

**Restoring Function & Faith
in Our Civil Justice System**

Hon Gary Yost
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C. David Witt

18th ANNUAL CONFERENCE

**Civil Justice Initiative:
Building Civil Case Management Teams**

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18th ANNUAL CONFERENCE

**WHAT IS
CASE
MANAGEMENT?**

Case management refers to the entire set of actions that a court takes to monitor and control the progress of cases, from initiation through trial or other disposition, as well as completion of all post-disposition work, to ensure that justice is done promptly and cost effectively.



WHY DO WE NEED CASE MANAGEMENT?

- Reduces cost and delay in litigation.
- Provides active and continuing oversight of cases.
- Promotes the use of resources proportionate to case needs.
- Permits judges to focus on tasks that require judicial training and expertise.

Program of the
INDEPENDENCE

Underlying Reality

The vast majority of civil cases are debt collection, landlord/tenant, foreclosure, and small claims cases, which means:

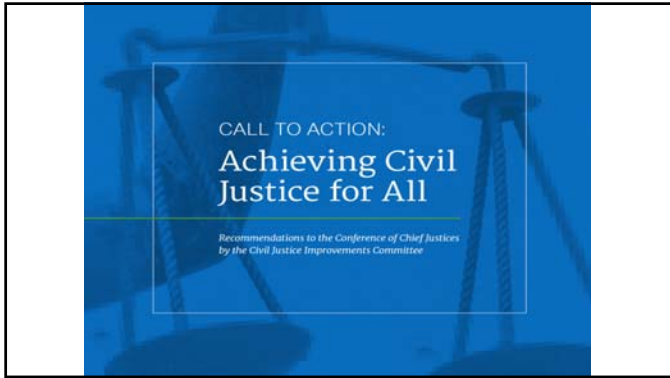
**Modest Monetary Claims
Little Adjudication
Default Judgment or Dismissal
Unrepresented Parties**

Underlying Reality

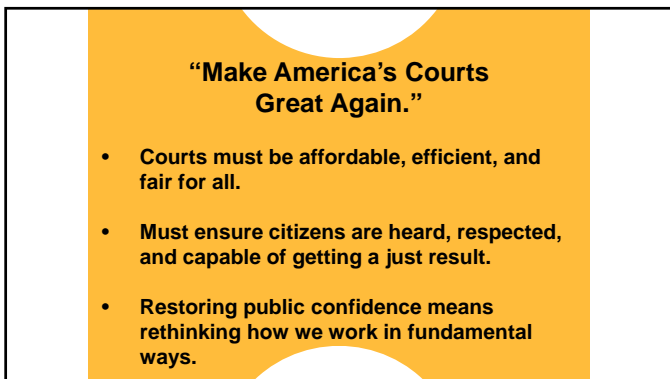
Some litigants with meritorious claims and defenses are denied access to justice because it is beyond their financial means to litigate.

Some litigants with means opt for private alternatives.

Will courts become obsolete?







Recommendation 7: Courts should develop civil case management teams (CCMT's) consisting of a responsible judge supported by appropriately trained staff.

What is a Civil Case Management Team (CCMT)?

Civil Case Management Teams:

1. Are specially trained professional staff.
2. Provide support and oversight to civil dockets.
3. Permit judges to focus on tasks that require uniquely judicial training and expertise.

How Can Courts Build a CCMT?

7.1 Courts should conduct a thorough examination of their civil case business practices to determine the degree of discretion required for each management task. These tasks should be performed by persons whose experience and skills correspond with the task requirements.

7.2 Courts should delegate administrative authority to specially trained staff to make routine case management decisions.

TIERS OF CASE MANAGEMENT RESPONSIBILITY

The CCMT Model consists of distinct tiers of responsibility over civil case management.



Implementation Tips:

Change can be frightening! The CCMT Model is not an exercise in downsizing the workforce, but rather focused on building the capacity of the workforce to perform more effectively, and ultimately enhancing the respect and dignity of their role in the judicial process.

1. Look at current administrative resources.
2. Develop a comprehensive plan. (Workshop can help!)
3. Judicial leadership must ensure appropriate policies are developed and goals met.
4. Implement the CCMT model incrementally across the civil docket.

Civil Justice Initiative Workshops

May 14th Akron, OH

May 16th Columbus, OH

Who Should Attend?

Individuals in your court who are responsible for civil cases (must include at least one judicial officer). Appropriate team members may include: Court administrators, clerk of court, judges, lawyers, or users of the system.

Civil Justice Initiative Workshops

May 14th Akron, OH

May 16th Columbus, OH

What Will We Accomplish?

Teams will leave with an implementation roadmap to streamline civil case processing that provides the optimal level of judicial case management and court oversight while avoiding delay, unnecessary costs, and wasted resources.

Civil Justice Initiative Workshops

May 14th Akron, OH

May 16th Columbus, OH

Is CLE Offered?

Yes! 6.25 Hours

Is Lunch Provided?

Yes! And it's Free!

Civil Justice Initiative Workshops

May 14th Akron, OH

May 16th Columbus, OH

Contact: Tasha Ruth at 614.387.9414 or Tasha.Ruth@sc.ohio.gov for more information.

Dispute Resolution Program Development

Hon. Gary Yost
Wendy Hawbaker

The Greater Dayton Area
Dispute Resolution '18
CONFERENCE

ASHTABULA COUNTY MEDIATION AND CONFLICT MANAGEMENT SERVICES

COMMON PLEAS COURT

GENERAL DIVISION (CIVIL)


- All civil cases
- Foreclosure mediation program
- Restorative justice (Drug Court)

The Greater Dayton Area
Dispute Resolution '18
CONFERENCE

ASHTABULA COUNTY MEDIATION AND CONFLICT MANAGEMENT SERVICES


DOMESTIC RELATIONS COURT

- Divorce and Dissolution
- Pre and post decree
- Parenting coordination
- Parent education class
- Family Investigations
- Coordination of guardian ad litem program



ASHTABULA COUNTY MEDIATION AND CONFLICT MANAGEMENT SERVICES


JUVENILE COURT	PROBATE COURT
<ul style="list-style-type: none"> • Parenting • Unruly and delinquency • Truancy 	<ul style="list-style-type: none"> • Will contest • Guardianship • Other



ASHTABULA COUNTY MEDIATION AND CONFLICT MANAGEMENT SERVICES

COUNTY COURTS


- GENERAL DIVISION
- CRIMINAL AND NEIGHBOR DISPUTES
- SMALL CLAIMS



ASHTABULA COUNTY MEDIATION AND CONFLICT MANAGEMENT SERVICES


OTHER SERVICES

- Governmental entities
- Township to township disputes
- Pre-filing at request of parties




Overview

- Identification of needs
- What is needed to respond to those needs?
- Funding
- Programmatic Decisions
- Buy-in of the stakeholders
- Expansion of the program




Identification of Needs

- Case management
- Increase consumer satisfaction
- Reduce cost of litigation




What is Needed to Respond to Those Needs?

- Mediators
- Facilities




Funding

- General fund
- Add on filing fees
- Cost for use
- Grants



Buy-In of the Stakeholders

- User-friendliness"
- Public relations efforts-news media and speaking engagements
- Advisory board



Programmatic Decisions

- Mediator background
- Will there be a fee for mediations?
- Which cases will be referred?
- When will cases be referred?
- Will "in person" attendance be required?
- Will continuances of mediation be granted? If so, how?



Expansion of the Program

- Mediation in more case types
- Specialized programs (eg: foreclosure mediation)
- Processes beyond mediation (eg: parenting coordination, facilitation, restorative justice)



**HOW TO CREATE
A PROBLEM SOLVING
SETTLEMENT PROMOTING
COURT**

C. David Witt



CLEVELAND HOUSING COURT

- More than 80% of Cases Settle, if having been referred for Mediation.
- Specialized Court: Cases of Necessity (Eviction) rather than Choice. Majority of Pro Se Litigants inhabiting an Economic Community of Have and Have Nots.
- Resolution a Combination of both Issues in Contest and Settlement Technique.
- Tools of the Trade having Potential Application in other Courts as well.



TRINITY OF RESOURCES TO ACHIEVE SETTLEMENT

- Hearing: **Mediation** to Promote the Potential of Settlement.
- Court Procedure Structure Wrapping Around Hearing: **Court Management of Settlement Agreements.**
- **Human Resources** at the Hearing: **Qualifications and Techniques** of Staff to Link Negotiation, Settlement and Case Management of Settlement Agreements.



MEDIATION

- Establish Basis for Mediation: Assignment by Judge or Magistrate and/or Request by Parties
- Require Attendance by Parties and Counsel
- Flexible Timeliness of Mediation: One of more events before Trial; even after Trial
- Set the Table: Orchestrate a Reasonable organized Dialogue between Parties
- Illuminate Facts
- Explore Interests of Parties as well as Positions
- Request Solutions
- Negotiate



COURT MANAGEMENT OF SETTLEMENT AGREEMENTS

- Agreed Judgment Entries signed by Parties, Counsel and Judge
- Incrementalized Performance of Obligations.
- Status Hearings to Monitor Performance of Agreed Judgment Entries
- Pre-Judgment Performance Obligations and Post-Judgment Performance Obligations
- Retention of Jurisdiction to Monitor Performance
- Retention of Jurisdiction to Monitor separate Settlement Contracts



STAFF RESOURCES AND TECHNIQUES TO LINK NEGOTIATION, SETTLEMENT AND MANAGEMENT OF SETTLEMENT

- Staff rather than Judiciary conducted Mediation
- Prepare for Mediation. Consider Possible Resolution Options and Points of Inquiry
- Explain Basis for Many Cases Settling. Create a Positive Environment for Negotiation
- Explain the Range of Possible Resolutions and Court Resources to assist
- Implementation of Settlement before commencing Dialogue



STAFF RESOURCES AND TECHNIQUES TO LINK NEGOTIATION, SETTLEMENT AND MANAGEMENT OF SETTLEMENT

- Use of Caucus
- Act Facilitative, Evaluative, and Creative. Pro-active as well as Reactive Role
- Reduce the Agreement to Writing for Review by the Judge, or Hold Case for Entry for Submission of Agreement by Parties and Review by the Judge
- Explain Contents of Agreement before Signature



STAFF RESOURCES AND TECHNIQUES TO LINK NEGOTIATION, SETTLEMENT AND MANAGEMENT OF SETTLEMENT

- Adjudication is a Process. Mediation is a Process. Content of Settlement is a Process itself, not simply a one moment Definitive Conclusion.
- Establish Status Hearings if Appropriate to Implement Performance of Agreement.
- Build a Library of Potential Structured Settlements to be utilized as Examples for Consideration in Future Cases.
- Maintain a Statistical Record of Performance.



IMPASSE

- Clarify Give and Take of the Parties. Emphasize Position Movements by Parties during Discussion
- Stress that Nothing is Absolute. Parties may continue to contemplate what has been said
- Consider Additional Mediations
- Remain accessible to Parties via Phone or E-Mail
- Consider Drafting a Proposed Settlement to be conveyed to Parties for Consideration
- Maintain a personal Record of Facts, Positions, Interests and Negotiation as a potential future resource



PROBLEM SOLVING IS MORE ASPIRATIONAL AND PRACTICAL THAN DECISION MAKING IN A LAND OF HAVE AND HAVE NOTS!



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