

THE SUPREME COURT *of* OHIO

ADVISORY COMMITTEE ON CASE MANAGEMENT

Honorable Jerome J. Metz, Jr.
Hamilton County Common Pleas Court
Chairperson

Honorable Kathleen L. Giesler
Ottawa County Court of Common Pleas
Probate/Juvenile Division
Vice Chairperson

Meeting Minutes

August 8, 2014

Committee Members Present:

Gretchen Beers, Esq.
Russell Brown, Esq.
Judge Deane Buchanan
Judge Anthony Capizzi
Judge Rocky Coss
Judge Carol Dezso
Judge Gary Dumm
Judge Richard Frye
Judge Laura Gallagher

Judge Kathleen Giesler
Lisa Gorrasi, Esq.
Judge Michael Hall
Judge Jerome Metz, Jr.
Judge Diane Palos
Judge John Pickrel
Elizabeth Stephenson, Esq.
Judge Joseph Zone

Committee Members Absent:

Judge Timothy Cannon
Judge Sheila Farmer
Mark Combs, Esq.

Laurie Endly
Judge Alan Goldsberry
Judge Tom Pokorny

Supreme Court of Ohio Staff Members Present:

Brian Farrington
Diane Hayes

Tasha Ruth, Esq.

Meeting Minutes

The minutes from the May 2, 2014 meeting were reviewed and approved unanimously.

Old Business – Super Subcommittee Report

Judge Coss presented the Advisory Committee with the draft of the Statistical Reporting Instructions and indicated that this document is intended to provide one document for local trial courts to locate the instructions to complete their monthly or quarterly statistical reports. Statistical Reporting Instructions for appellate courts will be included in a separate section of the final compendium.

A motion to amend the second paragraph under *Section (I) Placement on Inactive Status* was unanimously approved. As amended the paragraph reads as follows:

Cases placed on inactive reporting status pursuant to Section (I) of these instructions are **not to be reported** in a court's counts of its active pending caseloads. Nevertheless, courts shall regularly monitor how many cases it has placed on inactive reporting status **and their length of time** on inactive reporting status.

After hearing some concern regarding the definition for *Section (I)(12) Petitions for Protection Orders Pending Full Hearing*, a motion to amend the language was unanimously approved. As amended, the definition reads as follows:

Petitions for Protection Orders Pending Full Hearing. Cases in which a petition for a protection order has been filed and **a full hearing cannot proceed because service on the respondent has not been perfected.** Cases are to be reactivated when the court receives notice that service has been perfected.

After lengthy discussion regarding which post-judgment activities are most important to capture as a measurement of the court's workload, a motion was passed unanimously to amend *Section (M)(1) – (4) Post Judgment Activity Measures*. As amended, there are five categories of post-judgment activities:

1. **Violations of Community Control/Probation.** Hearings on alleged violations of terms of community control or probation, other than cases filed as separate violation of court order delinquency charges under R.C. 2152.02.
2. **Judicial Release.** Hearings on motions for judicial release pursuant to R.C. 2929.20.
3. **Expungement/Sealing.** Hearings on motions or applications for expungement or sealing pursuant to R.C. Chapter 2953.

4. **Post-Conviction Relief.** Hearings on petitions for post-conviction relief pursuant to R.C. Chapter 2953.
5. **Review Hearings.** Hearings held to monitor compliance with a previously entered final judgment or order or otherwise pursuant to law. For status review hearings held pursuant to R.C. 2151.417 in Abuse, Neglect, or Dependency cases, see Section (N)(3), below.

A motion to remove the second sentence from the definitions of *Section (L)(5)* and *(L)(7)* was unanimously approved. Those definitions now read as follows:

Trial by Judge – Decision Issued. Cases disposed as a result of a trial to a judge where a decision was issued.

Trial by Magistrate – Decision Issued. Cases disposed as a result of a trial to a magistrate where a decision was issued that was adopted by a judge.

The group discussed the merits of collecting statistics regarding objections to magistrates' decisions, including adding a new time guideline to rule on objections, effectively extending the original time guideline. Staff will prepare instructions for reporting these statistics and a model to display how this information might look on the Statistical Reporting Forms. The proposal along with the changes that were made to the Statistical Reporting Instructions during the meeting will be circulated to the ACCM before the October 16, 2015 meeting.

Old Business – Joint Subcommittee on Criminal Statistical Reporting

Judge Coss reported the subcommittee met in person in July to discuss the proposed criminal case types and their hierarchy. For common pleas courts, the two proposed criminal case types are Capital Cases and Criminal Cases. For municipal and county courts the proposed criminal and traffic case types remain unchanged. Judge Coss discussed the subcommittee's suggestion that in the future, the ACCM could recommend that the Ohio Courts Network (OCN) database or a hosted case management system become a data source for more granular criminal charge-level detail.

Old Business – Update on Multi-District Litigation Subcommittee

Judge Frye provided a detailed summary of seven states that have a multi-district litigation program. Texas has transferred 1,550 cases to 20 MDL dockets since 2009, including litigation surrounding the BP oil spill and hurricane or other storm cases. He indicated the MDL program in Texas is operating on a shoestring budget using retired or still active judges who receive no additional monetary compensation. In some states the MDL program is used primarily to consolidate the discovery process and cases are ultimately transferred back to the originally assigned judge for trial, while in other states parties can stipulate that the receiving MDL judge will preside over the trial.

Staff will ascertain how the Chief Justice would like to proceed.

Old Business – Statistical Reporting Subcommittee Reports

Appellate Courts

No report given.

Common Pleas, General Division Courts

Judge Coss indicated that the subcommittee met as part of the Joint Subcommittee on Criminal Statistical Reporting.

Common Pleas, Domestic Relations Division Courts

Judge Dezso indicated that the subcommittee has been temporarily on hold while the Super Subcommittee works on the Statistical Reporting Instructions.

Common Pleas, Probate Division Courts

Judge Gallagher indicated the subcommittee had some phone conferences to fill in any blanks within the Statistical Reporting Instructions.

Common Pleas, Juvenile Division Courts

Judge Capizzi reported that the juvenile subcommittee has been temporarily on hold while the Super Subcommittee works on the Statistical Reporting Instructions.

Municipal and County Courts

Judge Pickrel indicated that the subcommittee met as part of the Joint Subcommittee on Criminal Statistical Reporting.

New Business – Superintendence Rule 39

The Advisory Committee turned its attention to the topic of Superintendence Rule 39. Judge Metz led a discussion regarding comments that were submitted by members of the Advisory Committee. The following motions were made and passed.

Motion to amend Sup.R. 39.01(E):

Whenever practical and provided the defendant in a criminal case is available, a court should ~~impose sentence or~~ hold a sentencing hearing with all parties present within fifteen days of the verdict or finding of guilt or within fifteen days of the receipt of a completed pre-sentence investigation report and all other information requested by the court for sentencing, **whichever occurs later**.

Motion to amend Sup.R. 39.02:

- (1) In misdemeanor or traffic cases, **upon arraignment or waiver of arraignment**;

Motion to amend Sup.R. 39.03(A):

A court may toll the time for disposition of a case **only** for the reasons **as** provided in the statistical reporting instructions prescribed by the Case Management Section of the Supreme Court pursuant to Sup.R. 35(A).

Motion to amend Sup.R. 39.05(~~BE~~) Aggregate Case Delay:

(1) For ~~eases in a the general division~~ of the common pleas court, criminal cases, and all other case types combined as civil;

(2) For ~~eases in a municipal and county court~~, felonies, misdemeanors, operating a motor vehicle while under the influence of alcohol or any drug of abuse, other traffic, and all other case types combined as civil;

(3) For domestic relations cases, marriage terminations and dissolutions, including all terminations and dissolutions combined; domestic violence; and all other case types combined as miscellaneous;

(4) For juvenile ~~court~~ cases, delinquent and unruly combined; traffic; abuse, neglect, dependency, and motions for permanent custody combined; and all other case types combined;

(5) For probate ~~court~~ cases, estates, incompetents and minor guardianships combined, civil actions, and adoptions;

(6) For ~~appellate court eases~~, all criminal case types combined, original actions, and all other case types combined as civil.

Motion to delete the first paragraph of the “Commentary.”

Motion to amend and retain the second paragraph of the “Commentary:”

The time limits applicable to criminal cases are for the purpose of facilitating the prompt disposition of criminal cases. These time limits in no way affect the statutorily mandated limits contained in R.C. 2945.71. However, the failure to dispose of cases within these time guidelines may result in intervention by the Chief Justice. While the **administrative time** guidelines ~~set out in Rule 8(B)~~ are keyed to the date of arraignment, the requirement of R.C. 2945.71 begins to run from the date of arrest.

Motion to move the third paragraph of the “Commentary” to Sup.R. 39.01(C):

(C) Grand jury proceedings.

Although criminal cases are not reported as filed on Common Pleas Form A until the accused is arraigned on an indictment or information, the responsibility of the court of

common pleas for the processing of the case begins upon receipt of the papers in the case pursuant to Crim.R. 5(B)(7).

When an accused has been bound over to a grand jury and no final action is taken by the grand jury within sixty days after the date of the bindover, ~~the~~ a court or the administrative judge of the court shall dismiss the charge **without prejudice** unless for good cause shown the prosecuting attorney is granted a continuance for a definite period of time.

The summoning of a grand jury should not be unduly delayed. Although R.C. 2945.71 does not mandate a time limit for completion of the grand jury process, the statutory time limit runs from the date of arrest, including time taken in the grand jury process.

Motion passed unanimously to table the discussion regarding moving the fifth and sixth paragraph of the "Commentary" to new Sup.R. 39.07.

Action Items

- (1) Staff will make the suggested changes to the Statistical Reporting Instructions.
- (2) Staff will prepare instructions for reporting objections to magistrates' decisions and a model to display how this information might look on the Statistical Reporting Forms. The proposal along with the changes that were made to the Statistical Reporting Instructions will be circulated to the ACCM before the October 10, 2014 meeting.
- (3) The Advisory Committee members should review the changes to the Statistical Reporting Instructions, including the proposed instructions for reporting objections to magistrates' decisions before the October 10, 2014 meeting.
- (4) The Advisory Committee members should continue to review Superintendence Rule 39 (see attached red-lined version) and send any comments to Tasha Ruth at Tasha.Ruth@sc.ohio.gov.
- (5) A subcommittee will be formed to review Superintendence Rule 36. Staff will work with the chairs of the Advisory Committee to identify individuals willing to serve on this subcommittee.
- (6) Staff will ascertain the Chief Justice's wishes and next steps for proposing a Multi-District Litigation Program.

2014 – 2015 Meeting Dates

Friday, October 10, 2014
Friday, March 6, 2015
Friday, May 8, 2015

Friday, August 7, 2015
Friday, October 16, 2015