p. 132.

microcomputer (i.e., a "PC") or, depending on case volumes, a local area network of PC's that are easily installed, user friendly and capable of being "up and running" within a period of several weeks. The Court should therefore explore the existing market for vendor-supplied, "probate-court" computer systems that contain the features and functionalities of automated case processing and case management described above. (Appendix A contains a short listing of probate-court computer systems that, according to their respective brochures, meet the Court's automation needs.)

Aside from the principal advantage of easily and quickly generating the much-needed case-processing and case-management features, a PC-based system has an additional advantage: cost. It is anticipated that the hardware costs for a PC system can be initially installed in the Court for under \$15,000. As the case volumes grow, the system processing power can be increased in \$5,000 increments. Each increment adding to the system the same processing power as the original investment in hardware. Additionally, because the system would be procured from a vendor, the Court would not have to be concerned with either continually upgrading the system's application software or providing inhouse system maintenance. Finally, as the Supreme Court's comprehensive program of automation comes to fruition, in the ensuing years, Orphans' Court could migrate to the statewide system with little difficulty and little waste of money. The Orphans' Court PC's could be then recycled throughout other areas of the Court for alternative uses.

2.1.6.2 Until a computer system is installed a manual tickler file should be implemented.

Virtually all of the Court's case-processing and case-management problems are amenable to computerized solutions.¹⁴ Until automation can be applied to these computer-solvable problem areas, the Center suggests that the Court employ a manual "tickler" system to expedite the movement of cases in the court. A workable tickler system is described below.

An index-file card should be created that contains the following case information: case name, attorney name, addresses and phone number, action due, order date, etc. The index card should be filed by due date. The file containing the cards should be placed on the monitor's desk and reviewed daily. Parties missing due dates should be contacted either by phone or by written notice.

The incompetency department now completes alphabetic index cards for minors and incompetents. The incompetent and minor cards are filed separately. Each card is filed by last name of incompetent or minor and contains the following information: date of birth, name of guardian, residence, attorney, investigator and bank account(s), account numbers, date and amount of balance. These cards could be used to monitor events prior to and after hearings.

14. Note, however, that even a brilliantly designed computer system becomes ineffective if managed poorly. Therefore, although automation may have a part to play in improving some aspects of the Court's operations, the answers to the Court's problems do not reside exclusively in technology. Many of the Court's problems will still require a significant management component.

2.2 RECORDS MANAGEMENT

Case files are stored in both eight-tier open shelf and mechanical "Lektriever 80" filing equipment. Staff of the Register of Wills office retrieve case files after a request form (out card), located on the counter, is completed and submitted.

Microfilming of wills, inventories, accounts, etc., is performed onsite. After filming is completed, the rolls of film are sent to the Hulterman Company for processing. Hulterman develops the film and makes a paper copy of each document. The documents are then placed in books, bound and labeled. The original film is sent to the Butler Mines for safekeeping and storage; and the bound books and a copy of the film are sent to the Register of Wills Office. Separate bound books are kept for each type of document, i.e. wills, inventories, etc.

The Court has a local rule that forms or documents filed with the Court should be on letter-size (8 1/2 x 11) paper; yet most wills and other documents are filed on legal-size paper (8 1/2 x 14). Because the rule is not followed, the Court, in order to accomodate the larger paper documents, must use legal-size supplies and equipment to store documents.

2.2.1 Conclusions

The Court has not established a comprehensive program of records management. As noted above in sections 2.1 through 2.1.5, the Court is inundated with a variety of indexes and docket books---many that are no longer used. The nonstandard records and forms that the Court requires, as well as their diverse locations, are indicators that records management in the Court should be improved.

2.2.2 Recommendations.

In any court system, records management plays an important part in the overall administration process. Records management requires a court to determine: a) the records that will be archived electronically; b) the records that will be archived manually, i.e., reduced to hard copy; and c) how long information will be archived and in what manner and form.

An automated records management system requires that records be archived in an electronic format only once; and that hard-copy records of a similar nature should not be retained. Also, the system requires that records be removed from the system after they are no longer needed. Records are purged or retained in history files according to a retention schedule established by the court.

2.2.2.1 The Court should, where possible, automate its record management system.

By implementing the automated indexing/docketing function described above in section 2.1.6.1 the Court accrues related records management benefits. For example, the Court maintains a variety of alphabetic and numeric indices to enable clerical personnel to manually locate case information. This manual procedure requires the repetitious re-entry of previously recorded information to insure that information maintained in the indices is correct and easily available. A comprehensive computerized system eliminates both the need for re-entering this information and also the bulky books required to store the entries. The automated records-management system also gives the Court staff electronic access to case records, thereby eliminating the need for physically transporting case information to and from the Court by the Register of Wills messenger.

Although the onsite team realizes that the expense of optical disk record storage devices is, at this juncture, beyond the budget of the Court, the technology is rapidly becoming more affordable. Because virtually all of the Court's record-keeping problems (including those currently addressed by the messenger service) are solvable by this emerging technology, the Center suggests that the Court closely follow developments in this field.

2.2.2.2 The size of the Court's records and forms should be standardized.

The local rule requiring documents filed with the Orphans' Court should be addressed. Enforcement of the letter-size rule will save money, improve both the access and maintenance of case files and the overall recordkeeping procedures. In addition to enforcement of the letter-size rule, the Court should evaluate and, if required, redesign all Court forms in light of modern forms-design techniques. Also, special attention should be given to employ those techniques that standardize forms. Standardization improves data accuracy and expedites retrieval of information.

2.3 FINANCIAL MANAGEMENT

The only monies collected by the Register of Wills is the filing fee and other costs included in the "Bill of Costs, Orphans' Court". This is a fee schedule for the services of the Register of Wills and is set by local court order. There are also funds that involve monies to which the beneficiary (owner) can not be located that are held by the Register of Wills pending escheat. These funds are held in a single account at a local bank. The pending escheat accounts are individually reported on by the bank as a subaccount of the overall account. Manual records are kept of interest posted to the individual accounts, and, in effect, the accounts mimic a

standard statement savings account on an individual basis. At the time of the project team visit, there were eighteen accounts with an aggregate total balance of less than \$90,000.

With respect to executors and administrators of estates, they are required by Supreme Court rule¹⁵ to file financial status reports for cases involving fiduciaries. The report provides a limited amount of information regarding the distribution of funds from these "trustee" accounts.

2.3.1 Conclusion

Currently, neither the Court nor the Register of Wills is actively involved in the financial management of funds involving a guardianship, funds belonging to minors, and proceeds from an estate. For those funds that have been sequestered under court order, it is not known (and there is no way to know) each fund's actual status.

2.3.2 Recommendations

For the cases where the funds are sequestered and involve minors, guardianships, commitments, etc., it may be appropriate to establish a more active level of monitoring and supervision. The benefits of a more active role by the Court over these types of funds primarily are related to the ability of the Court to have more and better information as to the disposition and utilization of the money. In other words, by taking a more active role, the Court can better ensure that the funds are utilized in a manner consistent with the original intent of the court order.

15. Pa. O.C. Rule 6.12.

2.3.2.1 The Court should supervise fiduciary accounts according to generally accepted accounting principles.

There are some general policies and procedures that should apply to the administration and management of monies held on behalf of others. Applied on a uniform basis, these standards not only result in the Court having access to better and more timely information, but result in better protection of the financial interest of all parties involved.

From a general accounting standpoint, the standards as expressed in the Uniform Fiduciary Accounting Principles and Model Account Formats¹⁶, represent an excellent starting point for the proper administration and management of trust funds.

The three primary areas of concern in a fiduciary relationship involve:

- 1) The accountability and auditability of funds;
- 2) The general recordkeeping and administration requirements of funds; and
- 3) The investment of funds.

Whether through active control of funds by the Court, through reporting requirements to the Court, or through the establishment of uniform standards that all fiduciaries must follow, the implementation of standards in these areas would benefit the Court, the trustees, and the beneficiaries.

Accountability and Auditability

The accounting procedures to be used for these funds should conform to "Generally Accepted Accounting Principles", including (but not limited to) double-entry accounting, and full accrual-based

16. Report of the Fiduciary Accounting Standards Committee (1979).

accounting. Accrual-based accounting is preferred over cash-based accounting in order to recognize the anticipated effects of monies due to be paid (realized) either to the fund or from the fund.

To the degree that funds are commingled (pooled) for investment or other purposes, detailed records should be maintained in order to precisely allocate (or prorate) monies down to specific accounts. (Even to specific parties within an account where multiple parties are involved.) To the degree that mathematical formulas are used to allocate funds, the formulas (and their basis) should be well documented and retained in the file for a case. Any adjustment of any kind to an account should also be well documented and retained in the file in the form of a worksheet.

In reference to auditability, detailed records of all financial transactions that affect the account should be incorporated in the file for each case and reviewed (audited) periodically for accuracy and appropriateness. Like adjustment information, documentation relating to the audit should also be retained in the case file, as should any fees or charges to the account for any other purpose. (Such fees, or any other compensation, would include management fees, legal fees, investment fees, etc.) The amount and types of fees that can be charged to an account should be uniform, e.g., flat fees, percents, and/or a reasonable range of fees or percents.

Record Keeping and Administration

In addition to the accountability and auditability concerns, several related issues need to be addressed. These issues include: general internal controls and procedures; bonding and insurance; general record keeping; tax implications; and investments.

Internal controls refer to practical and feasible policies and procedures that are are needed to prevent accidental or intentional misuse of funds. An example of internal controls and procedures is the separation of money-handling duties and responsibilities. Where possible, the individual who approves the issuance of checks should not have the responsibility for signing the checks and balancing the checkbook. In a similar vein, individuals involved in receipting funds should not make bank deposits.

Bonding is another concern for fiduciaries. In general, a fiduciary should be fully bonded for the full amount of any and all funds under the fiduciary's control.¹⁷

Record-keeping functions, i.e., the posting and reconciliation of funds, should also be required of fiduciaries. The posting of interest received (or accrued) to an account should be performed regularly, as well as reconciliation of the accounts to bank statements. Not crediting accounts on a regular basis involves a risk of misplacing or not properly accounting for funds.¹⁸

Tax effects of fiduciary fund management should also be considered a part of overall fund administration. To illustrate, the tax effect of holding funds for a minor until the age of majority age is reached and then paying taxes on the entire lump sum may be considerably different than the tax effect of paying taxes

17. In one state, the legislature recently mandated that all clerks and/or general receivers be fully bonded for the trust funds under their control (Virginia, 1988 Reconvened Session, Chapter 841, [House Bill 705]).

18. See Funds Held In Trust by Circuit Courts, Joint Legislative Audit and Review Commission Report, The Virginia General Assembly, 1988, p.52, para 4.

annually on the interest income until the minor reaches age. Guidelines should be developed that clearly delineate when and to what extent the funds are taxable. Implicit in this aspect of tax planning is the need or requirement to issue IRS form INT-1099 to the individual for whom the monies are being held.

Investment management requires the fiduciary to invest the funds in prudent financial vehicles that offer maximum return at minimum risk. If such guidelines for investments do not exist, they should be developed. Consideration should also be given to the impact of investing in excess of \$100,000 where the excess is outside the insured levels of FDIC/FSLIC (or similar) coverage.

In addition to those for original principal investments, standards and guidelines should be in place regarding the reinvestment of interest or dividends. Interest and dividends should also be reinvested at reasonable investment rates of return. In general, limits should be placed on those funds that are held in non-interest accounts (i.e., checking accounts) to cover perhaps only those funds that are to be disbursed in the near future.

2.3.2.2 Recommended Manual Information Systems for Supervising Trust Funds.

Depending on the level of active involvement desired by the Court, the project team proposes two manual reporting alternatives that would enable the Court to ensure proper accountability for monies held by a fiduciary.

Alternative 1

The existing "status report" and "termination" report could be combined into one single report that could be used not only for estate cases but also for all other cases in which financial assets are managed by a fiduciary. In other words, the Center proposes a

modification to the existing financial information request that would enable the Court to maintain a more accurate financial picture of the account or case, and would be similarly applicable to all other types of cases (i.e., not just estates cases).

A layout of this simple financial information report is given in Table I. This report would provides a majority of the information that enables the Court to determine how much it has under its jurisdiction, and allows it to monitor the cash inflows and outflows of each case. For guardianships, minors, and similar cases, it would provide reasonable information as to how the account is being managed. For example, receipts in the form of interest or

TABLE I - SAMPLE FINANCIAL INFORMATION REPORT

Beginning Balance of Account (as of MM / DD / YY)	\$\$, \$\$\$, \$\$\$
Plus Cash Receipts	\$\$, \$\$\$, \$\$\$
Less Cash Disbursements	\$\$, \$\$\$, \$\$\$
Plus Non-Cash Adjustments	\$\$, \$\$\$, \$\$\$
Less Non-Cash Adjustments	\$\$, \$\$\$, \$\$\$
Ending Balance of Account (as of MM / DD / YY)	\$\$, \$\$\$, \$\$\$

dividends would be expected to be noted on a periodic basis. If the amount of principal involved is substantial and interest and other income has never been credited to the account, there may be some value in reviewing the account management. Similarly, large disbursements, or continuing disbursements may indicate other management concerns. The inclusion of positive and negative noncash adjustments that can be used to monitor fluctuations in accounts due to either noncash distributions or possible fluctuations in the market value of certain items (i.e., stocks, bonds, real estate, etc.) may be a desirable enhancement to this report.

The report shown in Table I could be required on a regular basis, in a manner similar to the required status filing mandated by Rule 6.12, and essentially it would become part of an annual accounting for the case. In addition, the report could become an official and integral part of the case record with its filing entered in the appropriate Orphans' Court docket or other register of actions.¹⁹

Alternative 2

This alternative would cover those cases that currently involve sequestered funds. Under this alternative, the funds would be put under the control and management of the Court as opposed to some outside investment or banking agency.²⁰ The accounting and

19. The status report currently in use is filed in the case folder, but does not get entered in the docket.

20. Perhaps this could be done through the Office of the Register of Wills, which is already structured to handle funds.

bookkeeping requirements of these monies would conform to generally accepted accounting principles.

Specifically, this alternative would be appropriate for the following case types:

- o Cases involving a minor who receives under some form of fiduciary arrangement a large amount of money until the minor reaches the age of majority;
- o Cases involving multiple minors who share in the proceeds of a lump sum amount of money, where it is necessary to track receipts and disbursements to the individual minors; and
- o Cases involving a guardianship where monies are managed for the benefit of another individual.

The funds associated with these case types would be deposited, invested, and disbursed by the Court itself.

The methodology and process for this management of funds would not require a substantial Court investment in terms of manpower and capital outlay for computers, and it would still insure that the funds were properly managed. To be completely effective, however, this process would lend itself to automation support, and, in fact, would most likely require some computerization.

The overall focus for this alternative is found in the following financial areas:

- o Receipts and disbursements
- o Investments
- o Management reports
- o Fees and administrative charges

Receipts and Disbursements.

Upon determining that a case would be appropriate for this alternative, the funds should be deposited into a single account set up by the Court through the Register of Wills. If there are multiple parties to the case (account), the amount of money for each party within the case should be identified and recorded. A local court order may be required to waive the current "poundage fee" currently used by staff of the Register of Wills for funds in their control. Following the receipt and deposit of the funds, any disbursement would be through the Register of Wills, with an accompanying court order. (The Register of Wills should have a single and separate checking account for these funds.) Any disbursements for cases involving multiple parties should be recorded for each party.

Investments

The funds on deposit should be pooled together to produce a single sum of money for investment purposes. This allows for better accounting of the funds and requires less bookkeeping than segregating the accounts into individual investment accounts. The investments themselves should be limited to those allowed under state statute, and should involve little to no risk (i.e., federally insured investments). To oversee the investment portfolio, there should be an investment committee that would direct the nature, duration and type of investment activity. The investment committee may best be comprised of members of the Court and members of the local government financial community (i.e., the county treasurer

and/or auditor). The proceeds from the pooled investments should be prorated to both the individual accounts and to individual parties within an account. (This particular aspect of the process would require some automated support in order to be efficient and effective.)

The distribution of the investment proceeds requires that they be prorated to take into account the length of time the principal amount was actually on deposit. (I.e., an amount that was taken in the last day of a month should not receive a full month's worth of interest.) In a similar fashion, disbursements during the month should be accounted for prior to the proration of investment proceeds.

For tax and record keeping purposes, the allocation of interest to the accounts must be clearly identified as interest and not principal. This requires that any disbursements from the account be clearly identified as "from principal" or "from interest".

Management Reports.

In order to perform the required tasks under this alternative, certain management and operating reports are needed. These are briefly identified and discussed below:

Cash receipts journal: A report that shows all monies received and deposited, and includes an identification of the amount, date, case, and party or parties.

Disbursement register: A report that shows all disbursements made, and includes case and party identification, date, amount, principal or interest characterization and the check number.

Interest allocation register: A report that shows the periodic allocation of interest, and includes the identification of case and party, earnings period, and amount.

Trial balance: A report that shows all accounting activity for a period of time.

Statement of income and expenses: A report that shows all interest and other income, as well as the administrative and interest expenses.

Balance sheet: A report that shows the aggregate account balances, and includes principal and interest liabilities, and investments and cash assets.

Detailed case report: A report that shows all financial activity (receipts, disbursements, allocations of interest, and adjustments) for each case, and for each party within a case.

Investment reports: A set of reports that identify investments as they are bought and sold, and a schedule of investments by maturity, and by type.

Cash needs report: A report that matches the investments and their maturities to the actual disbursement requirements.²¹ This report contains case and party identification, amount of distribution expected, and the date the distribution is expected.

21. If it is known (or can be estimated) when monies are needed, this report can be used to determine the best investment vehicles.

Fees and Administrative Expenses

Although Alternative 2 should not require substantial levels of effort and funding significantly over and above current levels, the associated additional administration and other expenses must be provided. The mechanism for covering these expenses can be varied, and must conform to existing state statutes and court rules.

Possible formats for recouping administrative and other expenses in a fair and equitable manner are given below:

- o Set-up fee: A charge can be made to initially set up an account.
- o Disbursement charge: A charge can be made whenever a disbursement is made from the account.
- o Settlement charge: A charge can be made when an account is closed.
- o Investment charge: A percentage of investment income derived from the pooled accounts (i.e., five to ten percent of the interest earned) can be earmarked to cover administrative costs of the system.
- o Flat account charge: Accounts could be charged a flat fee on a per-month or per-year basis for administrative costs.

2.4 ORGANIZATION AND MANAGEMENT STRUCTURE

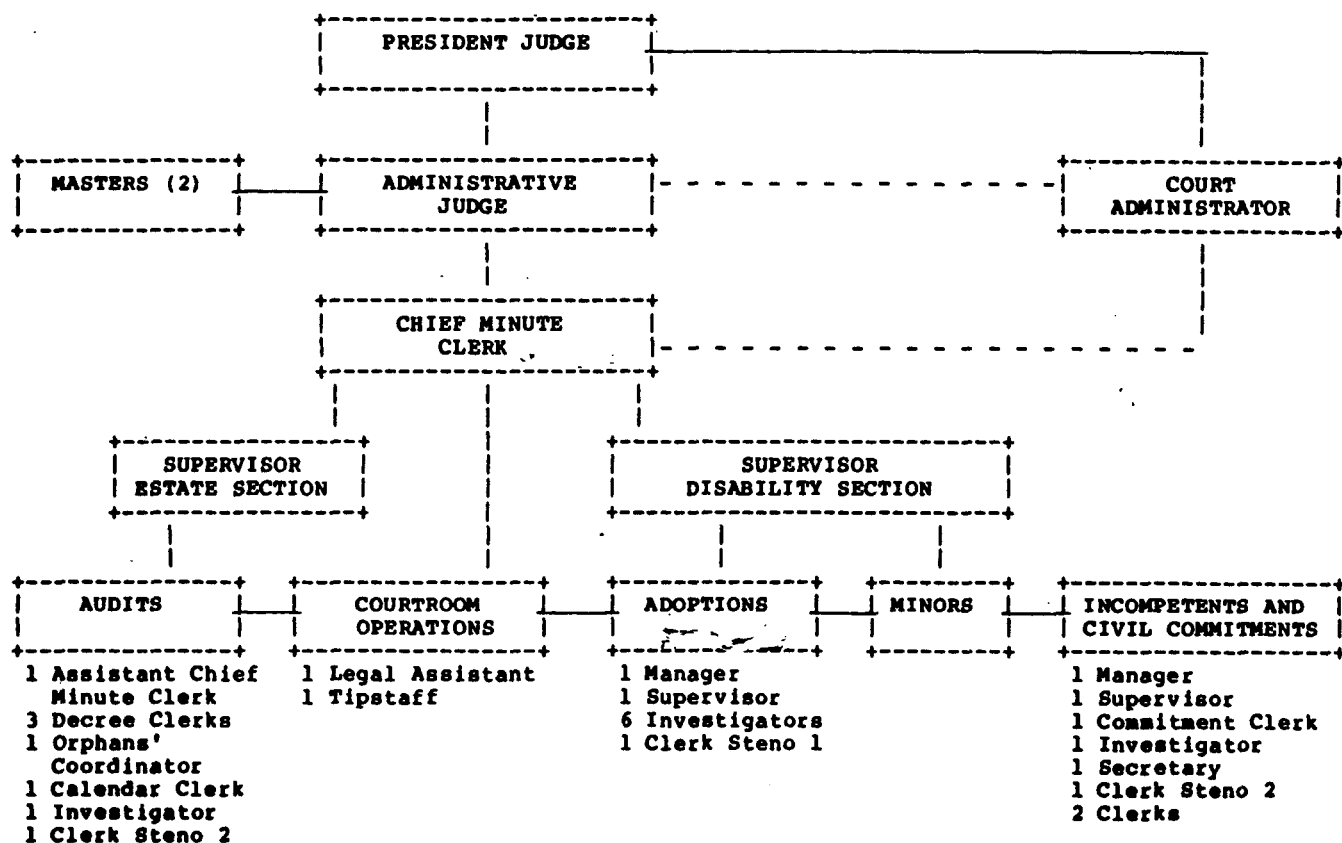
Exhibit 2 is a schematic representation of Orphans' Court existing organizational structure.

EXHIBIT 2

EXISTING ORGANIZATIONAL CHART FOR ORPHANS' COURT

AUGUST 1987

ORPHANS' COURT



The represented structure is designed to provide supervision of the two case-processing activities of the Court: decedents' estates and disability cases. Those performing these two functions report to individual supervisors who, in turn, report to the Chief Minute Clerk of Orphans' Court. The organization chart also gives recognition to the activity entitled "Courtroom Operations". This activity, although not directly responsible for processing cases, presumably is responsible for providing overall case-processing support. If case-processing support is, in fact, the function in question, then the Court's support requirements would be met either through the provision of physical resources and/or the provision of case-processing information. The nature of this particular activity, however, is unclear from both the standpoint of the organizational chart and from the standpoint of the onsite interviews. Suffice to say, at this point, that courtroom operations also comes under the supervision of the Chief Minute Clerk, but its purpose is (to a certain degree) undefined.

The problem associated with identifying the precise nature of courtroom operations is symptomatic of the problem the onsite team faced when evaluating the overall management structure of the Court. Although no documented evidence (either in the form of client questionnaires, detailed analysis of "people movement", or comprehensive desk audits, etc.) is available to support the Center's conclusions that follow, it was immediately apparent to each member of the Center's onsite team that the formatted organizational chart does not reflect the reality of how the Court

is structured --- at least from a management point of view. In other words, the "extant" organizational structure differs from the "specified" organizational structure.

Specifically, it was noted by the onsite team that the principal source of both case-processing information, i.e., information relating to procedures, case status, etc., and courtroom operations activities, i.e., budget preparations, case assignments, etc., is found in the chamber of the administrative judge. There is virtually no delegation of case-management activities to the Court's subordinate staff.

Historically, this structure of "one-man rule" in Orphans' Court was supported by the less than onerous demands of a small caseload and by the almost overwhelming tradition in Allegheny County (and nationally) that, with respect to estate cases, the Court should take a passive role regarding case processing and case management. These traditional and laissez-faire approaches to Orphans' Court administration are not supported, however, by either the significant demands of a large caseload, or court-management literature.²²

2.4.1. Conclusions

The existing organizational structure of the Court is ill-equipped to provide the communication links and the relationships necessary to effectively and efficiently manage the

22. See Appendix B for a discussion relating to the need for an "activist" approach to case management.

Court's "responsibility centers". (The responsibility centers, in this instance, are the areas of Court activity devoted to providing an identifiable portion of its output, e.g., the estate section, adoptions section, etc.) Because of the small caseload in the past, the current centralized form of management held some promise of providing the necessary services to the public. The large caseload increases in recent years, however, have created specific needs regarding case processing and case management. These needs have been identified above in section 2.1, and they require the application of a more decentralized form of organizational structure.

2.4.2 Recommendations

The overall structure of the Court must be revamped to provide the necessary operational and management controls described above in section 2.1. This restructuring will not only increase the efficiency and effectiveness of the Court, but it will also more fairly distribute the Court's workload and provide the feedback information necessary for the Court to meet its management goals and strategies.

2.4.2.1 The Court should both decentralize and expand its operational activity.

The Center recommends the creation (or redefinition, as the case may be) of its courtroom operations function. The section to be created can be generically thought of as "Administration". The purpose of this activity is twofold: 1) to remove the Administrative Judge from the day-to-day operations of the Court and allow more time for his involvement in strategic analysis; and 2) to provide better day-to-day case-management support by placing the function in the hands of individual(s) who are in a position to manage, on a

continuous basis, the department's increased administrative functions and responsibilities. The principle function anticipated by this particular recommendation is the computerized generation of management information --- a prime requisite for effective case management.

Other functions of this department include: the generation of budgets; management of personnel; procurement of supplies; and the overall production of required operational reports (e.g., hearing lists, schedules, etc.). Depending on the Court's restructuring in light of the recommendation given immediately below, the department will require at least three full-time employees including a department head who has "professional" status. The department head should report to the Administrative Judge.

2.4.2.2 The Court should establish, either within the confines of the proposed administration department or as a separate entity, a "compliance" function.

In the recommendation given in section 2.1.6.2, the Center made reference to a "monitor" who periodically reviews a tickler file to insure that case-processing guidelines are followed. This monitoring function should be "formalized."²³ Formalization of the monitoring function includes the following:

- o The function must be staffed with a minimum of two individuals, more than likely professionals (e.g., those with 1602 unit ID's) who are familiar with all aspects of case processing in Orphans' Court; and

23. In some respects the Court has already anticipated this function. See Appendix C.

- o The function must report to and be periodically reviewed by either the administrative judge or the head of the administration department.

The primary function of this newly-formed "compliance" or "enforcement" department/section is to move cases. This will require close proximity to management information. (The actual generation of the reports properly belongs to the newly-formed administration department.) The principal duties of the department include:

- o reviewing active case listings for cases that exceed case-processing guidelines;
- o notifying "delinquent" parties that they are not conforming to the Court's case-processing guidelines;
- o sampling cases, at random and as required, to determine the effectiveness of the Court's overall case-management strategies;
- o preparing, on a periodic basis, reports for the Administrative Judge of Orphans' Court regarding the case-management program; and
- o examining and auditing the sequestered funds accounts to insure that court orders are followed.

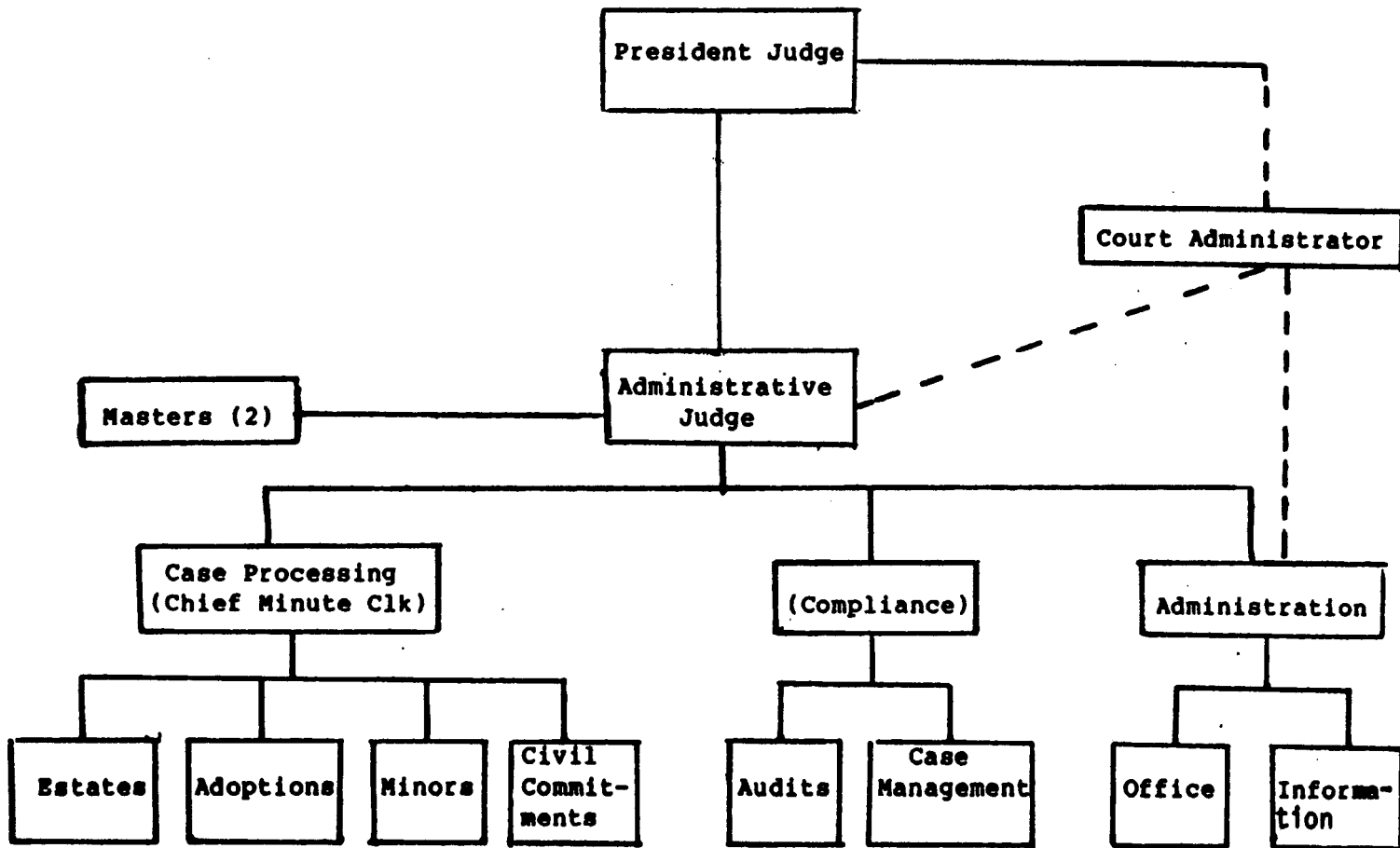
2.4.2.3 Recommended format for a revised organization chart.

Exhibit 3 is a suggested layout for a revised Orphans' Court organization chart. In the chart, monitoring the compliance activity is removed from the Chief Minute Clerk (where it was called "Audits") and given direct access to the Administrative Judge. (As mentioned above, however, this activity could also come under the newly-formed administration department.)

The Center's depiction of a revised organizational chart is only submitted to encourage a rethinking of the Court's management

EXHIBIT 3

REVISED ORPHANS' COURT ORGANIZATION CHART



strategies; other formats that more precisely reflect the "political realities" of the Court may be desired. The chart is submitted, therefore, as a thought-provoking exercise that, hopefully, encourages strategic senior management focus in this important area.

2.5 PERSONNEL ADMINISTRATION AND STAFFING

According to "The Departmental Position Report" (See Appendix D) the Court has filled twenty-seven of its allocated thirty-two staff positions. Three of the five unfilled staff vacancies have supervisory designations (i.e., 1602 unit ID's under the Court's personnel classification system). The monthly departmental salaries budget is \$63,614; the monthly departmental salaries paid is \$51,179. Overall, the departmental position report reflects the Court of Common Pleas' efforts to remain responsive to the demands of "tight" budgeting by the County Commissioners. Even though the Center has recommended changes in Court structure and procedures (with a concomitant reshifting and redefinition of job descriptions), it is clear that Orphans' Court is achieving many, if not all, of the economies mandated by the austere budget. The economies are traceable to the dedication of the Court's staff.

Notwithstanding the exemplary efforts of many of the Court's employees, the Center did notice one staff/personnel problem in the area of management supervision that deserves further comment. The Center's comment is directed to the failure of certain management personnel to provide the necessary direction for further enhancement of the Court's operational capabilities.

2.5.1 Conclusion

It virtually goes without saying that no organization can function if its supervisors do not play an active role in defining and directing the organization's activities. For example, workers need to know what areas and decisions are beyond their power and competencies. They therefore look to their supervisors for the organizational perspective on what the tasks are (or should be) and the task objectives. Supervisors provide the task standards; workers provide the feedback information regarding whether the tasks are being performed. While the temptation is to state that the proper role of supervisors is to "supervise", in reality the proper role of supervisors is to provide knowledge, training, guidance and organizational "lore" regarding how work is to be performed. Notwithstanding this redefinition of the traditional role of supervisors, it is not, however, intended to diminish an important component of management: the need for authority.

Authority is a vital part of the supervisory process. Work, however, still has to be performed on schedule and in a prearranged sequence. This requires that the authority component continue to be incorporated into the overall supervisory function. Note therefore that delegating tasks does not diminish authority and responsibility. It does, however, make work more effective and efficient. But, despite the need for delegation, someone still has to be in charge.²⁴

24. See Drucker, P., Management (1974) at p. 270 through 311, for a more comprehensive discussion of this subject matter.

In Orphans' Court there has been an insufficient delegation of work functions. Additionally, the Center team believes that the supervisory component of certain key players in Orphans' Court management has to be improved in light of the expanded definition of the supervisors' roles.

2.5.2 Recommendations

The Court should begin exploring ways to make its middle and upper level supervisors more responsive to the techniques and strategies developed in the behavioral sciences that increase organizational effectiveness.

2.5.2.1 The Administrative Judge should begin delegating many managerial functions.

As touched upon briefly in Section 2.4.2.1, the Administrative Judge is too actively involved in the day-to-day management of the Court. Because of this continuous involvement in the ordinary affairs of the Court's operations, the much-needed leadership required for the establishment of organizational planning is neglected and the overall operational efficiency of the Court is diminished. Additionally, because of the centralization of authority and management, there is little opportunity for subordinate staff to contribute, grow and develop.

2.5.2.2 The Chief Minute Clerk, in addition to the existing authoritative role, should assume the other role requirements that the supervisory position requires.

The Chief Minute Clerk, like many supervisors in many organizations, is becoming isolated between senior management and the workers. The proper role of the supervisor is not to force management's views on the staff, nor is it the supervisor's role to

be totally one-sided in favor of the workers. Rather, the modern supervisor, as Drucker points out, is to act as the:

ligaments, the tendons, and sinews, of an organization. [The supervisor] provides articulation. Without [him] no joint can move. It is the supervisor's job to be in the middle. Hence, he must have responsibility, function, and respect in both his relationships, upward to management and downward to the work group.²⁵

Senior Court management and the Chief Minute Clerk should endeavor to make Drucker's definition of the supervisor's role a reality in Orphans' Court

2.6 MANAGEMENT INFORMATION AND STATISTICS

At the present time, Orphans' Court appears to collect basic case volume information. The number of hearings (by type of hearing), the number of petitions filed (by type of petition), the number of petitions withdrawn and dismissed, the number of orders issued (by type of order), and the number of opinions rendered are all statistics which are collected and reported. Such information provides necessary and valuable information regarding Court case volumes, assignment needs, and the general workload demand on Court personnel. This information can usually be compared from year to year, or for that matter, quarter to quarter, to compare both workload demands and filing trends --- information that is very important in strategic decision making. Most, if not all, of this information is typically reported in the Court's Annual Report.

In addition to this information, and as described above in section 2.1.1 through 2.1.4, many dockets and indexes are kept that contain other valuable information. This information, however, is

25. Id. at 280.

simply not in a form or medium which allows for a summary to be produced or for a management report to be written, i.e., the information is accessible in the original dockets and indexes, but significant time and energy is required to both locate and summarize it.

Regarding financial management, the current system includes production and filing of a status report. This report provides certain financial information, including the utilization and distribution of funds in fiduciary accounts. Given the nature of current financial management, this may be all that is necessary. The Center's evaluation team finds, however (and as noted above), that more information in the financial management area is desirable.

2.6.1 Conclusion

The information currently collected clearly provides useful information to management. Collection and reporting of this information should continue. At the same time, more information and statistics can be provided. For example, the Court needs information regarding attorney compliance with its case-processing guidelines. Of particular importance are compliance information regarding the filing of status reports (required by Pa. O.C. Rule 6.12) and accounting information (described above in section 2.3.2.3) for funds managed by a fiduciary.

2.6.2 Recommendations

The purpose of the additional recommended management reports is to provide additional information to support both resource allocation and strategic decision making (i.e., to provide negative-feedback information that guarantees that the Court's case-processing guidelines are being followed).

The various reports listed below give Court managers information regarding both resource needs and the effectiveness of case-management controls.²⁶ These reports can be grouped into three types:

- o Case inventory reports;
- o Trend analysis reports; and
- o Case age and case status reports.

In all likelihood, detailed versions of these reports can only be provided in an automated environment. There are, however, certain nonautomated procedures the court can employ that generate a variety of useful case-management information. For example, the Court can manually prepare monthly case-filing/case-disposed logs and compare the relative disposition rates. The Court can also sample active cases to determine whether its compliance rules are being followed. Finally, the Court can prepare listings of filings, by type, and monitor the relative increase/decrease by type for each reporting period. Each of these procedures focus on easily calculable, measurable trend information that enables the Court to process cases in a timely fashion.

2.6.2.1 Recommended caseload inventory reports

The caseload inventory reports provide detailed information that helps determine specific allocation needs. (The caseload inventory

26. See generally, Clifford, M.L. and Jensen, L.A.; Court Case Management Information Systems Manual (Williamsburg, VA; 1983) for a comprehensive listing and discussion of the management reports summarized here.

reports recognize that all cases are not equal in complexity, and all stages of case processing do not require the same amount of time or resources.)

The following is a suggested listing of some of the caseload inventory reports the Court should employ:

- o Beginning pending, filings, dispositions and end pending;
- o Percent of total caseload filed by type of case;
- o Change in pending, number and percent;
- o Disposed cases as a percent of filings, and end pending as a percent of filings;
- o Manner of dispositions with comparison data;
- o Caseload by judge with individual reports similar to those listed above; and
- o Number and percent change in filings and dispositions.

2.6.2.2 Recommended trend analysis reports

Trend analysis provides information regarding the past that is reported in such a way as to provide predictions for the future. This, again, is particularly useful when planning for future needs and resources.

Recommended trend analysis reports include:

- o Comparison of number of filings to date in successive reporting periods and percent change in filings;
- o Cases filed trend over a six-year period;
- o Number and percent change for each manner of disposition;

- o Comparison of dispositions over several reporting periods; and
- o Projections based on trend analysis.

2.6.2.3 Recommended case age and case status reports

The case age and case status reports indicate how long a case or collection of cases have been in the system and how long it takes to process them. This information, in turn, can be analyzed by type of case and type of disposition. Such information provides detailed analysis of delay points and other difficulties in the case-processing system. Exception reports can be used if there are systematic applications of standards that locate the cases that fail to meet pre-imposed conditions. Therefore, the Center recommends that a local court rule be adopted in this regard. This information, combined with the inactive case list, allows Court management to know immediately what cases are inactive and what cases are in violation of the adopted local court rule.

The following age/status reports may be desirable:

- o Age of pending cases;
- o Age of cases at disposition;
- o Age of disposed cases by manner of disposition;
- o Status of pending cases;
- o Inactive case inventory;
- o Status of pending cases according to particular events in case processing; and
- o Cases pending longer than the jurisdiction's minimum time standard.

Some or all of the reports listed above could be produced by a combination of manual procedures and computerization and not impose a significant work burden on personnel. The Court should constantly review the management reports to ensure the usefulness, timeliness and accuracy of the information provided.

3.0 CONCLUSION

This report gives both comments regarding the effectiveness of the Court's current case-processing and case-management activities and suggests ways in which these activities can be improved. Notwithstanding the rather large dimension of some of the Court's problems and, as a result, the resulting large dimension the problems' associated solutions, the Center believes that the recommendations incorporated in this report should be pursued. Of special importance are the recommendations associated with effective financial management of funds held in trust and the application of proven management techniques (such as monitoring case compliance with local and state rules) to the movement of cases through the Court.

Care should be taken, however, to avoid the impression created by the report's categorization and cataloging of a variety of problems that Orphans' Court is in need of major management reform. By and large, the Court operates and manages well. Recognition by senior Court administrators that improvements to Orphans' Court operations can still be forthcoming is, of itself, evidence that the Court possesses the two most important attributes of successful management-- leadership and commitment.

APPENDIX A

VENDORS WHO PROVIDE AUTOMATED PROBATE COURT SYSTEMS

- o Gavel - Manatron, Inc., 1999 Wabash Avenue,
Springfield, IL 62704; --
- o Writs - Atek Information Services, Inc., 630 30th
Street N.W., Canton, OH 44709.
- o Sustain - CHOICE Information Systems, Inc., 732
Thimble Shoals Blvd., Suite 301, Newport News, VA
23606;
- o Trial Court Information Systems - Honeywell-Bull,
Inc., (as licensee from the Supreme Court of
Minnesota), 3800 West 80th St., Minneapolis, MN
55431;

APPENDIX B
ELEMENTS OF EFFECTIVE CASEFLOW MANAGEMENT

ELEMENTS OF EFFECTIVE CASEFLOW MANAGEMENT

January 7, 1987

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ELEMENTS OF EFFECTIVE CASEFLOW MANAGEMENT

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ELEMENTS OF EFFECTIVE CASEFLOW MANAGEMENT

Set forth below are criteria against which a caseflow management system may be evaluated.¹ Nationwide research over the past fifteen years in trial courts of general jurisdiction has documented the fact that effective case management systems share certain general characteristics. (See Table 1.) Those minimizing the time interval between filing and disposition and providing judges, attorneys, and the public with a high degree of satisfaction are characterized by most, if not all, of the following features.²

A. Judicial Commitment to the Concept of Court Control

Successful case management starts with judicial commitment to the concept that it is the responsibility of the court to control the progress of cases from filing to disposition. Some judges and attorneys continue to hold the traditional view that cases and their

1. See Maureen Solomon, Caseflow Management in the Trial Court [hereinafter, Solomon, Caseflow Management] (American Bar Association Commission on Standards of Judicial Administration, Supporting Studies--2, 1973).

2. The observations made by Solomon in Caseflow Management have been borne out in subsequent nationwide studies of trial-court case processing. See, for example, Thomas Church, et al., Justice Delayed. The Pace of Litigation in Urban Trial Courts [hereinafter, Church, Justice Delayed] (National Center for State Courts, 1978); and see Barry Mahoney, Larry Sipes and Jean Ito, Implementing Delay Reduction and Delay Prevention Programs in Urban Trial Courts. Preliminary Findings from Current Research [hereinafter, Mahoney, Implementing Delay Reduction] (National Center for State Courts, 1985). But cf. Judith Resnik, "Managerial Judges," 97 Harv. L. Rev. 374 (1982), for thoughtful observations on the pitfalls of judge involvement in caseflow management.

Table 1.
COMPONENTS OF EFFECTIVE DOCKET MANAGEMENT PROGRAMS:
CONCLUSIONS FROM MAJOR STUDIES

<p><u>M. Solomon, Caseflow Mgt. in the Trial Court (ABA 1972)</u></p> <ul style="list-style-type: none"> --Commitment by judges to control caseflow --Consultation between court and bar re: problems and proposed remedies --Established procedures and published policies --Restrictive continuance policy --Centralized responsibility for case management decisions --Continuous monitoring of case progress --Case processing time standards --Measurement of system performance against goals and standards with feedback to participants --Periodic procedural modifications to meet changing conditions --Techniques to avoid scheduling conflicts --Planning and coordination by administrative staff 	<p><u>L. Simon, Managing to Reduce Delay (NCSG 1982)</u></p> <ul style="list-style-type: none"> --Determination that courts and not attorneys will control caseflow --Development of time standards --Monitoring of key events in case progress --Realistic caseload limits for setting dockets --Firm continuance policy --Emphasizing older cases --Development of a useful information system
<p><u>T. Church, Justice Delayed (NCSG 1978)</u></p> <ul style="list-style-type: none"> --Court control of case management and of continuances --Incentives for judicial accountability and judicial productivity --Court readiness to try cases as an inducement to settle or plead --Standards for timely case disposition --Changing the "local legal culture" (the established expectations of judges and attorneys) 	<p><u>Nation Comm., Litigation Costs & Delay (ABA 1984)</u></p> <ul style="list-style-type: none"> --Judicial control over the pace of litigation --Comprehensive controls following case from initiation through disposition --Cost reduction through procedural simplification --Cooperative bench-bar mechanism to identify points of delay and design programs to combat them --Reduction of backlog through better use of judicial resources --Careful planning and attention to detail in developing any new programs --Flexibility in adjusting new programs to unanticipated problems --Commitment to abide by and carry out new procedures
<p><u>R. Prieman, Justice in Palmyr Cir. (Whittier 1972)</u></p> <ul style="list-style-type: none"> --Organization of the system to make policy decisions --Organization of the court for case processing --The control of case inventory by the court --The use of arraignment as a control point --The existence and enforcement of operating standards --The existence and use of information for monitoring, controlling and evaluating the system --Having the resources necessary to maintain the control system 	<p><u>R. Mahoney, Implementing Delay Reduction (NCSG 1982)</u></p> <ul style="list-style-type: none"> --Leadership, especially by trial court chief judge --Commitment by judges to minimize delay and manage cases from inception to completion --Good communications, both within court and with bar and other participants in court process --Case processing time standards or goals --Case management procedures for court to monitor case progress from initiation and to schedule specific case events --Management information for court to identify problems and to monitor caseload status --Calendarizing practices and other means to provide accountability for caseload management --Attention to detail in implementing court policies and programs

progress are the exclusive concern of the attorneys and that it is improper for the court to intervene. It has become clear, however, that adherence to this philosophy results in systemic delays that are unacceptable to attorneys and clients, as well as to the court, and may actually threaten the quality of the outcome.

For criminal misdemeanors and felonies before a general-jurisdiction trial court, assumption of court control calls for attention to many different facets and stages of the case process. There are many steps in a felony case--from preliminary arraignment and preliminary hearing before a district justice, through filing of an information, arraignment, motion hearings, trial and verdict, to posttrial motions, sentencing, and motions to modify sentences. If these events come about in a haphazard or unpredictable fashion, the court may not only be allowing its ability to dispense fair and equal justice in all cases to be compromised, but it may also be making poor use of finite judge time and other valuable court resources. To avoid the risk of unfair and unequal treatment of all cases, and to assure more efficient use of limited resources, the court must organize, monitor and control these steps in a criminal case.³

While a civil lawsuit is a matter of private concern to the parties, its resolution becomes of broader public concern when the case is filed in the court. The court has obligations to the litigants and to the public, from both fairness and effectiveness standpoints, to dispose of cases within a reasonable period of

3. Solomon, Caseflow Management, p. 31.

time. The court can discharge the responsibilities only by taking early control of the pace of litigation and supervising completion of all necessary steps preliminary to disposition.

Some judges may assume that court intervention in case progress would be unacceptable to attorneys. This is far from true when such intervention results in an orderly, fair and predictable process. There is considerable evidence that attorneys throughout the United States do not favor a laissez-faire approach to calendar management by trial courts.⁴ They do not believe that a lax continuance policy is beneficial. Court supervision of case progress, if it is in accordance with reasonable time standards, is considered far preferable to the uncertainty which currently characterizes civil case management in many trial jurisdictions.

B. Explicit Case Processing Goals

Usually these are time standards for case disposition. Throughout the country, state and federal courts commonly must dispose of criminal cases promptly in order to recognize the constitutional rights of criminal defendants. A recent national survey indicates that 22 states have statewide case-processing time standards, that 11 other states have current plans to adopt statewide standards, and that individual trial courts

4. See, for example, Robert D. Myers (a Phoenix attorney), "Efficient Management: We Know What's in It for Judges, But What's in It for Lawyers," 23 Judges' J. (No. 1, Winter 1984) 26; American Bar Association Action Commission to Reduce Court Costs and Delay, Attacking Litigation Costs! Delay, pp. 74-75 (Chicago: ABA, 1984); and William W. Falsgraf (Cleveland attorney and former ABA president), "The Quest for Justice: Cost and Delay Threaten Equal Access to the Courts," 9 State Ct. J. (No. 4, Fall 1985)

in 11 states have implemented time standards even though no statewide standards have been adopted.⁵

While the concept of time standards has traditionally been applied to criminal cases, application to civil cases is becoming more prevalent. Courts are recognizing that goal-setting provides a focus for planning the civil case-management system and development of benchmarks for measuring its success.⁶

The Conference of State Court Administrators (COSCA), whose membership includes the state court administrators from all states and territories, has adopted national time standards for processing civil cases. COSCA maintains that civil jury cases should be disposed within 18 months after filing unless the court finds exceptional circumstances, and that nonjury cases should be disposed within 12 months.⁷ The American Bar Association's National Conference of State Trial Judges has promulgated somewhat different time standards:⁸ without distinguishing between jury and nonjury civil cases, these standards provide that 90% of all civil cases be

5. See Howard P. Schwartz, "Trial Court Delay Reduction Efforts" (Conference of State Court Administrators Survey, March 1986).

6. See J. Denis Moran, "Stating the Case for Timely Justice," 8 State Ct. J. (No. 4, Fall 1984) 23.

7. Ibid.; see also, Frederic Melcher, "Setting Time Standards: How Much Delay is Too Much?" 23 Judges' J. (No. 1, Winter 1984) 48.

8. See ABA National Conference of State Trial Judges, Standards Relating to Court Delay Reduction (approved by ABA House of Delegates, 1984). (These standards replace Sections 2.50 through 2.56 of ABA, Standards Relating to Trial Courts (1976), except for former Section 2.54, which is renumbered as Section 2.79.) The new standards distinguish "general" civil matters from "summary" civil matters (small claims, landlord-tenant, and replevin actions), for which a 30-day time standard is offered. These standards are compared with the COSCA standards in Melcher, supra.

disposed within 12 months from filing, that 98% be disposed within 18 months, and that 100% be disposed within 24 months. An overall time goal for case disposition helps set attorney expectations and provides a context for court supervision of case progress.⁹

Goal-setting by court rule is preferable to time limits established outside the courts. It allows incorporation of factors such as local court capacity and the norms and values in each "local legal culture".¹⁰ Even so, across the nation, courts tend to select 12 or 24 months from filing as the appropriate and achievable time intervals for disposing of most civil cases. In Ohio, for example, superintendence rules recommend an outer limit of 24 months after filing of complaint for personal-injury cases, with most other civil cases to be disposed within 12 months.¹¹

Some of the courts that have adopted case-processing goals

9. See Mahoney, Implementing Delay Reduction, p. 17, note 8:

As Maureen Solomon has noted, it is important to distinguish between time standards used as management goals and time restrictions specified in statutes or rules. Especially on the civil side, the time limits found in statutes and rules often bear little relationship to reasonable time standards for the processing of a case. See Solomon, [Caseflow Management], pp. 36-39. The time standards recently adopted by the American Bar Association and the Conference of State Court Administrators--and now being actively considered by bar groups and judicial leaders in a number of jurisdictions--are intended to serve as management goals.

10. The phrase "local legal culture," referring to a cluster of factors including the established expectations, practices, and informal rules of behavior among the judges and attorneys in any trial jurisdiction, was coined in a national study of delay in metropolitan trial courts. See Church, Justice Delayed, p. 54.

11. See Ohio Supreme Court, Rules of Superintendence for Courts of Common Pleas, Rule 5, in Ohio Revised Code, Title 23.

specify the intervals between the various stages in a case (e.g., between joinder and motions, or between pretrial conference and trial) or the time for completion of a particular activity (e.g., discovery). Others deal with scheduling details, such as the maximum percentage of scheduled cases that may be continued while maintaining court control and predictability of the calendar.

Courts in at least two states--New Jersey and Connecticut--have adopted what they call "differential case management" for civil cases.¹² This approach incorporates two significant features of the case processing goals discussed above.

First, they proceed on an assumption, like that expressed in the Ohio rules of superintendence, that there are differences among civil cases that warrant having different case processing time standards. Cases of different types are put on different case processing "tracks," and they are subject to different case processing timetables. Thus, a contract case with liquidated damages might be on an "expedited" track, to be disposed within six months after filing; a difficult construction contract case, on the other hand, might be on a "complex" track, with a unique, case-specific disposition timetable; and a routine motor vehicle trespass case might be on a "standard" track, to be disposed within twelve months.

The second feature of these differential case management

12. See New Jersey Supreme Court, Committee on Civil Case Management and Procedures, Toward a Theory of Civil Case Management and Improved Civil Procedures (March 1985); and Connecticut Judicial Department, Committee to Study Rules of Civil Practice and Procedure, Report (Draft, November 1985).

approaches is that they include intermediate timetables for completion of various pretrial stages. More specifically, they include timetables, different for one track than for another, within which the pleadings are to be closed and discovery is to be completed. On the expedited track, the time for pleadings and discovery to be completed would be shorter than for the standard track; and cases on a complex track would have individually-tailored timetables for completion of the pleadings and discovery.

C. Effective Communications with the Bar

While it is undesirable for a trial court to permit attorneys to control case movement, it would be impractical and unfair to ignore scheduling problems and appearance costs for the members of the trial bar. As a general rule, courts that have undertaken successful case-management programs have done so in conjunction with a series of ongoing discussions and working meetings with the local bar.¹³ In criminal cases, the prosecutor's cooperation with the court in administrative matters is critical. Court efforts to

13. Dean Ernest C. Friesen has written that courts seeking to control caseflow must still make reasonable accommodation for attorneys' schedules:

The litigation process is not served if lawyers can't make a living from litigation. Programs of calendar management which increase the cost of appearance or which force an attorney to choose between clients in court appearances are dysfunctional. The reasonable accommodation of lawyers involves a continuing honest communication link between the courts and the active litigators.

Friesen, "Cures for Court Congestion. The State of the Art of Court Delay Reduction" [hereinafter, Friesen, "Cures"], 23 Judges' J. (No. 1, Winter 1984) 4, at 7.

expedite criminal case movement may be weakened, if not defeated altogether, unless the court has engaged the full cooperation of the prosecutor. There must also be communication with the public defender and busy private defense attorneys, because of their important role in the criminal trial process.¹⁴

While the court has the ultimate responsibility for determining what system is to be used for control of cases, the views of the attorneys practicing in the court should be considered. Their participation in planning and in continuous evaluation will help assure long-term success.

D. Early and Continuous Court Supervision of Case Progress

In order for the court to be effective in its effort to control case progress, such control must be exercised from the very beginning of each case. In a criminal case, this means control immediately after arrest or from filing of a complaint. In a civil case, it means monitoring and control from the time of initial filing.

For criminal cases, arrest is usually the point of case commencement. After that, the court can take early and effective case control. This calls for (a) prompt determination of pretrial release and probable cause, with expeditious filing of charges and arraignment in the general-jurisdiction trial court; (b) meeting the needs of indigent defendants for counsel at public expense as soon

14. See, for example, David C. Steelman, Representation of Indigent Felony Defendants in the Cuyahoga County (OH) Court of Common Pleas (North Andover, MA: National Center for State Courts, 1984).

as possible; (c) effective early screening of cases to identify those that should be disposed promptly by plea, dismissal or nolle prosequi; and (d) effective early screening to identify cases suitable for diversion from the criminal process.

Nor should case control be relaxed after arraignment in the general-jurisdiction court. Routine provision of discoverable materials by the prosecutor to defense counsel should reduce the incidence of discovery motions.¹⁵ At arraignment, many courts schedule conference dates for prosecutor and defense counsel to negotiate pleas, and they set deadlines for the filing and consideration of pretrial motions.

Courts that successfully reduce time to disposition in civil cases typically monitor the progress of each case from the time of filing. Case movement and scheduled hearings are in accordance with the time standards and procedures established by the court. Exceptions are monitored and controlled. In some courts, (such as the Montgomery Court of Common Pleas in Dayton, Ohio) staff members monitor whether or not an answer or other responsive pleading has been filed within a reasonably short time after that called for by rules of procedure. If not, the court sends notice to the plaintiff's attorney indicating that a dismissal for want of prosecution will be entered by the court unless the attorney moves for substitute service or a default judgment. This practice

15. See, for example, Richard N. Ross, et al., Passaic County (NJ) Speedy Trial Demonstration Project. Final Evaluation Report (North Andover, MA: National Center for State Courts, 1981); see also Samuel D. Conti, et al., Hudson County (NJ) CJP Evaluation (North Andover, MA: National Center for State Courts, 1985).

demonstrates to counsel that the court is concerned with timely case processing, and it tends to expedite close of the pleadings.

Generally these courts do not use certificates of readiness for trial. Continued use of such attorney-generated certificates will always represent a certain restraint on a trial court's control of its calendar.¹⁶

Continuous court supervision of civil cases comprehends the concept of setting and enforcing deadlines for discovery completion as well as the concept that cases should always have a future action date assigned. Both are often incorporated through use of an early status conference between the judge and all counsel. At these conferences, held shortly after completion of the pleadings, the case is discussed and a timetable for disposition is established by joint agreement of the court and counsel. Within the timetable, specific future action dates and deadlines (e.g., for discovery completion or trial commencement) are designated.

The reader should note that mention of pretrial conferences immediately before trial was omitted in the preceding paragraph. In a major study of pretrial conferences in New Jersey civil cases, one

16. One state where court practice and procedure include the use of such certificates of trial readiness is Pennsylvania (where they are called "praecipies for trial"). For a discussion of the role of the praecipe for trial in civil practice in the largest Pennsylvania trial courts, see William H. Popp and Richard N. Ross, A Report on Civil Case Processing in the Philadelphia and Allegheny County (Pittsburgh) Courts of Common Pleas (Pennsylvania Metropolitan Delay Project, volume II) (North Andover, MA: National Center for State Courts, 1980). For discussion of the role of praecipies in civil practice in smaller Pennsylvania trial courts, see the reports prepared in 1986 for the Blair, Clearfield, Lawrence, Northumberland and Susquehanna County courts of common pleas in the National Center's "Pennsylvania Five-County Delay Project."

noted scholar concluded that such conferences do not have a positive effect on case dispositions.¹⁷ By rule, pretrial conferences in New Jersey civil cases have been made discretionary except in equitable matters and those brought in lieu of prerogative writs.¹⁸ A conclusion to the same effect has been reached by a general-jurisdiction trial judge in Michigan, who has found that setting firm trial dates is every bit as effective as pretrial conferences in promoting settlement of civil cases.¹⁹ (See below, E. Trial-Date Certainty.)

Establishing a timetable in each criminal or civil case greatly increases the probability of a steady, predictable progression to disposition. Early contact between counsel and the court encourages earlier, nontrial disposition (most often, by plea or settlement). Adherence to the concept of future-action dates assures that cases will not be stricken or taken off the calendar to be reset in due course only by motion--a process through which cases often become lost or escape court control, resulting in needless handling of cases with no progress toward disposition.

In order for the court to make this approach effective, it must have a "tickler" system to monitor compliance with deadlines and to allow the court to contact attorneys who are not in compliance. A

17. Maurice D. Rosenberg, The Pretrial Conference and Effective Justice: A Controlled Test in Personal Injury Litigation (New York: Columbia University Press, 1964).

18. See Sylvia Pressler, Current New Jersey Rules, R. 4:25-1.

19. Hilda R. Gage, "How to Reduce the Docket: What One Judge Can Do When Extra Funding and Staff Aren't Available," 23 Judges' J. (No. 1, Winter 1984) 12, at 15.

very effective manual tickler system would employ cards filed chronologically according to each case's next action date.²⁰ If case volume and cost permit the use of a computerized management information system, the court's computer could make a daily review of deadlines and prepare notices to attorneys who have failed to comply.

E. Trial-Date Certainty

The "bottom line" in a court's case management system is its ability to establish or assign trial dates that are reasonably certain. The court's system of deadlines, future action dates and monitoring must lead to trial dates that are more likely than not to be met by the court. Only when this occurs is the court in a position to enforce deadlines and compel attorney readiness.

Trial-date certainty depends on several components: realistic trial calendar limits; a strict continuance policy; counsel preparedness; and availability of the trier(s) of fact and law. A key element in a successful experiment to reduce delay in the Maricopa County (Phoenix), Arizona, general-jurisdiction trial court was a change in court rules that allowed the appointment of judges pro tempore on a day-to-day basis from a list of attorneys prepared to serve in that role (and exercising full judicial authority while serving), thus all but guaranteeing the availability of sufficient

20. Dean Ernest C. Friesen urges courts to control caseflow by steps that include "short scheduling"--that is, scheduling events to occur in the near future, so that attorneys will feel a sense of urgency and be prepared when such events actually happen. If lawyers are prepared, he says, there will be fewer continuance requests. See Friesen, "Cures," 23 Judges' J. at 7.

judges to meet whatever civil trial demands might arise on a given day.²¹

Calendar limits can be developed through analysis of past trial lists or calendars to determine the number of cases that the court actually can dispose of on the trial date or within the week. If this is not done, and if cases in excess of the number that actually can be disposed are scheduled, then attorneys will be less likely to prepare or to bring in expert witnesses. Excessive overscheduling of cases for trial actually results in more continuances and fewer cases going to trial. Requiring attorneys to prepare repeatedly for trial dates that do not materialize is likely to cause deterioration in the quality of attorney case preparation. The court must create the expectation that the case will be reached for trial on the scheduled date.²²

When this is achieved, then the court is in a position to grant

21. See Larry Sipes, et al., Managing to Reduce Delay [hereinafter, Sipes, Reduce Delay], Appendix A (Williamsburg, VA: National Center for State Courts, 1980).

22. The problem of "oversetting" or "undersetting" calendars was demonstrated in classic form in a National Center study of civil case scheduling in the three-judge general division of an Ohio common pleas court. See David C. Steelman and Lorraine M. Adams, Civil Case Scheduling in the Trumbull County (Ohio) Court of Common Pleas. Findings and Recommendations, pp. 33-34 (North Andover, MA: National Center for State Courts, 1982). In that court, as in all Ohio trial courts, all cases are assigned to trial judges on an "individual calendar" basis.

When the National Center project staff members inspected court records, they found that the judge with the greatest backlog of pending civil cases had scheduled only 19 civil trials in three sample months, and that 15 (79%) of those cases actually went to trial as scheduled. While there was great certainty that cases before this judge would be tried as expected, he was scheduling so few cases that he was not staying abreast of new filings, and his pending civil caseload of about 950 cases was one of the highest in the entire state of Ohio. (Footnote continued on next page.)

continuances only for exceptional reasons. Continuances have important clerical and management implications. Management of a case is lost when attorneys, routinely granted continuances, control the calendar through their lack of preparedness. There is also considerable extra clerical work for both the court staff and the offices of attorneys.²³

Thus, the relationship between the court's continuance policy and its calendar scheduling practices is apparent. Attorneys are most likely to prepare when they have a good expectation of being reached on the scheduled date. If they are not prepared and are reached for trial, they must request a continuance. If the court

(Footnote 22 continued) A second judge, seeking to avoid calendar breakdowns, scheduled 47 civil trials during the time period inspected, or 2 1/2 times as many as the first judge. Because of continuances, however, he tried only 19 cases--just 40% of those scheduled and only four more than his colleague. This second judge's calendar results were a perfect illustration of the troublesome consequences of excessive overscheduling. While his pending civil caseload of 525 cases was much better than that of the first judge, he saw himself on a treadmill of slowly increasing civil case backlog.

The third judge had the smallest pending civil backlog (about 400 cases, for one of the better records in Ohio), and he took an approach to scheduling that avoided both excessive underscheduling or excessive overscheduling. In the time period under inspection, he set 35 civil cases for trial, and 24 (or 69%) were actually tried. Setting fewer cases for trial than the second judge, he actually tried and disposed of more cases.

These results show the impact on pending caseloads of excessive oversetting and excessive undersetting, and they show that the establishment of a realistic setting level results in more dispositions and control of pending caseloads.

23. In Allegheny County, Pennsylvania, it was estimated that in 1979 criminal continuances consumed 5% of clerk's office time, 20% of the calendar control division's time, and 17% of the time of minute clerks, bailiffs and the administrative judge. Continuances cost the court an estimated \$79 per case. William H. Popp and Donald Hardenbergh, Finances and Operating Costs of Pennsylvania's Courts of Common Pleas, pp. 70-72 (North Andover, MA: National Center for State Courts, 1980).

routinely grants such continuances, it reinforces the attorney's propensity not to prepare the next time the case is on the calendar. (See Figure 1 for a representation of the destructive cycle that arises from a combination of excessive calendar oversetting and a lax continuance policy.) In contrast, courts that are successful in case management use realistic calendaring and a strict continuance policy to create an atmosphere wherein deadlines are met, trial dates are certain, and attorneys are prepared.

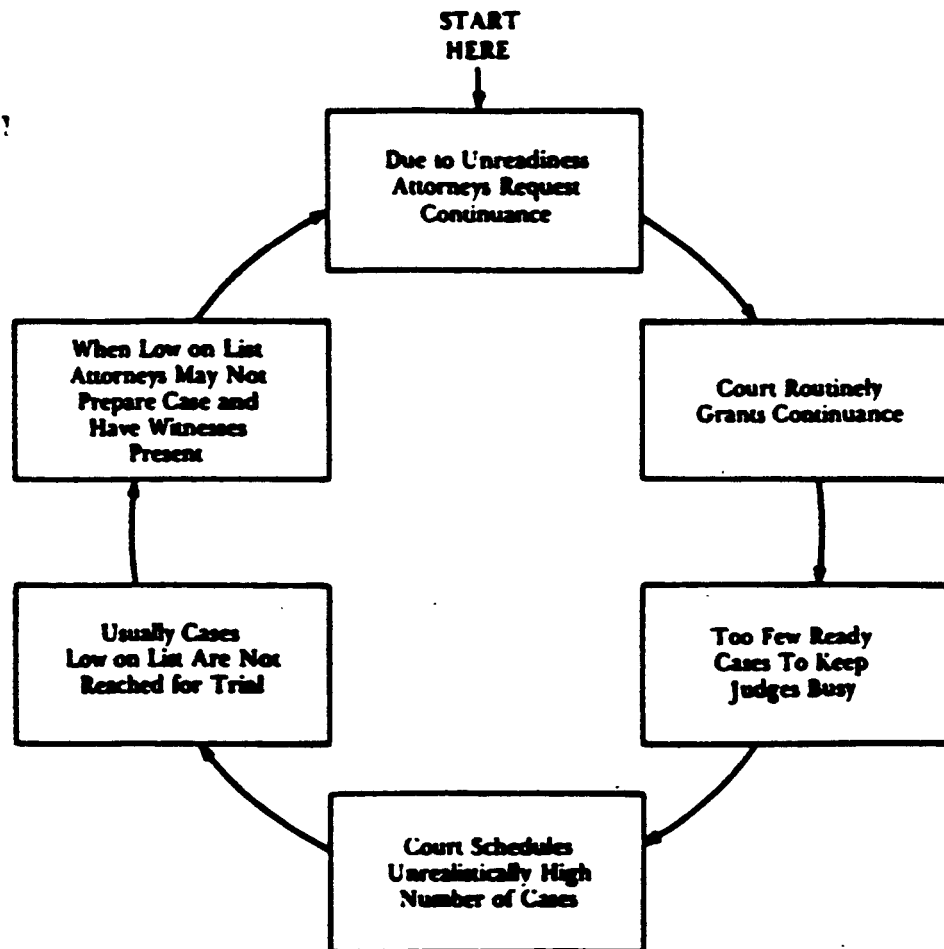
F. A Functional Case Management Information System

Such a system is essential to a court's ability to operate an effective caseload management system. Information is needed for planning, management, and evaluation. For example, caseload data (for all cases on file) concerning the numbers, types, and ages of cases on hand must be readily available. Information concerning past and future action dates and deadlines is needed for the case progress tickler function. Disposition statistics are needed for evaluation of program success.

Successful courts use manual or computer-based management information systems. Advances in technology are rendering the use of mini-computers or personal computers economically feasible even in one-judge courts. Yet the success of the manual case management information system in the Maricopa County Superior Court in Phoenix, Arizona, demonstrates that even a large multijudge court does not necessarily need computers to manage its cases effectively.²⁴

27. See Sipes, Reduce Delay, Appendix A, for a detailed discussion of the case-management system in Phoenix.

FIGURE 1.
EFFECT OF CONTINUANCE AND SCHEDULING POLICY
ON ATTORNEY READINESS*



*Source: M. Solomon, Caseflow Management in the Trial Court, p. 50 (Chicago: American Bar Association, 1973).

G. A Plan for Attacking the Case Inventory

Courts that develop a management strategy for comprehensive court control of case progress usually develop and publish plans for (a) dealing with the existing pending inventory and (b) managing incoming cases from the time of filing. The latter plan incorporates the procedures and rules under which the system will operate. It thus establishes guidelines for the bar and for court personnel, providing ground rules for the case management system. This form of control could be called a "bow tie" theory, in that equal forces must be exerted on both ends to provide symmetry in the middle and to hold everything together under control.

Development of a special program for disposing of the pending inventory helps the court "get out from under" an uncertain workload and paves the way for comprehensive management of a firmer caseload. Usually a trial court's existing inventory of civil cases contains many that have either been abandoned by the parties or can, with some assistance from the court, be disposed by settlement.

H. Conclusion

The purpose of this brief paper has been to give a conceptual outline to guide trial courts in the improvement of civil and criminal caseflow management. Research, experimentation and program implementation in a number of courts around the country all support the value of applying all the elements discussed here in efforts to assure the prompt and fair administration of justice in American trial courts.

APPENDIX C
INTERNAL "COMPLIANCE" MEMORANDUM

June 28, 1988

TO: Judge Paul R. Zavarella, Administrative Judge

FROM: Joe Cain

I am submitting for your approval an idea that I think can help maintain the smooth operation of the Orphans' Court Division and also expand the duties of Jim Siudela and Alan Grogan.

I suggest that Jim and Alan check on the timely filing of receipts in MINORS ESTATES. I will show them the docket that is kept in the Decree Room which lists the minor's estates that are created by estates coming to audit. I will also show them the Minute Docket which records the minor's estates that come from Motions. If no receipt is filed or if a receipt is filed in an erroneous manner our office will then contact counsel to comply correctly with the Decree of Distribution and/or Order of Court. Hopefully, this might help to prevent a similiar situation like the one in the Estate of Segi Imani Payne.

I am also going to try and cut down on the amount of files and papers in our office. It seems to me that there is a lot of unnecessary duplication. By doing this I think we will save both money and space. It is my suggestion that the original Status Reports that our office receives be put in the official court file in the Register of Wills Office. If Jim and Alan need a copy of the Status Report they can use a photographic copy.

There are also a few other matters that I would like go over with you whenever you have some free time. The first point would be what you would suggest be our follow up procedure after I have contacted the Attorneys concerning the filing of Inventories in Guardianship Estates. I would also like to get your thoughts concerning the filing of Inventories in Decedents Estates. Tom Molyneaux called me concerning this problem and I told him I would bring it to your attention.

I would like to take this opportunity to thank you for the assignment in the Callahan Estate. I truly enjoyed this particular assignment and would like you to know that I am more than willing to accept any other assignment that would help to maintain the continued smooth and efficient operation of the Orphans' Court Division.

DECEDENTS ESTATES

- make sure inventories are filed as mandated by the PEF Code
 - (1) what manner of compliance if inventory isn't filed
 - (2) when inventory is filed income is generated for the County from the filing fee
 - (3) inventory also can alert the County Treasurer's Office that personal property tax may be due which generates additional income

- filing of receipts for distribution from all heirs and distributees
 - (1) applies to all cases (Audits - Small Estates - Family Settlement Agreements - At Risk Distributions - Petitions for Distribution of a Minor's Estate
 - (2) receipts are part of the record in case of some future litigation
 - (3) receipts generate income for County when consideration is given to the great number that would be filed over the course of a year

- Rule of Court (at least a local rule if not instituted statewide) that at the very least, all residuary legatees receive a copy of the will that has been probated and some form of administration accounting
 - (1) when you have an intestate estate all the heirs would receive a copy of administration accounting

GUARDIANS ESTATES AND INVENTORIES

- make sure inventories are timely filed by the Court appointed guardian
 - (1) what manner of compliance if inventory isn't filed
 - (2) when inventory is filed income is generated from the filing fee

- Local Rule of Court that an account be filed by the Guardian on a regular basis
 - (1) time limit could be set as determined by the Judges in the Orphans' Court Division (possibly as soon as annually)
 - (2) income is generated from the fees for filing these accounts
 - (3) greater control over the management of these accounts when accounting is mandated

APPENDIX D
DEPARTMENTAL POSITION REPORT

DEPARTMENTAL POSITION REPORT

PAY PERIOD ENDING 06/18/88
743500 ORPHANS COURT

NAME	JOB TITLE	JOB NO	HOURS	RATE	EMPLOYEE NUMBER	UNIT ID	MAXIMUM SALARY	MONTHLY SALARY	BI-WEEKLY GROSS	MC	HAY CODE	JOB CLASS
WYLIE, M M	CHF MINUTE CL	001	80.00	16.1600	11863	1602	2801.09	2801.09	1292.80	C	9999	
A,	A CHF MIN CLK	002	80.00	14.8329	74350	1602	2571.03	.00	1186.63			
MILLER, E J	DECREE CLERK	003	80.00	11.7719	11377	1601	2040.49	2040.49	941.75	C	9999	
BUCCIGROSSI, N	DECREE CLERK	004	80.00	11.7721	81121	1601	2040.49	2040.49	941.77	C		
CORNELL, C P	COORD OPH CT	005	80.00	11.8440	10538	1601	2052.99	2052.99	947.52	C	9999	
HAMES, DEBRA M	DECREE CLERK	006	80.00	11.7720	73738	1601	2040.49	2040.49	941.76	C		
PURVIS, MAUREE	COMITMNT CLK	007	80.00	8.1576	73090	1601	1842.15	1414.00	652.61	C		
LANTON, NANCY	INVESTIGATOR	008	80.00	10.2664	73806	1603	1905.48	1779.51	821.31	C		
LEWIS, J M	SUPV	009	80.00	11.5129	39499	1602	1995.59	1995.59	921.03	C	9999	
A,	LEGAL ASST	010	80.00	12.4349	74350	1603	2155.39	.00	994.79			
A,	INVESTIGATOR	011	80.00	10.7718	74350	1603	1867.12	.00	861.74			
LANE, R A	TIPSTAFF	012	80.00	9.5873	36848	1601	1661.82	1661.82	766.98	C	9999	
LOGAN, STELLA	INVESTIGATOR	013	80.00	10.2664	61577	1603	1779.51	1779.51	821.31	S	5122	
MARTIN, MARTHA	INVESTIGATOR	014	80.00	10.2664	70872	1603	1779.51	1779.51	821.31	S	0000	00
MCMANARA, J M	SUPV	015	80.00	11.5129	51347	1602	1995.59	1995.59	921.03	S	9999	
MORES, HELEN L	INVESTIGATOR	016	80.00	10.2664	79192	1603	1779.51	1779.51	821.31	C		
MILSON, MADINE	CLERK STENO 1	017	80.00	7.2306	76179	1601	1313.32	1253.32	578.45	C		
SIUDELA, JAMES	INVESTIGATOR	018	80.00	10.2664	77846	1603	1779.51	1779.51	821.31	S		
DEBRECZENI, AN	INVESTIGATOR	019	80.00	10.2664	80443	1603	1779.51	1779.51	821.31	C		
COLOSIMO, FAYA	SECRETARY	020	80.00	8.0769	82094	1601	1693.32	1400.00	646.15	C		

DEPARTMENTAL POSITION REPORT

PAY PERIOD ENDING 06/18/88
743500 ORPHANS COURT

NAME	JOB TITLE	JOB NO	HOURS	RATE	EMPLOYEE NUMBER	UNIT ID	MAXIMUM SALARY	MONTHLY SALARY	BI-WEEKLY GROSS	MC	HAY CODE	JOB CLASS
A,	MANAGER	021	80.00	13.0533	74350	1602	2262.58	.00	1044.26			
CONTE, A M	MANAGER	022	80.00	13.0532	50854	1602	2262.58	2262.58	1044.26	C	9999	
WILLIAMS, MARY	EXAM OF FID	023	80.00	9.4584	35947	1601	2227.97	1639.49	756.67	C	9999	
ZUNICH, R	MASTER	024	80.00	16.0202	44028	1602	2776.85	2776.85	1281.62	C	9999	
WILLIAMS, JOSE	MASTER	025	80.00	16.0202	64779	1602	2776.85	2776.85	1281.62	C	9999	
RADICK, DAVID	CLERK STENO 2	026	80.00	7.9037	78965	1601	1369.99	1369.99	126.46	C		
MYCOFF, R N	CALENDAR CLK	027	80.00	12.6963	50766	1602	2200.71	2200.71	1015.70	C	9999	
GROGAN, ALAN G	INVESTIGATOR	028	80.00	10.2664	77256	1603	1779.51	1779.51	821.31	C		
CAYE, EVA	CLERK	029	80.00	8.1575	77484	1601	1414.00	1414.00	652.60	C		
CRIMMEL, MARK A	CLERK STENO 2	030	80.00	7.9036	74511	1601	1369.99	1369.99	632.29	C		
CAIN, JOSEPH P	SUPERVISOR	031	80.00	12.7861	65970	1602	2216.25	2216.25	1022.89	C	0000	
A,	SUPERVISOR	032	80.00	0.0000	74350	1602	2083.34	.00	.00			

DIVISION	TOTALS	TOTAL POSITIONS	32	FILLED	27	UNFILLED	5	63614.53	51179.15	27202.55
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APPENDIX E
MISCELLANEOUS PRESS CLIPPINGS

Tussle Over Making Data Public Stalls Report on Surrogate's Court

By MATT GRYTA

State and local prosecutors reportedly are bickering over the wording of a report they want an Erie County grand jury to issue on the operation of the Erie County Surrogate's Court.

And they may be forced to ask a judge for more time to work with the panel, law enforcement sources said Friday afternoon.

The dispute, described as friendly by sources who requested anonymity, prompted prosecutors twice this week to scuttle plans to have the grand jury hand up its report to Erie County Judge John A. Dillon, thereby completing its part in the three-year probe.

The disagreement reportedly is linked to efforts by prosecutors to ensure the document can be made public legally within a month or so

of its completion.

The grand jury has been looking for improprieties in the administration of the court, in which Surrogate Joseph S. Mattina pays out between \$8 million to \$12 million in attorneys' fees annually, using funds from estates.

The panel also has been investigating possible thefts by private lawyers assigned to estate cases.

By state law, public officials criticized in the report are allowed 30 days to respond in private and can ask the judge to eliminate any references to them that cannot be justified by evidence or testimony.

Sources also said prosecutors may be forced to ask Dillon for permission to extend the working time of the grand jury for a third time.

Dillon is the judicial overseer of

the grand jury probe, and prosecutors must petition him for an extension of the grand jury's working time. State law requires that grand juries be supervised by a judge, but the judge plays no role in the actual investigation.

In November, Dillon gave prosecutors from the Erie County district attorney's office and the state attorney general's office until next Friday to complete its work. He also had extended the work of the panel last May after prosecutors told him they needed more time.

Sources said Dillon was alerted falsely twice this week about impending grand jury action.

Prosecutors first told Dillon they would hand up a report to him Tuesday afternoon. Then, they told him he would get the report Friday.

Jury Indicts Two In Probe Critical Of Estate Court

By MATT GRYTA

A grand jury probing the operations of the county's Surrogate Court, where lucrative estate cases often are handled, today indicted two persons and gave a judge a sealed report criticizing the court's structure.

The Erie County grand jury also obtained court approval to keep the 3-year-old investigation open through at least Nov. 4.

The grand jury has been looking for improprieties in court administration, for those improperly using funds from estates and for individual greed by attorneys.

Surrogate Joseph S. Mattina awards \$8 million to \$12 million annually in attorney fees from the court.

There is no indication that Mattina is part of the probe, officials said.

The panel has also been considering proposals to revise the state-imposed system under which the surrogate assigns lucrative cases to private attorneys.

State officials have already called for creation of a state office to handle such estate cases, taking them out of the hands of Surrogate Court judges, and the special grand jury's report supports those proposals, according to law enforcement sources who asked to remain anonymous.

Erie County Judge John A. Dillon ordered the two indictments and the critical report sealed from public scrutiny after Marilyn Fedel, the grand jury assistant forewoman, and two prosecutors gave him the documents late this morning.

Dillon said the indictments

against the two individuals will remain sealed until they are taken into custody. The judge gave prosecutors Richard M. Kaufman and James F. Shalleck arrest warrants permitting police to seize both individuals if they won't voluntarily surrender.

Under state law, Dillon must review the grand jury report for up to 30 days and give any government officials criticized in the report a chance to try to prove privately to him that all references to them should be deleted from the document before it is made public.

At the request of Shalleck and Kaufman, Dillon also gave the grand jury six more months to work on what the two prosecutors described in court as "unfinished business." The panel's work was slated to end Friday.

Dillon, Erie County District Attorney Richard J. Arcara and spokesmen for the state attorney general's office all declined to comment on today's action by the grand jury. Mrs. Fedel also declined to comment.

Mattina, who testified before the special grand jury last August, couldn't be reached to comment. Mattina has refused to comment on any aspect of the probe since it began.

The Buffalo News disclosed last Aug. 16 that the special grand jury was considering at least two additional indictments. Saturday, The News disclosed that the prosecutors on the probe were considering a request to Dillon to extend the grand jury's work time.

Empaneled in November 1986 as part of a probe that began in April 1985, the grand jury is working with prosecutors from both the district attorney's office and the attorney general's office.

Law enforcement sources who requested anonymity said prosecutors are unsure of when the two indicted individuals will be arraigned and whether they will ask them to surrender or have them arrested and brought to court in handcuffs.

After receiving the indictments and the sealed report, Dillon told Mrs. Fedel and the two prosecutors who accompanied her to court that he will study the document "and take whatever actions therein I find

appropriate."

Dillon, under state law, could be forced to either permanently seal the report or delete sections from it if private individuals are criticized by name.

State law denies private individuals a right to respond to critical grand jury reports but provides that such reports can be permanently sealed.

Several years ago, following an unrelated Erie County grand jury probe, a report openly critical of private individuals was sealed permanently by State Supreme Court Justice Theodore S. Kasler. Judges oversee all grand jury activities but don't actively participate in the investigations.

In late 1986, the special grand jury indicted Kenneth O'Connell, an unemployed Buffalo salesman, for tampering with estate funds he had been assigned to handle for relatives.

O'Connell was placed on probation in March 1987 and ordered to repay \$8,600 he took from the estate of an uncle. Mattina personally referred the O'Connell case to the grand jury.

The current special grand jury, which has now received three extensions, took over from an earlier grand jury that had been investigating the Surrogate's Court.

The first grand jury was disbanded in 1986 because prosecutors had trouble persuading enough of its members to come downtown to review evidence.

Lawyer, Associate Are Indicted In Jury Probe of Surrogate's Court

By MATT GRITA

Buffalo lawyer Stanley J. Collesano and his longtime business associate Dennis Insalaco were indicted Tuesday on extortion and bid-rigging charges linked to their handling of money and property in estates probated in Erie County's Surrogate's Court, The Buffalo News learned.

The two are the last of three persons to be charged in connection with a three-year grand jury investigation of the court's transactions, according to law enforcement sources who requested anonymity.

Collesano, a central figure in the probe, has been charged with extorting money from heirs to three estates by soliciting work as a lawyer by telling heirs they might be entitled to bequests, but refusing to tell them where the money was until they hired him.

A long-time associate of Collesano and brother of an Erie County sheriff's deputy slain last August, Insalaco is primarily accused of staging false bidding on estate property to acquire the property for less than fair-market value.

Insalaco reportedly became active in estate property-sale matters because of his association with Collesano.

The schemes cheated heirs out of money, the grand jury contends.

In addition to handing up sealed indictments against Collesano and Insalaco, the grand jury gave Erie County Judge John A. Dillon a sealed report critical of the statewide Surrogate's Court system for handling estates of people who die without wills or heirs.

The judge extended the grand jury probe until Nov. 4 merely as a formality in case he later orders prosecutors and the panel to justify its criticism of the system.

Joseph D. Bermingham Jr., Collesano's lawyer, and Patrick J. Baker, Insalaco's lawyer, both refused to comment on the indictments. Bermingham and Baker also refused to acknowledge that they represent the suspects, citing Dillon's sealing of the indictments until the suspects are arraigned.

Sources, however, confirmed that Bermingham and Baker were notified by prosecutors Tuesday of the indictments.

Collesano and Insalaco, business partners on and off since the 1970s when they spearheaded a private development venture in the Franklin Street area, could not be reached to comment.

Collesano is a former partner of Salvatore R. Martoche, former U.S. attorney for Western New York and now an assistant U.S. Labor Department secretary in Washington.

Insalaco's brother, Sheriff's Deputy Robert Insalaco, was killed Aug. 13. Paul Olson of North Collins has been charged in the shooting.

The Surrogate's Court probe was sparked by the former public administrator's extensive use of Collesano and other lawyers to handle estate matters involving people who died without wills or heirs.

The former administrator, Mary Dee Martoche, Martoche's wife, was appointed by Surrogate Judge Joseph S. Mattina to oversee such cases in 1982. But Mattina forced her to resign in July 1985 as a result of the controversy over her extensive use of Collesano and others.

Mattina testified before the special grand jury for two days last August. Mrs. Martoche testified before the grand jury a year ago.

Mattina routinely doles out \$8 million to \$12 million a year in estate fees to attorneys. All those fees are paid out of money in the estates processed in Mattina's court.

The attorneys for Collesano and Insalaco reportedly were trying to get prosecutors to have both of them arraigned by Friday afternoon.

Prosecutors, however, want to put off the arraignments until early next week, when State Attorney General Robert Abrams is scheduled to come to Buffalo.

Prosecutors from Abrams' office and the Erie County district attorney's office have been working with the special grand jury.

Paul J. Cambria Jr., Mattina's personal attorney, told The News that prosecutors have assured him that Mattina doesn't face criminal charges and isn't personally criticized in the sealed grand jury report.

He said prosecutors also told him that the sealed report is "basically critical of the system" the state has set up to have Surrogate's Courts oversee estates in which people die without wills or heirs.

Over the past year, Abrams and State Comptroller Edward V. Regan have called for massive reforms in the administration of such estates and pointed to alleged cronyism and crime in Surrogate's Court operations in the New York City area as justification for changes.

Dillon ordered the two indictments and the report sealed from public scrutiny after Marilyn Fedel, the assistant forewoman of the grand jury, and two prosecutors gave him the documents at about 11:30 a.m. Tuesday.

The judge, who is the official judicial overseer of the grand jury probe, gave prosecutors Richard M. Kaufman and James F. Shalleck arrest warrants for Collesano and Insalaco if they refuse to surrender voluntarily.

Under state law, Dillon must review the grand jury report for the next 30 days and give any government officials criticized in the report a chance to try to prove to him that all references to them should be deleted from the document before it is made public.

At the request of Shalleck and Kaufman, Dillon also gave the grand jury six more months to work on what the two prosecutors described in court as "unfinished business." The panel's work had been slated to end Friday.

One other person has been indicted by the special grand jury. In late 1986, Kenneth O'Connell, an unemployed Buffalo salesman, was charged with tampering with estate funds he had been assigned to handle for relatives.

O'Connell was placed on probation in March 1987 and ordered to repay \$8,600 he took from the estate of an uncle. Mattina personally referred the O'Connell case to the grand jury.

Two Absolved In Probe Here, Abrams Says

By MATT GRUTA

The grand jury investigating the Erie County Surrogate's Court found "no evidence of criminal wrongdoing" on the part of either Erie County Surrogate Joseph S. Mattina or his former public administrator, Mary Dee Martoche, Attorney General Robert Abrams said Monday.

Abrams held a press conference in his Buffalo office to comment on the grand jury's indictment of a lawyer and a businessman. He said the inquiry is part of a 2-year-old investigation of the court-run public administrators' offices handling estates statewide.

He pointed out the grand jury still is active in the case, and he refused to discuss details of the panel's focus on the operations of the public administrator's operations in the local estate court.

ABRAMS SAID his office and the Erie County district attorney's office, which also is taking part in the probe, have urged Erie County Judge John A. Dillon to release as quickly as possible the grand jury's report on the public administrator's office.

Dillon has been reviewing that report for the past week.

Abrams said the statewide probe has revealed "very serious problems" in court supervision of the public administrators. He said this points up "a desperate need for public focus and reform."

Mattina testified before the grand jury last August. Mrs. Martoche appeared before the panel a year ago.

Abrams' comments came hours after Buffalo lawyer Stanley J. Collesano and Collesano's longtime business associate, Dennis R. Insalaco, pleaded innocent to indictments in the case.

Collesano, 45, was charged by the special grand jury with three counts of grand larceny to force three heirs in two Buffalo estates to hire him as their lawyer in 1983 and 1984. He allegedly used extortion tactics.

Insalaco, 41, was charged with two counts of filing a false instrument and one count of criminal possession of a forged document for allegedly rigging bids on sales of estate property in 1984 and 1985 so several of his unnamed associates could acquire the property at below fair-market prices.

DILLON ALLOWED both of them to remain free without bail. Collesano and Insalaco both vowed to fight the charges and defended their conduct.

Collesano is a former law partner of Mrs. Martoche's husband, Assistant U.S. Labor Secretary Salvatore Martoche.

Mattina forced Mrs. Martoche to resign from her court post in July 1985 amid continuing controversy over the probe, which was sparked by Abrams. The probe was linked to Mrs. Martoche's extensive use of private attorneys, including Collesano, to conduct her court business.

Joseph D. Bermingham Jr., Collesano's attorney, attempted to ask Abrams about the one-week delay in arraigning both defendants after the grand jury's action. However, Abrams interrupted, and addressing him and Insalaco's lawyer, Patrick J. Baker, said: "You'll have your opportunity to represent your client admirably in court."

Abrams also rejected as "absolutely false," claims by Collesano that former Attorney General Louis Lefkowitz ruled in a 1967 legal opinion that the work that got Collesano into legal trouble — searching for heirs and signing them up as clients — is completely legal.

The attorney general said the investigation of the Erie County Surrogate Court was prompted by the "complaint of an individual" — not by news media reports on the court.

Abrams agreed with Baker and Bermingham, who had complained that the arraignments were delayed to coincide with a previously planned Abrams trip to Buffalo.

He said he deliberately planned the session because he believes the court problem statewide is so critical he had to "personally stand behind" reform efforts.

ABRAMS ALSO said he had no intention of letting criminal suspects "dictate the time and place of surrender." He said he and his staff and the district attorney's office spared Collesano and Insalaco arrests and let them voluntarily surrender in court "as a courtesy."

After the press conference, Bermingham labeled Abrams' actions "disgraceful."

Baker said both men were "willing" to appear in court last week, only to find the attorney general's office stalling proceedings.

During Monday morning's arraignments, Assistant Attorney General James F. Shalleck told Dillon that Collesano was accused of "stealing" retained agreements from three heirs, withholding from them "legal information" about estate cases and "instilling in them a fear" that they would lose out on money if they didn't hire him.

Richard D. Kaufman, an assistant Erie County district attorney assigned to the probe, told the judge that Insalaco is accused of "falsifying bids" on the sale of estate property after he had been "put in a position of trust" by Mrs. Martoche.

Kaufman said Insalaco rigged bidding on estate property to ensure that property was "sold to some of his associates" at below "fair-market value."

Although it is not spelled out in his indictment, Collesano is accused of taking advantage of information readily available to him in the court files kept by Mrs. Martoche, according to law enforcement sources who requested anonymity.

Jury's Report Shuns Criticism Of Court Staff

By MATT GRITA

The sealed grand jury report on the Erie County Surrogate Court recommends creating a statewide public guardian's office to oversee estate cases, but it does not criticize any current or former officials in the local court, The Buffalo News has learned.

Although the report, issued May 3, "indicts" the fee practices of the estate courts across the state, the lack of criticism of specific public officials means that Erie County Judge John A. Dillon, who is reviewing the document, isn't legally bound to withhold its release for at least 30 days, sources said.

The grand jury agreed with State Attorney General Robert Abrams, who wants an Office of Public Guardians to represent minors, mentally impaired individuals and missing heirs.

Judges now appoint lawyers as guardians and conservators for such persons.

Under Abrams' proposal, estates would be assessed a small fee to pay for the office.

In Erie County, Surrogate Joseph S. Mattina now doles out \$8 million to \$12 million a year in attorneys fees, with much of the money mandated by state law and the payments agreed to by heirs.

In a related development, attorneys for Mattina and Mary Dee Martoche, the judge's former public administrator, confirmed reports that both had waived immunity and risked possible indictment to testify before the grand jury.

Before Mattina's testimony Aug. 5 and 6, prosecutors from the district attorney's and attorney general's staffs questioned the judge extensively, said Paul J. Cambria, Mattina's attorney.

Prosecutors and the grand jury quizzed Mattina about "the whole operation of his court" and about the judge's own reforms in recent years, Cambria said.

The grand jury questioned Mattina about the functioning of his court "from one end to the other," Cambria said.

Edward C. Cosgrove, Mrs. Martoche's attorney, said she had been offered immunity for her testimony in April 1987.

But "she waived immunity upon my advice so there would never be any question about her conduct as public administrator," Cosgrove said. "She had nothing to hide or fear."

Although Cosgrove declined to comment, law enforcement sources said Mrs. Martoche is expected to be a key prosecution witness against Buffalo lawyer Stanley J. Collesano and real estate developer Dennis R. Insalaco.

Collesano, 45, was indicted on charges of extortion and forcing unsuspecting heirs to hire him by telling them that, otherwise, he would not disclose the source of their potential windfall.

Insalaco, 41, was indicted on charges of rigging bids on the sales of estate property to help confederates obtain goods at below fair-market prices.

Both men have pleaded innocent and are free on their own recognizance.

Abrams said the grand jury found "no evidence of criminal wrongdoing" on the part of either Mattina or Mrs. Martoche.

Court sources said prosecutors had delivered the voluminous grand jury transcripts and related documents to Dillon last week so he could begin his review.

At the request of prosecutors, Dillon extended the grand jury's term to November, but the panel won't do any more work unless Dillon indicates he isn't satisfied with its efforts, according to law enforcement sources.

Court sources said that Dillon still could take more than 30 days to review the report because he must ensure that the grand jury's conclusions are supported by testimony

and evidence produced during the two-year probe.

If current or former public officials were criticized in the report, Dillon would have been required to give them a month to respond privately to the criticism, attempt to rebut it and persuade the court to delete any references to them.

Dillon and spokesmen for the Erie County district attorney's office and the state attorney general's office declined to comment on the report.

The probe stemmed from complaints about the extensive use of private attorneys, including Collesano, to help handle problem estates.

Collesano is a former law partner of Mrs. Martoche's husband, Salvatore R. Martoche, former U.S. attorney for Western New York and now an assistant U.S. labor secretary.

Mattina, who appointed Mrs. Martoche in 1982, forced her to resign in July 1985.

Mrs. Martoche, who now lives in Washington, D.C., and Mattina have declined to comment on the probe.

New Rules Weighed For Overseeing Wills

By D.J. Hill

Newsday Albany Bureau

Albany — Responding to reports of excessive delays and high fees charged by county officials who oversee the estates of people who die without wills, the Assembly Judiciary Committee will draw up rules within the next month to tighten controls on the offices, the committee chairman said yesterday.

Assemb. G. Oliver Koppell (D-Bronx), said after a hearing that the committee probably will develop general legislation directing a task force or the Office of Court Administration to promulgate rules for public administrators who oversee the estates of those who die without wills and who have no one able or willing to oversee the estates.

"Nobody seems to have looked at this for many, many years," Koppell said after the 90-minute hearing on public administrators. "A lot of problems seem to have accumulated over time."

Both the state attorney general and

state comptroller issued reports earlier this year on public administration offices in New York City's five boroughs and Nassau, Suffolk, Monroe, Onondaga and Westchester Counties. Except for Suffolk, most communities in those areas were deficient. The reports cited poor record-keeping, lengthy delays in handling estates, excessive estate fees, and the improper purchase of property by appraisers hired to put a value on the estate.

The two state offices recommended a series of reforms, including a proposal to transfer authority to appoint public administrators from surrogate judges to the New York City government and to county officials in the other communities.

But Koppell and witnesses yesterday said they favor allowing the surrogate judge to continue appointing the public administrator. Koppell also prefers that the administrator serve at the pleasure of the judge, instead of a fixed five-year term as now provided.

MANHATTAN CLOSEUP New Administrator Handles Estates

By Anthony M. DeStefano

Manhattan lawyer Ethel Griffin has taken over the job of public administrator for the borough following the resignation of Bruno Cappellini, who had held the post since 1977.

A specialist in family law matters, Griffin, 43, applied for the post after a job search was initiated by court officials earlier this year when Cappellini announced he was retiring on June 20.

Cappellini announced his resignation a few months after state officials criticized "unconscionable delays" in the way the public administrators' offices around the city handle the estates of Manhattan residents who die without wills or known heirs.

State officials have been conducting an undercover criminal investigations of employees working in public administrators' offices in the Bronx, Queens

and Brooklyn, for theft from estates of fictitious dead people. Criminal charges against investigators with the public administrators' offices in the Bronx, Brooklyn and Queens were announced recently. Cappellini wasn't accused of wrongdoing in the investigation.

"My agenda is to find out what is happening in the office — to meet employees to find out what is being done," Griffin said recently. Her office is the largest administrator's office in the city, handling over \$66 million in funds belonging to estates. Three weeks ago her office held the first public auction during her tenure in which unclaimed property from various estates was sold.

In 1981 Griffin received a law degree from New York University School of Law. She received her undergraduate degree from the University of Denver.

Before going to law school,

Griffin worked for eight years as a lecturer and counselor for the department of education services at Brooklyn College. It was there that Griffin said she participated in the development of budget policy and planning, as well as the development of a computerized management information system used by the department.

Before her appointment as public administrator, Griffin had her own law firm, in which she specialized in guardianship matters — that is, cases in which she was appointed to represent the legal interests of people unable to handle their own affairs. She also served as an associate counsel to state Assembly Speakers Stanley Fink and Melvin Miller.

Griffin serves in the \$63,000-a-year post at the pleasure of Manhattan Surrogates Marie Lambert and Renee Roth.



Ethel Griffin