

INTERNATIONAL ASSOCIATION OF JUDGES
Second Study Commission
Civil Law and Procedure
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STRATEGIES IN EFFECTIVE CASE MANAGEMENT
Responses of the United States of America

1. Can case management be used effectively in civil litigation matters in your jurisdiction?

Yes. U.S. Courts have several mechanisms to assure that cases are managed effectively and efficiently. From the filing of a complaint or docketing of an appeal, courts require parties to identify the issues that they intend to raise and to submit other information to the court to help it organize its docket. In most cases, the federal rules of civil procedure require parties to submit to a pre-trial conference at which the parties must consider the bases for their legal claims, discuss the possibilities for settling or otherwise resolving the case, and attempt to develop a proposed discovery plan. The court also issues a scheduling order to establish deadlines for the major milestones in the case, such as dates for filing key disclosures, dispositive motions such as motions for summary judgment, and trial. Local rules may also require parties to undergo mediation to attempt to resolve issues before trial.

The Federal Judiciary also uses electronic case management, called the Case Management/Electronic Case Files system (“CM/ECF”), in all civil litigation. CM/ECF allows courts to accept electronic filings and provides access to filed documents online for attorneys and the public. Motions and briefs filed through CM/ECF can be served electronically to other litigants. Anyone may register online through the Public Access to Court Electronic Records (“PACER”) portal to view and download civil filings.

2. Are there rules or guidelines for the use of case management in civil litigation in your jurisdiction?

Yes. Federal and local rules establish specific case management procedures. Rule 26(f) of the Federal Rules of Civil Procedure outlines the requirements for pre-trial conferences in all federal civil cases. Each court also has its own local rules, which outline case-management procedures in that venue. For example, Local Civil Rule 26.01 of the U.S. District Court for the District of South Carolina requires a party to file responses to interrogatories with the court at the time the party first appears in court. The District of South Carolina's local rules also require the parties to articulate whether the court is the proper venue for the case and whether the case should be tried before a jury. The parties also must disclose corporate affiliations and whether other parties have an interest in the lawsuit. These responses help the court assign cases. In the same district court, the parties are required to have a mediation conference to resolve issues before trial following the procedures outlined in Local Civil Rules 16.04–.12.

The local rules of each U.S. Court also determine the required procedures for use of the CM/ECF system. For example, in the U.S. Court of Appeals for the Fourth Circuit, Local Rule 25(a) requires counsel to file and serve briefs electronically through CM/ECF (with few exceptions). The Judicial Conference of the United States is authorized by statute to prescribe the fees and costs associated with the use of the CM/ECF system. *See* 28 U.S.C. §§ 1913, 1914, 1926, 1930, 1932.

3. What are the advantages or disadvantages of the use of case management in your jurisdiction?

Case management procedures provide many advantages. Pre-trial conferences can streamline proceedings by encouraging early settlement of all or part of a case and by establishing up front the legal claims that remain. Furthermore, scheduling conferences help keep cases on track and establish clear case milestones. For example, there is a date by which the parties must establish a discovery plan. Similarly, clear deadlines for filing of summary judgment motions encourage parties to consider whether some or all issues

may be disposed of before trial. As a result, very few civil cases proceed to trial, and those that do proceed to trial usually go to trial on fewer legal issues.

The CM/ECF system also offers many advantages, including near-instantaneous availability of case documents to litigants and the court, ease of reference to past dispositions and pending matters in cases, and increased public access to court documents (with exceptions for case documents filed under seal to protect sensitive information), which increases the transparency of civil proceedings. This system allows courts to efficiently manage their dockets, collect filings, distribute orders or judgments, and record case-manager notes. Furthermore, because the PACER and CM/ECF systems serve as a reliable, comprehensive digital repository for all filings, government attorneys (as well as attorneys at some law firms) treat these systems like digital libraries and generally do not maintain separate, redundant library systems of case filings for reference.

Though the CM/ECF system has no real disadvantages, its user-fee system has been criticized for being too costly. Also, like any online platform, maintaining the integrity and security of the system remains a constant focus.

4. Who incurs the costs of the use of case management in your jurisdiction?

There are no fees, aside from filing fees, associated with most case management procedures in federal courts. However, parties generally pay costs associated with pre-trial mediation, including the cost of paying the mediator, where such mediation is required.

User fees fund the federal judiciary's electronic case management systems. All registered agencies and individuals pay \$0.10 per page to access case documents through PACER, up to a maximum of \$3.00 for a single document. Users who are unable to pay these fees may apply for an exemption. However, copies of court opinions are available at no charge through the Government Printing Office's FDSys website. The Judicial Conference established a pilot program to provide free access to PACER at designated federal repository libraries but halted this effort after a year because the program was underutilized by the target population.

5. Can the use of case management in your jurisdiction be improved?

Yes. Though case management procedures in federal courts help dispose of meritless issues in cases before trial, these procedures can also become very costly for parties. Disputes over a discovery plan, for example, might lead to formal briefing and hearings before a district court judge. These disputes can take months to resolve in highly complex civil cases and can generate many thousands of dollars in attorney's fees. Some courts have experimented with implementing more informal procedures, such as telephone conferences, to attempt to resolve less complex or contentious issues by agreement of the parties before resorting to more formal pre-trial procedures.

In addition, the functionality of available search features with CM/ECF and PACER are limited. Users can search for cases by case number or party name (including attorney names), but not by other case attributes such as disposition or subject matter. Once users have accessed a case's docket, they may search document descriptions as listed on the docket; however, in order to search the content of documents on the docket, the user must download the document, thereby incurring fees.

Also, the first generation of PACER and CM/ECF did not allow users to file documents and access documents through the same portal. Since 2014, the judiciary has been transitioning to a Next Generation of CM/ECF ("NextGen"), which will allow users to both file case documents electronically and access documents through PACER through a single account. NextGen also improves user functionality and provides enhanced security.