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CASEFLOW MANAGEMENT  
COORDINATING COMMITTEE

FINAL REPORT AND RECOMMENDATIONS  
TO THE MICHIGAN SUPREME COURT

June, 1987

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ADMINISTRATIVE OFFICE

TRIAL COURT  
DELAY REDUCTION  
PROJECT

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## Thirtieth Judicial Circuit of Michigan

City Hall  
Lansing, Michigan  
48933

June 29, 1987

TO: Hon. Dorothy Comstock Riley, Chief Justice  
and Associate Justices

Dear Chief Justice and Associate Justices:

On behalf of all of the members of the Caseflow Management Coordinating Committee, I am pleased to present you with the enclosed report.

As evidenced by the recommendations of the Citizens' Commission to Improve Michigan Courts, one of the major concerns of Michigan citizens is the length of time it takes to get cases heard by the courts. Committee members have been advised by both plaintiff and defense counsel that this concern must be emphasized to the Michigan Bar. While there are no easy or obvious solutions for the problem, plaintiff and defense attorneys have expressed support for court control over the pace of litigation to address this concern.

Two years ago, the Supreme Court targeted the reduction of delay in Michigan's trial courts as one of its primary objectives. To assist the Court in this effort, former Chief Justice Williams appointed the Caseflow Management Coordinating Committee. The charge of the Committee was to document problem areas, review practices in Michigan and other states, identify solutions and make recommendations.

The Committee would like to thank Supervising Justice Dennis W. Archer, former Chief Justice Williams and the members of the Court for their support and assistance in the continuing effort to provide justice to the people of Michigan in a fair and efficient manner. We would also like to thank members of the bar and court personnel who took time to offer their suggestions and recommendations to the Committee.

The members are grateful to the Court for the opportunity to serve on this Committee and eagerly await review and implementation of these recommendations.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael G. Harrison", written over a large, stylized flourish.

Michael G. Harrison  
Chairperson

MGH:js

cc: Hon. V. Robert Payant, State Court Administrator

U.S. Department of Justice  
National Institute of Justice

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## CASEFLOW MANAGEMENT COORDINATING COMMITTEE

**Supervising Justice:** Hon. Dennis W. Archer, Michigan Supreme Court

**Chairperson:** Hon. Michael G. Harrison, 30th Circuit Court (Ingham County)

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Hon. William H. Cannon, 41B District Court (Macomb County)

Hon. Hilda R. Gage, 6th Circuit Court (Oakland County)

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Linda M. Twitchell, Eaton County Clerk

Betty J. Walkup, 3-1 District Court Magistrate (Branch County)

**CASEFLOW MANAGEMENT COORDINATING COMMITTEE  
FINAL REPORT AND RECOMMENDATIONS TO THE  
MICHIGAN SUPREME COURT**

State Court Administrative Office  
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The Caseflow Management Coordinating Committee and State Court Administrative Office project staff were partially funded through Justice Assistance Act grant funds, Grant number 80365-2A86, administered by the Office of Criminal Justice Programs.

**NCJRS**

**AUG 31 1987**

**ACQUISITIONS**

## ACKNOWLEDGEMENTS

We would like to express special thanks to Supervising Justice Dennis W. Archer for his support and guidance throughout this project. We are also grateful to the many judges, trial court personnel, lawyers, and staff persons of the Supreme Court and its administrative offices who contributed their time and effort to this project, and reserve special thanks to those listed below:

### State Court Administrative Office Personnel

John D. Ferry Jr., Deputy State Court Administrator  
Stephen D. Conley, Associate State Court Administrator  
Richard G. Wilhelm, Executive Director, Judicial Data Center  
Herbert D. Levitt, Regional Administrator, Region 1  
Kevin J. Bowling, Regional Administrator, Region 2  
Jack C. Crandall, Regional Administrator, Region 3  
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Susan B. Boynton, Docket Control Manager (Region 1, Recorder's Court)  
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### Technical Advisors

David Cable, 10th Circuit Court Administrator (Saginaw County)  
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## I. INTRODUCTION

### Statement of Committee Purpose

The Michigan Supreme Court has identified the reduction of delay in the State's trial courts as one of its primary objectives. The report from the Citizens' Commission to Improve Michigan Courts disclosed that eight out of ten Michigan residents polled believe that court proceedings take too long. To address the problem of delay, the Supreme Court established a three step plan: adoption of time guidelines for case processing, improvement of data systems and implementation of caseload management procedures. Former Chief Justice G. Mennen Williams made the improvement of the management of Michigan's judicial system one of his priorities during his final year on the Supreme Court.

In December of 1985, the Supreme Court appointed the Caseload Management Coordinating Committee comprised of probate, district and circuit court judges, court administrators, bar members and a county clerk. The Honorable Dennis W. Archer, was designated as Supervising Justice. The overall charge of this Committee, chaired by the Honorable Michael G. Harrison, was to improve the just resolution of criminal and civil matters by developing procedures and time guidelines for use in Michigan's trial courts and to reduce unreasonable delay for litigants and the general public.

Five priorities were identified by the Supreme Court. They were: identify problems within the Michigan Judicial System and design procedures to address those problems; adopt case processing time guidelines; improve the statewide reporting and accountability system; develop a model case information system; and develop a caseload management project staff, within the State Court Administrative Office, to provide Michigan trial courts with technical assistance.

### Summary of Recommendations

The Committee has developed its recommendations for action by the Supreme Court, State Court Administrative Office, and Michigan's trial courts.

Specifically, the Committee's final report recommends that the Supreme Court:

- o Adopt the Time Guidelines contained in Section II by administrative order;

- ⦿ Amend the Michigan Court Rules as proposed in Section III, and create rules as proposed in Section IV;
- ⦿ Direct the State Court Administrator to seek legislation amending Michigan statutes as proposed in Section V;
- ⦿ Direct the implementation of the policies recommended in Section VI, with the assistance of the State Court Administrative Office and other administrative units of the Supreme Court.
- ⦿ Support the State Court Administrative Office in the implementation of recommendations made to that office in Section VII; and
- ⦿ Direct the State Court Administrator to assist the Michigan trial courts in the implementation of the recommendations in Section VIII.

**II. TIME GUIDELINES FOR CASE PROCESSING-  
PROPOSED ADMINISTRATIVE ORDER**

## Time Guidelines for Case Processing

Tom Peters, in his book, Passion for Excellence, quotes a successful businessman who states: "If you believe in unlimited quality, and act in all your business dealings with total integrity, the rest (share, growth, profits) will take care of itself". Peters cites numerous anecdotes of successful American companies who believe and are committed to this philosophy. These are the well-managed American companies which are winners in the business world. These are the companies which: 1. listen to their customers, employees, and suppliers and then, 2. do something to improve their product or service.

Each judge and each attorney should passionately believe that the potential quality of the courts is unlimited. A first step in improving the quality of the courts is to listen to what our customers, the citizens of the State of Michigan, are saying. "It costs too much, it takes too long, and it is never over" are common complaints about the courts. Perhaps a judge will not hear that complaint about his or her own court, but the judge may hear a frustrated citizen make that complaint about other courts. The complaint is loudest concerning the delay in civil cases in many courts. The Supreme Court has heard that complaint loud and clear and charged this Committee with setting up time guidelines for case processing in the courts.

Several different "yardsticks" can be used in setting guidelines. For example, the Committee could have chosen as a guideline what most courts are presently doing. This would have required only some courts to improve. The Committee could have recommended guidelines that the public would consider as "not bad". Instead, the Committee chose to use as a guideline the amount of time in which courts should be able to dispose of cases, taking into consideration the needs of litigants and the public in general. The basis for the time guidelines set forth herein was the set of goals adopted by the State Trial Courts Administration Committee of the Michigan Bar, the Representative Assembly of the Michigan Bar, the Michigan Judges Association, the Michigan District Judges Association and the Michigan Association of Circuit Court Administrators. After receiving input from representatives of the benches which will be affected, this Committee agreed upon time guidelines for case processing.

These goals will require courts to re-examine their present procedures, local legal culture, goals, and expectations. Some court rules will have to be changed. If a judge and staff commit to these guidelines, they can be met. It will be necessary to re-examine these guidelines a year from now to see if they are, in fact, attainable and realistic by selected trial courts. Clearly, however, without a total commitment they cannot be met.

Some courts may already be able to match these stringent time guidelines because they have been using good caseload management principles. Other courts which have a severe backlog problem at this time perhaps will not be able to reach these goals in the short term. Those courts should establish transitional goals, for example, to meet the civil guidelines by January 1, 1988, and the criminal guidelines by January 1, 1989.

Time guidelines for criminal cases should spur public confidence in the administration of criminal justice by establishing a calendar of legal events which will lead to prompt, efficient resolution of these cases. The time guidelines recommended are not to be understood, however, as benchmarks for due process rights relating to speedy trial. Those rights will continue to be established by statute and case law, based on values apart from the broad public policy concerns of this Committee.

The time guidelines for case processing are dependent upon changes in the Michigan Court Rules and Statutes proposed by the Caseflow Management Coordinating Committee. The time guidelines shall not be used as a punitive device nor shall they form the basis for disciplinary proceedings against a lawyer or judge. Further, they shall not result in a lawsuit being dismissed for failure to comply with the guidelines unless otherwise provided in the Michigan Court Rules. Rather, the courts which are deciding cases in time should be rewarded with public recognition just as the auto part suppliers which deliver products in time are rewarded with new contracts and money.

Rewards could take the form of recognition by the Supreme Court and favorable publicity. Each court which achieves the goals and has a good reporting system in place should be recognized with a plaque for caseflow management excellence. It would be very appropriate to dedicate this award in the name of former Chief Justice G. Mennen Williams. The attorneys and public who do business in that court would immediately recognize that this is a court in which they can expect a speedy disposition.

Therefore, the Committee recommends adoption of the following Administrative Order, relating to the adoption of time guidelines for case processing. This is a revision of a draft submitted to the Court in 1986. Its purpose is to provide trial courts with guidelines for case processing. It is recognized that judges will continue to exercise care to balance the desirability of swift disposition against the exceptional needs of individual cases.

ADMINISTRATIVE ORDER 1987- \_\_\_\_\_

Time Guidelines for Case Processing in Michigan Trial Courts

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Directed to All Michigan Courts:

The following are adopted as guidelines for case processing in all Michigan trial courts.

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I. Caseflow Management and Delay Reduction: General Principle\*

From the commencement of litigation to its resolution, whether by trial or settlement, any elapsed time other than that reasonably required for pleadings, discovery and court events, is unacceptable and should be eliminated. To enable just and efficient resolution of cases, the court, not the lawyers or litigants, should control the pace of litigation. A strong judicial commitment is essential to reducing delay and, once achieved, maintaining a current docket.

II. Case Management

Essential elements which the trial court should use to manage its cases are:

- A. Court supervision and control of the movement of all cases from the time of filing of the document invoking court jurisdiction through final disposition.
- B. Promulgation and monitoring of time goals for the disposition of cases.
- C. By rules, conferences or other techniques, establishment of time for conclusion of the critical steps in the litigation process, including the discovery phase.

\*The Caseflow Management and Delay Reduction General Principles, Elements of Case Management and Time Standards are modeled after the American Bar Association National Conference of State Trial Judges (1984) Standards Relating to Court Delay Reduction. Chicago, Illinois: American Bar Association.

- D. Development of procedures for early identification of cases that may be protracted and for giving them special administrative attention where appropriate.
- E. Adoption of a trial setting policy which schedules a sufficient number of cases to ensure efficient use of judge time while minimizing re-settings caused by over-scheduling.
- F. Commencement of trials on the original date with adequate advance notice.
- G. A firm, consistent policy for minimizing adjournments.

### III. Guidelines of Timely Disposition

#### A. PROBATE COURT GUIDELINES

##### 1. DELINQUENCY AND NEGLECT PROCEEDINGS

- a. IN-CUSTODY - Where a minor is being detained or is held in court custody, 75% of all petitions or complaints should have adjudication and disposition completed within 63 days from the authorization of the petition; 90% within 77 days and 100% within 91 days.
- b. NON-CUSTODY - Where a minor is not being detained or held in court custody, 75% of all petitions or complaints should have adjudication and disposition completed within 119 days from authorization of the petition; 90% within 6 months and 100% within 7 months.

##### 2. PROBATE PROCEEDINGS

75% of all contested probate matters should be resolved within 6 months from the time the issue is joined; 90% within 9 months and 100% within 12 months except for individual cases in which the court determines exceptional circumstances exist and for which a continuing review should occur.

#### B. DISTRICT COURT GUIDELINES

##### 1. CIVIL PROCEEDINGS

- a. GENERAL CIVIL - 90% of all civil cases should be settled, tried or otherwise concluded within 6 months from the date of case filing; 98% within 9 months and 100% within 12 months except for individual cases in which the court determines exceptional circumstances exist and/or for which a continuing review should occur.

- b. **SUMMARY CIVIL** - Proceedings using summary hearing procedures, as in small claims, landlord/tenant and claim and delivery actions should be settled, tried or otherwise concluded within 35 days from the date of service. In those cases where a jury is demanded, actions should be concluded within 63 days from the date of service.

## 2. CRIMINAL AND TRAFFIC PROCEEDINGS

- a. **MISDEMEANOR** - 90% of all misdemeanors, civil infractions, and other non-felony cases should be adjudicated or otherwise concluded within 63 days from the date of the first appearance; 98% within 91 days and 100% within 126 days.
- b. **FELONIES** - 100% of preliminary examinations to be concluded within 14 days of arraignment unless good cause is shown.
- c. **PERSONS IN PRE-TRIAL CUSTODY** - Persons detained should have a determination of custodial status or bail set within 24 hours of arrest. Persons incarcerated before trial should be afforded priority for trial.

**NOTE:** When a case is removed from circuit to district court, the district court Time Guidelines should apply and the time should commence when the case is received by the district court.

## C. CIRCUIT AND RECORDER'S COURT GUIDELINES

### 1. CIVIL PROCEEDINGS

90% of all civil cases should be settled, tried or otherwise concluded within 12 months from the date of case filing; 98% within 18 months and 100% within 24 months except for individual cases in which the court determines exceptional circumstances exist and for which a continuing review should occur.

### 2. DOMESTIC RELATIONS PROCEEDINGS

**Recommendation:** Abolish the distinction between divorce with children and divorce without children.

90% of all divorce cases should be settled, tried or otherwise concluded within 7 months from the date of case filing; 98% within 10 months and 100% within 12 months.

In the event the distinction between the categories is not abolished:

- a. DIVORCE WITHOUT CHILDREN - 90% of all divorce cases without children should be settled, tried or otherwise concluded within 91 days from the date of case filing; 98% within 9 months and 100% within 12 months.
- b. DIVORCE WITH CHILDREN - 90% of all divorce cases with children should be settled, tried or otherwise concluded within 7 months of the date of case filing; 98% within 10 months and 100% within 12 months.
- c. PATERNITY - 90% of all paternity cases should be settled, tried or otherwise concluded within 7 months of the date of case filing; 98% within 12 months and 100% within 18 months.
- d. INITIATING UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT (URESA) 100% of all URESA orders should be forwarded to the court of the responding state having reciprocal legislation within 24 hours of the filing of the Certificate of Support.
- e. CHILD SUPPORT/RESPONDING UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT (URESA) - 90% of all child support/responding URESA cases should be adjudicated or otherwise concluded within 91 days from the date of case filing or receipt of order from initiating state; 98% within 6 months and 100% within 12 months.
- f. CHILD CUSTODY ISSUES - 100% of all child custody issues should be adjudicated or otherwise concluded within 91 days from notice of request for custody hearing.

### 3. CRIMINAL PROCEEDINGS

90% of all felony cases should be adjudicated or otherwise concluded within 91 days from the date of entry of order binding the defendant over to circuit court; 98% within 154 days and 100% within 10 months. Incarcerated persons should be afforded priority for trial.

#### 4. APPEALS TO CIRCUIT COURT

- a. APPEALS FROM COURTS OF LIMITED JURISDICTION - 100% of all appeals to the circuit court from courts of limited jurisdiction should be settled or otherwise concluded within 154 days from the filing of the Claim of Appeal.
- b. APPEALS FROM ADMINISTRATIVE AGENCIES - 100% of all appeals to the circuit court from administrative agencies should be settled or otherwise concluded within 154 days from the filing of the Claim of Appeal.
- c. EXTRAORDINARY WRITS - 98% of all extraordinary writ requests should be adjudicated within 35 days from the date of filing and 100% within 91 days.

#### 5. MATTERS SUBMITTED TO THE JUDGE

Matters under submission to a judge or judicial officer should be promptly determined. Short deadlines should be set for presentation of briefs and affidavits and for production of transcripts. Decisions, when possible, should be made from the bench or within a few days of submission; except in extraordinarily complicated cases, a decision should be rendered not later than 35 days after submission.

NOTE: In the Time Guidelines for criminal cases, the phrase "adjudicated or otherwise concluded" refers to the date of conviction or acquittal for the purpose of measuring the age of the cases. These Guidelines contemplate that an incarcerated defendant will be sentenced within 2 weeks and a non-incarcerated defendant will be sentenced within 4 weeks of a finding of guilt. For the purpose of the Circuit Court Caseload Report, cases are not closed until sentence or delayed sentence has been imposed.

#### IV. Court Delay Reduction Program

Each court should have a program to reduce and prevent delay.

##### A. Essential ingredients of the program should be:

1. A strong and continuing judicial commitment to delay reduction, expressed in written goals and objectives to guide court operations.
2. A published case management plan detailing the delay reduction techniques, ultimate time goals and a transition program for reaching those goals where there is a backlog problem.

3. A system to furnish prompt and reliable information concerning the status of cases and case processing.

B. The program should be enhanced by:

1. Lawyer cooperation and support.
2. Adequate resources.
3. Use of special expertise.
4. Consideration of alternative methods of dispute resolution which would facilitate an earlier termination of actions.

C. Where unacceptable delay exists, there should be a published transition program designed to achieve these time guidelines. The transition program should include:

1. Assessment of the current caseload, including backlog identification.
2. Analysis of productivity.
3. A conscientious effort to use internal resources.
4. Use of special expertise.
5. Revision of rules and practices to implement the transition program.
6. A scheduled termination of the transition program with interim goals, ultimately resulting in full implementation of the time guidelines.

#### V. Firm and Uniform Enforcement

The court should firmly and uniformly enforce its caseflow management and delay reduction procedures.

- A. Adjournment of a hearing or trial should be granted only by a judge for good cause shown. Extension of time for compliance with deadlines not involving a court hearing should be permitted only on a showing to the court that the extension will not interrupt the scheduled movement of the case.

- B. Requests for adjournments and extensions, and their disposition, should be recorded in the file of the case. Where adjournments and extensions are requested with excessive frequency or on insubstantial grounds, the court should adopt one or a combination of the following procedures:
1. Cross-referencing all requests for adjournments and extensions by the name of the lawyer requesting them;
  2. Requiring that requests for adjournments and stipulations for extensions be endorsed in writing by the litigants as well as the lawyer;
  3. Summoning lawyers who persistently request adjournments and extensions to warn them of the possibility of sanctions and to encourage them to make necessary adjustments in management of their practice. Where such measures fail, restrictions may properly be imposed on the number of cases in which the lawyer may participate at one time;
- C. Where a judge is persistently and unreasonably indulgent in granting adjournments or extensions, the chief judge should take appropriate corrective action.

## DISCUSSION

Our trial courts have been under attack from many elements of society because of the elapsed time in bringing a case to resolution. Delay, by itself, has caused a lack of confidence in the trial courts in particular, and the rule of law in general. Delay devalues judgments, creates anxiety in litigants and uncertainty for lawyers, results in loss or deterioration of evidence, wastes court resources, needlessly increases the costs of litigation, and creates confusion and conflict in allocation of court resources. The public expects and deserves prompt and affordable justice.

Presently, there are no guidelines or goals by which a judge, the lawyer, the litigant, or the public may weigh the effectiveness of the system or a judge. The proposed guidelines provide a way.

These guidelines begin with a new definition of delay and a reaffirmation of the courts' responsibility for controlling the pace of litigation. The guidelines make delay reduction both a goal of the court system and of the individual judge. The guidelines fix responsibility for implementation of modern management techniques squarely upon the court.

The guidelines recognize the varying time needs of cases within general categories but emphasize the need to focus on all cases. Thus, for most categories, a deadline is given for when 90% of all cases should be concluded; a second deadline for when 98% of the cases (all but those cases with special circumstances) should be concluded and, for most categories, a time when all cases in the category should be concluded. This approach will give a clearer picture of a court's performance.

The guidelines call for each court to have a program to reduce and prevent delay. A delay reduction plan, developed by each court under the guidelines, must be tailored to its specific needs. Each of the State's trial courts, under the guidelines, are to design a delay reduction program. Central to the program is the published case management plan detailing techniques to be used and ultimate time goals. Publication of caseload statistics opens the courts' goals, objectives and achievements to public scrutiny.

It is recognized that courts which are unacceptably backlogged will need special efforts to achieve a current calendar. Thus, there is provision for a transition program to enable the court to catch up. By separating transition features from the continuing delay reduction program, the goals ensure that emergency measures of the transition do not become standard operating procedures.

Many of the efficiencies attendant to court delay reduction can be achieved through better use of existing resources. Where courts need more resources, the delay reduction program can ensure that new funds are most effectively used.

### **III. PROPOSED AMENDMENTS TO COURT RULES**

**RULE 2.102 SUMMONS, EXPIRATION OF SUMMONS;  
DISMISSAL OF ACTION FOR FAILURE TO SERVE**

(A) - (C) [Unchanged.]

(D) **Expiration.** A summons expires ~~182~~ 42 days after the date the complaint is filed unless the judge to whom the action is assigned, within that ~~182~~ 42 days, orders a second summons to issue for a definite period not exceeding ~~one~~ year 91 days from the date the complaint is filed. If such an extension is granted, the new summons expires at the end of the extended period. The judge may impose just conditions on the issuance of the second summons. Duplicate summonses issued under subrule (A) do not extend the life of the original summons. The running of the ~~182~~ 42-day period is tolled while a motion challenging the sufficiency of the summons or of the service of the summons is pending.

(E) - (G) [Unchanged.]

**RULE 2.116 SUMMARY DISPOSITION**

(A) - (H) [Unchanged.]

(I) **Disposition by Court; Immediate Trial.**

(1) - (2) [Unchanged.]

(3) A court may, under proper circumstances, order immediate trial to resolve any disputed issue of fact, and judgment may be entered forthwith if the proofs show that a party is entitled to judgment on the facts as determined by the court. An immediate trial may be ordered if the grounds asserted are based on subrules (C)(1) through (C)(6), or if the motion is based on subrule (C)(7) and a jury trial as of right has not been demanded on or before the date set for hearing. ~~If the motion is based on subrule (C)(7) and a jury trial has been demanded, the court may order immediate trial, but must afford the parties a jury trial as to issues raised by the motion as to which there is a right to trial by jury.~~ If a motion is based on subrule (C)(7), even though a jury trial has been demanded, the court may order immediate trial, and the disputed issues of fact will be determined by the court.

(J) [Unchanged.]

## RULE 2.119 MOTION PRACTICE

### (A) Form of Motions.

(1) (a)-(d) [Unchanged.]

(e) If any motion or response thereto is accompanied by a brief, the length shall not exceed 10 pages except upon leave of the court.

(2) - (3) [Unchanged.]

(B) - (D) [Unchanged.]

(E) Contested Motions. The moving party must ascertain whether a contemplated motion will be opposed. The motion must affirmatively state that the concurrence of counsel in the relief sought has been requested on a specified date, and that concurrence has been denied or has not been acquiesced in, and hence, that it is necessary to present the motion. A party who fails to comply with this rule is subject to assessment of costs under subrule (E)(4)(c).

(1) - (4) [Unchanged.]

(F) - (G) [Unchanged.]

## RULE 2.301 COMPLETION OF DISCOVERY.

(A) Discovery in circuit and probate court must be completed one year within 6 months after an answer has been filed unless the court sets another date by order.

(1) - (3) [Unchanged.]

(B) - (C) [Unchanged.]

## RULE 2.302 GENERAL RULES GOVERNING DISCOVERY

### (A) Availability of Discovery.

(1) - (3) [Unchanged.]

(4) With respect to actions in the circuit and probate courts, two months prior to the discovery cutoff date set by the court under MCR 2.301, witness lists shall be filed with the court.

(a) The list should include:

(i) Name and address of each witness.

(ii) whether a witness is an expert and

(iii) a brief statement of the nature of the anticipated testimony of each witness.

(b) This provision shall not prevent a party from obtaining an earlier disclosure of witness information by other discovery means as provided in this Rule.

(B) - (H) [Unchanged.]

## RULE 2.308 USE OF DEPOSITIONS IN COURT PROCEEDINGS

### (A) In General.

(1) - (3) [Unchanged.]

(4) The court may require video or stenographic depositions, with the exception of parties, for non-jury cases. If a video deposition is taken, for use in non-jury cases, a stenographic transcription will not be required.

(B) - (C) [Unchanged.]

## RULE 2.309 INTERROGATORIES TO PARTIES

(A) Availability; Procedure for Service. [Unchanged.]

(1) - (2) [Unchanged.]

(3) Interrogatories shall be limited to 25 questions, inclusive of subparts, except upon leave of the court or upon written stipulation of the parties.

(B) - (E) [Unchanged.]

## RULE 2.401 PRETRIAL CONFERENCE

(A) Time; Discretion of Court; Request by Party.

(1) [Unchanged.]

(2) The Court may direct that an early status or scheduling conference be held within 90 days of case filing. In addition to those considerations enumerated in Subrule (B), during this conference the court should:

(a) determine whether jurisdiction and venue are proper or whether the case is frivolous, and

(b) determine the complexity of a particular case and set time limitations for the processing of the case and establish dates when future actions should begin or be completed in the case.

~~(2)~~(3) [Unchanged.]

(B) Scope of Conference. [Unchanged.]

(1) - (11) [Unchanged.]

(12) whether some form of alternative dispute resolution would be appropriate for the case;

~~(12)~~(13) [Unchanged.]

(C) - (D) [Unchanged.]

(E) Appearance of Counsel. The court may direct that the attorney who intends to try a case, or any other attorney from his/her office who is thoroughly familiar with and has the authority to settle the case, attend pretrial conferences.

~~(E)~~(F) Presence of Parties at Conference. The court may direct that the parties to the action, or a representative of their insurance carriers or other agent with authority to settle the case, be present or immediately available at time of the pretrial conference.

~~(F)~~(G) Failure to Attend; Default. [Unchanged.]

~~(G)~~(H) Order for Completion of Discovery. [Unchanged.]

~~(H)~~(I) Conference After Discovery. [Unchanged.]

#### RULE 2.403 MEDIATION

(A) - (H) [Unchanged]

(I) Submission of Documents.

(1) [Unchanged.]

(2) Failure to submit these materials to the mediation clerk within the above-designated time subjects the offending party to a ~~\$60~~ \$150 penalty to be paid at the time of the mediation hearing and distributed equally among the attorney-mediators.

(J) - (O) [Unchanged.]

#### RULE 2.502 DISMISSAL FOR LACK OF PROGRESS

(A) Notice of Proposed Dismissal. At least once in each calendar quarter, the court may notify the parties in those actions in which no steps or proceedings appear to have been taken within ~~one-year~~ 91 days (~~182 days in district court~~) that the action will be dismissed for lack of progress unless the parties appear as directed by the court and show that progress is in fact being made or that the failure to prosecute is not due to the fault or lack of reasonable diligence of the party seeking affirmative relief. The notice shall be given in the manner provided in MCR 2.501(C) for notice of trial.

(B) - (C) [Unchanged.]

## RULE 2.503 ADJOURNMENTS

(A) [Unchanged.]

(B) Motion or Stipulation for Adjournment.

(1) Unless the court allows otherwise, a request for an adjournment must be by motion or stipulation made in writing or orally in open court based on good cause. All requests for trial adjournments, after the first request, shall require the signatures of the moving litigants or, during oral motions for trial adjournments, the moving litigants must be present in court.

(2) - (3) [Unchanged.]

(C) - (F) [Unchanged.]

## RULE 2.505 CONSOLIDATION; SEPARATE TRIALS

(A) [Unchanged.]

(B) Separate Trials or Issues for Trial. For convenience or to avoid prejudice, or when separate trials or the separation of issues during a single trial will be conducive to expedition and economy, the court may order a separate trial of one or more claims, cross-claims, counterclaims, third-party claims, or issues. The court may also order the separation of issues for a single trial, before the same jury.

## RULE 2.507 CONDUCT OF TRIALS

(A) - (G) [Unchanged.]

(H) Presence of Trial Judge During Deposition Testimony. In the trial of a civil case, a judge may absent himself or herself during the reading or showing of deposition testimony with the concurrence of counsel and with appropriate instructions to the jury.

~~(H)~~(I) Agreements To Be In Writing. [Unchanged.]

## RULE 2.603 DEFAULT AND DEFAULT JUDGMENT

### (A) Entry; Notice; Effect.

(1) If a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules, ~~and that fact is made to appear by affidavit or otherwise,~~ the clerk must enter the default of that party.

(2) ~~Notice of the entry must be sent to all parties who have appeared and to the defaulted party.~~ The clerk shall send notice of default to all parties who have appeared and to the defaulted party. If the defaulted party has not appeared, the notice to the defaulted party may be served by personal service, by ordinary first-class mail at his or her last known address or the place of service, or as otherwise directed by the court.

~~(a) In the district court, the court clerk shall send the notice.~~

~~(b) In all other courts, the notice must be sent by the party who sought entry of the default. Proof of service and a copy of the notice must be filed with the court.~~

(3) [Unchanged.]

(B) - (E) [Unchanged.]

## RULE 5.707 SETTLEMENT OF ESTATES; REPORTING REQUIREMENTS; CLOSING

(A) Settlement Procedure. [Unchanged.]

(1) - (3) [Unchanged.]

(4) Accountings; Time for Filing; Contents; Authentication and Service; Tax Information.

(a) Time for Filing. When required, interim accountings covering the period of a year, unless the court designates a shorter period, must be filed within ~~56~~ 28 days after the end of the accounting period. The accounting period ends on the anniversary date of the issuance of the letters of authority, unless the

personal representative elects to change the accounting period so that it ends on a date other than the anniversary date of the issuance of the letters. Only one such change is permitted. If the personal representative elects to make such a change, the first accounting period thereafter shall not be more than a year. A notice of the change must be filed with the court. The late filing of an accounting does not affect the end of the next accounting period. A final account, when required, must be filed when the estate is ready for closing.

(5) - (6) [Unchanged.]

(B) [Unchanged.]

### RULE 7.101 PROCEDURE GENERALLY

(A) - (E) [Unchanged.]

(F) Record on Appeal.

(1) Within 28 days after filing the claim of appeal, the appellant must file a transcript with the trial court. ~~or a copy of the reporter's or recorder's certificate and a statement that the transcript is not yet available.~~ The court may extend or shorten these limits in an appeal pending in the court on a motion filed by the court reporter or recorder or a party.

(2) - (5) [Unchanged.]

(G) - (H) [Unchanged.]

(I) Filing and Service of Briefs.

(1) Within 21 days after the trial court clerk notifies the parties that the record on appeal has been sent to the circuit court, the appellant must file a brief in the circuit court and serve it on the appellee. The appellee may file and serve a reply brief within 21 days after the appellant's brief is served on the appellee. The appellant's brief must comply with MCR 7.212(C)(2)-(8), and the appellee's brief must comply with MCR 7.212(D).

(2) [Unchanged.]

(3) Except as the court, by order, permits, briefs are limited to 10 pages double-spaced, exclusive of tables and indexes. Quotations may be single-spaced.

(J) [Unchanged.]

~~(K) Oral Argument. A party who has filed a timely brief is entitled to oral argument by writing "ORAL ARGUMENT REQUESTED" in boldface type on the title page of the party's brief. There shall be no oral argument unless ordered by the Court.~~

~~(L) Setting for Hearing. Submission to the Judge.~~ Within 14 days after the appellee's brief is filed or within 14 days after the time for filing has expired, the circuit court clerk shall:

(1) schedule the case for argument and notify the parties by mail, if a party has requested the court has ordered oral argument; or

(2) ~~if no party has requested oral argument,~~ submit the file to the judge to whom the appeal is assigned for decision.

(M) - (P) [Unchanged.]

#### RULE 7.105 APPEALS FROM ADMINISTRATIVE AGENCIES IN "CONTESTED CASES"

(A) - (J) [Unchanged.]

(K) Briefs and Arguments.

(1) - (2) [Unchanged.]

~~(3) A party who files a timely brief is entitled to oral argument by writing "ORAL ARGUMENT REQUESTED" in boldface type on the title page of the party's briefs. However, in cases in which a party is incarcerated, the court need not order the production of that party for argument but instead may order the case to be submitted on briefs. Except as the court, by order, permits, briefs are limited to 20 pages double-spaced, exclusive of tables and indexes. Quotations may be single-spaced.~~

(4) The judge to whom the case is assigned may dispense with oral argument.

~~(4)(5)~~ Within 14 days after the filing of the last brief allowed under subrule (K)(1), or within 14 days after the time for filing it has expired, the court clerk must:

(a) [Unchanged.]

(b) If no party is entitled to oral argument, submit the file to the judge assigned for decision.

(L) - (O) [Unchanged.]

**RULE 7.204 FILING APPEAL OF RIGHT;  
APPEARANCE**

(A) - (G) [Unchanged.]

(H) A copy of a motion for a stay of proceedings and any application for leave to appeal from an order denying an adjournment shall be served on the trial judge, and the trial judge shall have the right to respond to the Court of Appeals.

**RULE 8.107 STATEMENT BY TRIAL JUDGE  
AS TO MATTERS UNDECIDED**

Every trial judge shall, on the first business day of January, May, and September of each year, file with the state court administrator a certified statement in the form prescribed by the state court administrator, containing full information on any matter submitted to the judge for decision more than 4 months earlier which remains undecided. The judge shall also set forth in the statement the reason a matter remains undecided. For the purpose of this rule the time of submission is the time the last argument or presentation in the matter was made or the expiration of the time allowed for filing the last brief, as the case may be final date set for trial or hearing of the matter, or if evidence is presented during the trial or hearing, following the conclusion of such evidence. If supplemental briefs are required after such date, an additional 14 days shall be allowed. The Judge shall send a copy of the report to the chief judge and a copy shall be sent to all attorneys of record in the cases listed on the report. If the judge has no cases to report, the word "none" on a signed report is required.

#### **IV. PROPOSED MICHIGAN COURT RULES**

## I. LATE SETTLEMENT FEES

If, within two working days of the day set for trial by jury, any civil case is settled, each party shall be charged \$100.00. Oral notice to the court is sufficient for purposes of this rule. The court may not waive the foregoing cost except upon the showing of exceptional circumstances which excuse the delay.

## II. ATTORNEY SCHEDULE CONFLICTS

Subject to the court and counsel attempting to resolve scheduling conflicts, and with due regard to Michigan Court Rules and Statutory time constraints, the oldest case will have preference for trial with the following exceptions:

(1) Criminal case, when defendant is in custody, or

(2) when a minor is being detained or in court custody, or

(3) when counsel is already engaged in an ongoing trial of another case which requires his or her attendance in another court, or

(4) if one or more of the conflicting cases exceed the Time Guidelines, then the case which exceeds the Time Guidelines the most shall have preference. If neither case exceeds the Time Guidelines, the one closest to exceeding the Guidelines shall have preference.

## III. ALTERNATIVE DISPUTE RESOLUTION

**(A) Scope and Applicability of Rule.** A court may submit a civil action to an appropriate type of alternative dispute resolution as described in this rule.

### **(B) Selection of Cases.**

(1) The judge to whom an action is assigned or the chief judge may select it for a form of alternative dispute resolution by written order no earlier than 91 days after the filing of the answer as specified in this rule.

(a) on written stipulation by the parties, or

(b) in the case of Masters, on written motion by a party or on the judge's own initiative.

(2) Selection of an action for alternative dispute resolution has no effect on the normal progress of the action toward trial.

### (C) Forms of Alternative Dispute Resolution.

(1) Assignment of Senior Judge to Preside Over Trial. Refers to a former judge or justice who was elected and served as a judge or justice but is not currently holding judicial office.

(a) Parties to a civil action may stipulate to the assignment of a "senior judge" to preside over their case. They must select two senior judges from a list approved by the Supreme Court. The stipulation must specify:

(i) the hourly rate of compensation for the senior judge services and an estimate of the number of hours needed to hear the action.

(ii) an estimate of the costs of the proceedings, including compensation of the senior judge and of a court reporter or recorder, the rental cost of a location to conduct the trial if a courtroom is unavailable, and necessary expenses.

(b) In each circuit court, a stipulated assignment fund would be established for receipt of an amount equal to the estimated cost of the proceedings, payable by the parties, in accordance with the stipulation.<sup>1</sup> The senior judge shall be reimbursed for his or her services from this fund and may file for interim payments before a trial is concluded.

(c) The stipulation shall be filed with the chief or presiding judge of the court in which the action is pending together with a copy of a receipt from the clerk of the court indicating that the required fees and costs have been deposited.

(d) Upon that judge's approval, the stipulation shall be forwarded to the Supreme Court for approval and designation of the senior judge.

(e) Upon approval, the senior judge is authorized to exercise the same powers and duties of a judge sitting in the court in which the action is pending. Any such trial must be public, and the record of the proceedings and other papers filed with the senior judge must be filed with the clerk of the court.

(f) Except for good cause shown to the chief or presiding judge, a judgment must be entered by the senior judge within 21 days after all parties have submitted their closing proofs and arguments, or after verdict in a jury case. Any action, order, decision or judgment entered by the senior judge is reviewable as though made by a judge of the court.

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<sup>1</sup> The language proposed in this section was taken from Senate Bill 153, the Senior Judge Bill, which died on the floor of the House of Representatives in December, 1986. The bill is being reintroduced this year. This proposed Rule contemplates the establishment of a non-refundable fund for the indigent.

(2) Appointment and Compensation of Masters.<sup>2</sup> Each circuit judge may appoint masters within their jurisdiction. As used in this rule the word "master" includes a referee, an auditor, an examiner, a commissioner and an assessor. The compensation to be paid to a master shall be fixed by the court, and shall be charged to the parties or paid out of any fund or subject matter of the action, as the court may direct.

(a) Reference. A reference to a master shall be the exception and not the rule. In actions to be tried by a jury, a reference shall be made only when the issues are complicated; in actions to be tried without a jury, save in matters of account and of difficult computation of damages, a reference shall be made only upon a showing that some exceptional condition requires it.

(b) Powers. The order of reference may specify or limit the master's powers and may direct the master to report only upon particular acts or to receive and report evidence only and may fix the time and place for beginning and closing the hearings and for the filing of the master's report.

(i) Subject to the specifications and limitations stated in the order, the master has and shall exercise the power to regulate all proceedings in every hearing before the master.

(ii) The master shall have the authority to do all acts and take all measures necessary or proper for the efficient performance of the master's duties.

(iii) The parties may procure the attendance of witnesses before the master by the service of subpoenas, pursuant to MCR 2.506.

(c) Report. The master shall prepare a report upon the matters submitted to the master by the order of reference and, if required to make findings of fact and conclusions of law, the master shall set them forth in the report. The master shall file the report with the clerk of the court and in an action to be tried without a jury, unless otherwise directed by the court, shall file with it a transcript of the proceedings and of the evidence and the original exhibits. The clerk shall forthwith mail to all parties notice of the filing.

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<sup>2</sup>Rule 53, of the Federal Rules of Civil Procedure, was used as a model for this proposed section. The Subcommittee is aware of the prohibition of "Master in Chancery" in Article 6, Section 5 of the 1963 Constitution. The Court may wish to consider changing the name of this concept from "masters", to "referees", as described in MCLA 450.1768(a) - Appointment of referee for determination of dissenting shareholder's rights; powers, duties.

(i) Non-jury Actions. The court shall accept the master's findings of fact unless clearly erroneous. Within 14 days after being served with notice of the filing of the report any party may serve written objections thereto upon the other parties. Application to the court for action upon the report and upon objection thereto shall be by motion and notice as prescribed in these Rules. The court after hearing may adopt the report, modify it, or may reject it in whole or in part; or, may receive further evidence or may recommit it with instructions.

(ii) Jury Actions. The master shall not be directed to report the evidence. The master's findings upon the issues submitted to them are admissible as evidence of the matters found and may be read to the jury, subject to the ruling of the court upon any objections in point of law which may be made to the report.

(iii) Stipulation as to Findings. The effect of the master report is the same whether or not the parties have consented to the reference; but, when the parties stipulate that a master's findings of fact shall be final, only questions of law arising upon the report shall thereafter be considered.

(iv) Draft Reports. Before filing a report, a master may submit a draft thereof to counsel for all parties for the purpose of receiving their suggestions.

(d) The master shall not retain the report as security for compensation.

(e) When a party ordered to pay the compensation allowed by the court does not pay it after notice and within the time prescribed by the court, the master is entitled to a writ of execution against the delinquent party.

(3) Mini-Hearings. Parties to a dispute may stipulate to submit the matter for a mini-hearing. Upon approval of the court, a mini-hearing may be held, which is an abbreviated proceeding in which attorneys for corporate parties present their positions to the parties' senior officials to attempt to settle the dispute. The parties may fashion the procedure which they feel is appropriate. On proper motion, however, the court may prescribe certain procedures and time limits.<sup>3</sup>

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<sup>3</sup>Rule 44 of the United States District Court for the Western District of Michigan was used as a model in developing this concept. See Parker & Radoff, "The Mini-Hearing: An Alternative to Protracted Litigation of Factually Complex Disputes", 38 Bus. Law. 35 (1982); E. Green, "Corporate Dispute Management" (1982); "Model Mini-Trial Agreement for Business Disputes", Alternatives to the High Cost of Litigation, Vol 3 No. 5 (1985); Kall, Holme and Kenney, "The Private Mini-Trial: Sample Form Agreement", The Civil Litigator pgs. 1794, 1801, and 1802, (October, 1985).

(4) Early Neutral Evaluation. Upon stipulation of the parties, the judge to whom the action is assigned may appoint an experienced attorney to make a confidential evaluation of each party's position, early in the proceedings. The evaluator will then make recommendations to the parties regarding the scope of the issues and the focus of discovery. The stipulation for early neutral evaluation should contain the amounts each party agrees to pay to compensate the evaluator.

## **V. PROPOSED AMENDMENTS TO STATUTES**

**330.2028 Examination of defendant; consultation with counsel  
report; opinions**

Sec. 1028. (1) When the defendant is ordered to undergo an examination pursuant to section 1026, the center or other facility shall, for the purpose of gathering psychiatric and other information pertinent to the issue of the incompetence of the defendant to stand trial, examine the defendant and consult with defense counsel, and may consult with the prosecutor or other persons. Defense counsel shall make himself available for consultation with the center or other facility. The examination shall be performed, defense counsel consulted, and a written report submitted to the court, prosecuting attorney, and defense counsel within ~~60~~ 28 days of the date of the order.

(2) - (3) [Unchanged.]

**330.2030 Appearance; hearing; evidence; medication;  
determination**

Sec. 1030. (1) Upon receipt of the written report, the court shall cause the defendant to appear in court and shall hold a hearing within ~~5~~ 7 days or upon the conclusion of the case, proceeding, or other matter then before it, whichever is sooner, unless the defense or prosecution for good cause requests a delay for a reasonable time.

(2) - (4) [Unchanged.]

**330.2050 Commitment; examination; report; petition;  
hearing; disposition**

Sec. 1050. (1) The court shall immediately commit any person who is acquitted of a criminal charge by reason of insanity to the custody of the center for forensic psychiatry, for a period not to exceed ~~60~~ 28 days. The court shall forward to the center a full report, in the form of a settled record, of the facts concerning the crime which the patient was found to have committed but of which he was acquitted by reason of insanity. The center shall thoroughly examine and evaluate the present mental condition of the person in order to reach an opinion on whether the person meets the criteria of a person requiring treatment or for judicial admission set forth in section 401 or 515.

(2) Within the ~~60~~ 28 day period the center shall file a report with the court, prosecuting attorney, and defense counsel. The report shall contain a summary of the crime which the patient committed but of which he was acquitted by reason of insanity and an opinion as to whether the person meets the criteria of a person

requiring treatment or for judicial admission as defined by section 401 or 515, and the facts upon which the opinion is based. If the opinion stated is that the person is a person requiring treatment, the report shall be accompanied by certificates from 2 physicians, at least 1 of whom shall be a psychiatrist, which conform to the requirements of section 400(j).

(3) - (5) [Unchanged.]

**552.9f Same; taking of testimony, minor children; perpetuating testimony; nonresident defendant, resident of plaintiff**

Sec. 9f. No proofs of testimony shall be taken in any case for divorce until the expiration of 60 days from the time of filing the bill of complaint, except where the cause for divorce is desertion, or when the testimony is taken conditionally for the purpose of perpetuating such testimony. ~~In every case where there are dependent minor children under the age of 18 years, no proofs of testimony shall be taken in such cases for divorce until the expiration of 6 months from the day the bill of complaint is filed. In cases of unusual hardship or such compelling necessity as shall appeal to the conscience of the court, upon petition and proper showing, it may take testimony at any time after the expiration of 60 days from the time of filing the bill of complaint.~~ Testimony in any case for divorce may be taken conditionally at any time for the purpose of perpetuating such testimony. When the defendant in any case for divorce is not domiciled in this state at the time of commencing the suit or shall not have been domiciled herein at the time the cause for divorce arose, before any decree of divorce shall be granted the complainant must prove that the parties have actually lived and cohabited together as husband and wife within this state, or that the complainant has in good faith resided in this state for 1 year immediately preceding the filing of the bill of complaint for divorce.

**552.507 Referee; designation; powers; transcripts; de novo review**

Sec. 7 (1) [Unchanged.]

(2) (a) - (d) [Unchanged.]

(e) Accept a voluntary acknowledge of support liability, and review and make a recommendation to the court concerning a stipulated agreement to pay support. He; testimony and take proofs of a pro confesso petition for the granting of a divorce.

(f) [Unchanged.]

(3) - (5) [Unchanged.]

**600.8302 Equitable jurisdiction; jurisdiction  
concurrent with circuit court**

(1) - (3) [Unchanged.]

(4) In a case where the district court has jurisdiction over the principal amount claimed and a claim for equitable relief is ancillary to that claim, the district court shall have jurisdiction over the equitable claim as well.

**768.20a Insanity defense; notice to court and prosecutor; examinations;  
notice of rebuttal; admissibility of report in evidence**

(1) [Unchanged.]

(2) Upon receipt of a notice of an intention to assert the defense of insanity, a court shall order the defendant to undergo an examination relating to his or her claim of insanity by personnel of the center for forensic psychiatry or by other qualified personnel, as applicable, for a period not to exceed ~~60~~ 28 days from the date of the order. When the defendant is to be held in jail pending trial, the center or the other qualified personnel may perform the examination in the jail, or may notify the sheriff to transport the defendant to the center or facility used by the qualified personnel for the examination, and the sheriff shall return the defendant to the jail upon completion of the examination. When the defendant is at liberty pending trial, on bail or otherwise, the defendant shall make himself or herself available for the examination at the place and time established by the center or the other qualified personnel. If the defendant, after being notified of the place and time of the examination, fails to make himself or herself available for the examination, the court may, without a hearing, order his or her commitment to the center.

(3) - (9) [Unchanged.]

**VI. RECOMMENDATIONS TO THE  
SUPREME COURT**

The Committee presents these recommendations to the Supreme Court for its consideration in drafting new policy.

1. Appoint an appropriate body to oversee implementation of the work of the Caseflow Management Coordinating Committee and to review necessary court rule and statutory changes on an ongoing basis.
2. Encourage the trial courts to actively embrace the concept of One Court of Justice, by working with one another and willingly serving as visiting judges in other courts.
3. Establish a policy for scheduling conflicts between State and Federal Courts by scheduling this issue on the agenda for the next meeting with the Federal judges from the Eastern and Western Districts.
4. Encourage the drafting of legislation to provide that whenever a judge dies, retires, resigns or is removed from office, the Supreme Court assign a visiting judge to temporarily serve in that court until the vacancy is filled. The judge should be a former judge or justice who was elected and served as a judge, not currently holding office. The visiting judge should be compensated in the same manner as the presiding judge.
5. Impose sanctions for judges who fail to submit all required State Court Administrative Office reports or comply with the reporting requirements.
6. Encourage the use of settlement weeks by trial courts as a delay reduction technique.

**VII. RECOMMENDATIONS TO THE STATE  
COURT ADMINISTRATIVE OFFICE**

The Committee recommends that the State Court Administrative Office, with the concurrence and support of the Supreme Court, should:

1. Develop time guidelines for the Court of Appeals and the Supreme Court.
2. Audit and evaluate individual circuit court reports, on a quarterly basis, to increase compliance and to target management problems.
3. Provide an analysis of the pending caseload data that is currently submitted in the Circuit Court Caseload Report enabling comparison between circuit courts.
4. Require that circuit courts maintain their caseload reports, at the local level, on a per-judge basis and make those reports available to the State Court Administrative Office, upon request. Incorporate this requirement in the Chief Judge Rule - MCR 8.110.
5. Develop a system for district court users, similar to the system developed by the Judicial Data Center for circuit courts for tracking of pending cases' age.
6. Provide a more detailed breakdown of line 120 "dispositions" on the Circuit Court Caseload Report for internal use by courts.
7. Provide forms, through its established forms development and approval process, for early conference orders similar to those attached in Appendix B.
8. Revise the MCR 6.109 Report (SCAO 26) form currently in use as reflected in the draft forms SCAO 26 and SCAO 26a, developed by the Committee, as shown in Appendix C.
9. Refer the proposed 6.109 report to the appropriate forms Committees in order to update the rule and the forms to reflect the Time Guidelines as approved by the Supreme Court.
10. Further explore and study the following concepts:
  - A. A trial procedures checklist.
  - B. Greater use of depositions to reduce perfunctory or repetitive testimony.
  - C. The concept of "high-low" dollar figures for civil cases.
  - D. The use of "multiple jury selection."

## **VIII. RECOMMENDATIONS TO TRIAL COURTS**

The Committee recommends that all Michigan trial courts, with the concurrence and support of the Supreme Court, should:

1. Establish local bench/bar committees presided over by the chief judge of each circuit, district and probate court to develop procedures to assist the courts in attaining full compliance with the Time Guidelines.
2. Consider using early conference orders, similar to those attached in Appendix B, to establish dates for case activity.
3. Post adjournments on a master calendar, along with the name of each party requesting an adjournment.
4. Use telephone conferencing as much as possible for status and motion conferences, and such other proceedings as the court deems necessary.
5. Allow physicians' certified lab reports of blood test results in evidence, in lieu of expert testimony, unless objected to by a party.

## **APPENDIX A**

### **SUMMARY OF COMMENTS RECEIVED REGARDING PROPOSED ADMINISTRATIVE ORDER 1986-1 AND RESPONSE BY CASEFLOW MANAGEMENT COORDINATING COMMITTEE**

The members of the Time Guidelines Subcommittee of the Caseflow Management Coordinating Committee met on January 26, 1987 to review responses received from Michigan Bar members to proposed Administrative Order 1986-1, Proposed Time Guidelines for Case Processing in Michigan's Trial Courts. Included with the comments for the Subcommittee's consideration were recommendations received from several trial court judges. This report reflects the comments and recommendations of the Time Guidelines Subcommittee to the responses and suggestions received. The Subcommittee's recommendations appear in bold type face.

First, as a general response, the Subcommittee wished to emphasize that the Time Guidelines are designed to be an optimum goal for Michigan's trial courts. They are intended to apply to the typical 98% of cases and allow for additional time that the extraordinarily complex cases may require. The purpose of the Guidelines is neither to embarrass nor to criticize judges, but to best serve the interests of the public.

#### A. Summary of General Comments.

One Michigan Trial judge submitted that 100% compliance with the Guidelines is not feasible and that any report on a particular judge should be accompanied by the standard of compliance available throughout the State.

The Time Guidelines Subcommittee agrees that basic fairness requires that any figures reported regarding compliance with the Guidelines should include state-wide compliance information. The Preamble to the Time Guidelines specifies that they shall not be used as a punitive device nor shall they form a basis for disciplinary proceedings against a lawyer or judge. Further, they shall not result in a lawsuit being dismissed for failure to comply with the Guidelines unless otherwise provided for in the Michigan Court Rules.

Consideration should be given to the court's inability to control the responses of non-court agencies, such as the Forensic Center and mental health agencies, to its needs.

The Caseflow Management Coordinating Committee has formulated recommendations to reduce statutory time provisions for forensic reporting. Beyond this, the Subcommittee felt that it would be impossible for the Guidelines to address all potential delays, caused by non-court agencies, in processing cases.

Throughout the Time Guidelines, change the word "continuance(s)" to "adjournment(s)" to be consistent with the Michigan Court Rules.

**The Subcommittee supports this recommendation and changes have been made in the proposed Administrative Order.**

The Guidelines for criminal actions do not define the meaning of the phrase "adjudicated or otherwise concluded", for the purpose of measuring compliance.

**The Subcommittee recommends that the date adjudicated or otherwise concluded be the date of conviction or acquittal as opposed to the date of sentence.**

How will understaffed courts, with manual case processing systems be able to comply with the proposed Time Guidelines?

The National Center for State Courts has studied the concern that inadequate resources are a cause for delay, and has laid to rest the notion that the basic cause of court delay is insufficient numbers of judges, lawyers, clerks, and so on. The consistent results of their research revealed that massive infusion of judges and staff was not a cure for delay and the successful delay reduction programs examined were accomplished with existing resources. A lack of resources can be a cause for delay, but most of the time it is not.

#### **B. Summary of Comments Regarding Domestic Relations Actions.**

The Department of Social Services, advised that to comport with federal timeliness standards and avoid the possibility of losing millions of dollars in federal funding, the Guidelines for Divorce With Children should be expanded to require entry of temporary support orders in 90% of such cases within three months, 98% within six months and 100% within twelve months. Further, to be consistent with the federal timeliness guidelines for responding to URESA cases, the standard of three months rather than 91 days for concluding 90% of the cases should be used. Finally, the Guidelines should be clarified to show whether they apply only to support order establishment or both establishment and enforcement (e.g., dispositions of petitions for liens).

**The Time Guidelines are not intended to establish goals for separate interim support orders. The 91 day provision was used to comply with Michigan Court Rule time specifications as it is divisible by seven.**

The recommendation that 90% of all divorce cases without children be concluded within 91 days does not allow enough time to obtain service, allow an answer, set a pretrial and set a trial date. The time should be extended to 4 months.

The studies completed thus far in the pilot courts indicate that the Time Guidelines provide adequate time as service is made and answers filed very early in the life of a divorce case. Pretrials are not mandated in these cases, and the experience of many Subcommittee members shows that the majority of them settle with little judicial involvement.

**C. Summary of Comments Regarding Probate Court Guidelines.**

While disposing of 75% of all contested probate matters in 6 months seems attainable, the requirement that 90% be concluded in 9 months and 100% in 12 months is unrealistic because of the considerable amount of discovery time needed to depose physicians or other health care personnel.

Will contests are usually "at issue" shortly after an estate is opened in the probate court. Frequently, the contestant wants to defer any discovery proceedings or trial until other matters are first resolved, such as contests regarding joint accounts held by the decedent and another person. Until this type of matter is decided, the proponents and objectors to a will put the matter "on the back burner". There is no point in going ahead with discovery and making other preparations for a will contest if there will be minimal assets to distribute from the decedent's estate.

The Subcommittee amended the Time Guidelines in Section III (A)(2), Probate Proceedings by adding the following to the end of the sentence:

**"except for individual cases in which the court determines exceptional circumstances exist and for which a continuing review should occur".**

**D. Summary of Comments Regarding District Court Guidelines.**

When a case is removed from circuit to district court, which Time Guidelines should apply, and when should the time begin to run?

The Subcommittee amended the proposed district court Guidelines so that the time should commence when the case is received by the district court.

There is a lack of consistency in the wording of the Summary Civil and the General Civil Proceedings Sections.

The Subcommittee amended the proposed Time Guidelines, at the end of the third line of Section III (B) (1) (b), Summary Civil, to read:

**"..... settled, tried or otherwise concluded..."**

## E. Summary of comments regarding General Civil Actions.

### 1. Court control over the pace of litigation.

The preamble to the Guidelines should not analogize the processing of lawsuits to a parts supply system in the auto industry as lawsuits are highly individualized and not susceptible to production line methods.

The analogy was intended to emphasize, that much like the auto manufacturing industry, the trial courts must concern themselves not only with dispensing the highest quality of justice, but they must do so in an expeditious manner to achieve public satisfaction with their product. The Time Guidelines Subcommittee would be happy to rewrite the Preamble should the Court desire.

The Caseflow Management Coordinating Committee ignores the fact that nearly every civil case is a private dispute between private parties making use of public forum to resolve their dispute. It would seem that agreement of the parties, through consultation with their lawyers, should be sufficient cause for delay since the court has no inherent interest in the pace of the case other than having its computerized statistics look good. The entire tone of the proposed Order suggests a belief that the management of the court docket rather than the particular results of the individual cases defines justice.

There is clear evidence of concern about delay, as proven by the results of the research done for the Citizens' Commission to Improve Michigan Courts. Of the citizens polled, 80% felt that court cases take too long. The Subcommittee agrees that most arguments addressed against controlling delay are aimed at imagined inroads on due process of law. It is, however, a much greater denial of due process to allow memories to fade and become distorted by repeatedly postponing hearings.<sup>2</sup>

Studies have shown that the court has been most often cited as the cause of delay.<sup>3</sup> American Bar Association President Eugene C. Thomas has written that many Americans derive their impression of the law, judges and lawyers from their perception of the court.<sup>4</sup> The Caseflow Management Coordinating Committee subscribes to a quote from Alfred P. Murrah: "While the case is in the hands of the lawyers, before it is filed in the court, it is their business—but after it reaches the court, it is the public's business, and it is the duty of all to see to it that it is moved along to final disposition".

Section V (B)(2), requiring that requests for continuances be endorsed in writing by the litigant implies that the attorney is not acting in the best interest of the litigant, or with his or her concurrence. Problems are caused for attorneys who are unable to contact their clients. Should the request for continuance be signed by the insured, or the insurance carrier who has retained the attorney and would be paying any judgment or settlement?

The Citizens' Commission To Improve Michigan Courts Report, asked the Michigan Supreme Court to direct that, where a postponement is necessary, a statement of the reason for the postponement be sent to all parties, not just the lawyers. Experiments have been conducted which required the client to join in all formal motions for postponement of actions. The results disclosed that this requirement, when vigorously enforced, universally halved the number of requests for postponement. <sup>5</sup>

2. Times proposed for completing civil cases.

The complicated civil case should be treated differently in the Time Guidelines as case preparation, such as identifying manufacturers of component parts or complex testing procedures necessary to determine underground waterflow, source of contamination, etc., involves a significant amount of time. Twelve months to complete 90% of all civil cases is unrealistic.

It is impossible to run a practice having cases of any complexity whatsoever, and have each case ready for trial within one year of their filing. No civil case of any complexity should be required to go to trial for 24 months after filing, with a minimum of 18 months to conduct discovery.

Under Section III (B)(1)(a), regarding General Civil actions in district court, the requirement that 90% of all civil cases be concluded within six months is totally unrealistic. Although district court cases involve controversies of less money, they are often as complex and as important to the client.

The Time Guidelines are proposed for the majority of cases and do allow flexibility for unusually complex actions by providing exceptions for "individual cases in which the court determines exceptional circumstances exist and for which a continuing review should occur".

The Civil Delay Reduction Project which was implemented in Maricopa County (Phoenix), Arizona, set most civil cases for trial within nine to 12 months of filing, unless good cause for a longer period of time was shown. While the program met with some problems, once attorneys were familiar with the theory and practice, the system generally met its goals. Attorneys favored the project because their clients were benefited when most continuances were eliminated and most of their cases were finished in a year. Attorneys found that the scheduling of witnesses was facilitated as early notification to witnesses, especially experts, of trial dates along with a reduction in the rescheduling of trials, significantly diminished witness hostility. Lawyers were more diligent, as most found they had to manage their files in a more comprehensive and orderly manner to meet expedited pretrial discovery, and trial preparation deadlines. Finally, judges were found to cooperate with good cause requests for extensions of discovery periods or trial dates. <sup>6</sup>

### 3. Defense attorney's ability to prepare.

The practical effects of the proposal will place severe and unreasonable time constraints on the defense to complete discovery and prepare for trial.

If unreasonable time constraints impose a risk of missing something, every file will get frontal assault, i.e., requests for interrogatories, admissions, production of documents, etc., all at once, which may not be necessary for many cases. This will increase the cost of defending a claim.

The proposed one-year limitation for the resolution of most civil lawsuits will create a rush-to-judgment atmosphere. This will penalize the defendants in virtually every personal injury case. Plaintiffs have three years to prepare a case.

The general principal of the proposal is that "any elapsed time other than reasonably required for pleadings, discovery and court events is unacceptable and should be eliminated." Defense investigation and preparing may include identifying, locating and contacting witnesses, viewing and/or photographing the scene, identifying, locating and obtaining documents, and other matters which may not be considered "pleadings, discovery, and court events."

The Time Guidelines Subcommittee submits that the object of court control over the pace of litigation is to control waiting time, not the time necessary to prepare and present matters. Whether adequate preparation time has been allowed has always been a ground for appeal as an abuse of discretion.<sup>7</sup> "The goal of good judicial case management is to help all participants in the process understand the dispute as clearly as possible, focus on what is central to it, develop expeditiously the information needed to resolve it, and either facilitate a negotiated disposition or deliver up the matter promptly and tidily to a trial court."<sup>8</sup>

The basis for the Time Guidelines set forth in Administrative Order 1986-1 are the goals adopted by the State Trial Courts Administration Committee of the Michigan Bar, the Representative Assembly of the Michigan Bar, the Michigan Judges Association, the Michigan District Judges Association and the Michigan Association of Circuit Court Administrators. The Guidelines along with the general principles and essential elements necessary to reduce delay were modeled after standards set forth by the American Bar Association National Conference of State Trial Judges in 1984.

As early as 1981, the Defense Research Institute took the position that attorneys must endeavor to arrive at settlements as soon as reasonably possible and to avoid postponing settlements as these early settlements benefit not only individual disputants but the court system itself.<sup>9</sup> Further, the civil defense bar should look to the judiciary for leadership and direction as "the judiciary has primary responsibility for effective, efficient operation of the system of justice."<sup>10</sup> The courts share with individual attorneys responsibility for caseflow. Administrative practices and rules of procedure which leave entirely in the hands of the attorneys of record the responsibility for case scheduling should be changed, as necessary, to provide for judicial supervision of case movement.<sup>11</sup>

The collective judgment of the Defense Trial Lawyers' Task Force on Litigation Cost Containment, was that these earlier propositions were still valid in 1985.<sup>12</sup> One of its specific goals was to reduce litigation costs by seeking the cooperation of the judiciary in taking a more active role in case management. The Task Force associated itself with the view that a case is the judge's case and the judge determines when and how it shall move forward.

The Time Guidelines Recommended for Case Processing in Michigan's Trial Courts represent an effort on the part of the judiciary to fix the responsibility for implementation of modern management techniques squarely upon the court. They are attainable, as some Michigan judges with heavy caseloads are already meeting the Time Guidelines.

## FOOTNOTES

1. Friesen, Ernest C. "Cures For Court Congestion". The Judges Journal. (Winter, 1984, Volume 23, Number 1).
2. Friesen.
3. Connolly, Paul R. J. and Sandra Smith. "The Litigant's Perspective on Delay: Waiting for the Dough". The Justice System Journal. (Winter, 1983, Volume 8/3)
4. Lawyers Conference Task Force on Reduction of Litigation Cost and Delay (1986) Defeating Delay. Chicago, IL: American Bar Association.
5. Friesen.
6. Myers, Robert D. "We Know What's In It for Judges, What's In It for Lawyers?". The Judges Journal. (Winter, 1984, Volume 23, Number 1).
7. Friesen.
8. Brazil, Wayne D. "Case Management: The Panacea Has Its Side Effects" The Judges Journal. (Fall, 1985, Volume 24, No. 4).
9. Administration of Civil Justice Position Paper, Defense Research Institute (1981).
10. Administration of Civil Justice.
11. Administration of Civil Justice.
12. The Defense Trial Lawyers' Task Force On Litigation Cost Containment, Defense Research Institute (1985).

Nationally, the defense bar has taken stands on delay reduction and court control over the pace of litigation. The Defense Trial Lawyers' Task Force on Litigation Cost Containment was created in 1983. It represented the combined efforts of the International Association of Insurance Counsel, the Association of Insurance Attorneys, the Defense Research Institute and the Federation of Insurance Counsel, to "counter the overwhelming cost factors of the judicial system which are causing a constant assault upon and erosion of the system".

## **APPENDIX B**

### **SAMPLE EARLY CONFERENCE FORMS**

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

Civil Action  
No. \_\_\_\_\_

\_\_\_\_\_  
CALENDAR CONFERENCE ORDER

At a session of said Court, held in the  
Court House Tower, City of Pontiac, County of  
Oakland, State of Michigan, on the \_\_\_\_\_  
day of \_\_\_\_\_, 19\_\_.

PRESENT: HONORABLE HILDA R. GAGE  
Circuit Court Judge

This matter having come before the Court for a calendar  
conference and the parties, through their respective counsel having  
been present and heard, and the Court being fully advised on the  
premises;

IT IS HEREBY ORDERED that the within cause shall be set for  
mediation on \_\_\_\_\_.

IT IS FURTHER ORDERED that the list of witnesses for each  
party shall be submitted to opposing counsel and the Court not  
later than \_\_\_\_\_.

IT IS FURTHER ORDERED that discovery shall be completed by  
\_\_\_\_\_.

IT IS FURTHER ORDERED that the within cause of action shall  
be set for trial the week of \_\_\_\_\_.

IT IS FURTHER ORDERED that all depositions to be used at  
trial shall be purged not later than two weeks prior to trial or  
the objections shall be deemed to have been waived.

IT IS FURTHER ORDERED that the appearance of counsel upon a  
pleading shall be deemed to be the appearance of every other member  
of his/her law firm at the mediation or trial. No adjournments of  
the mediation or trial shall be allowed.

\_\_\_\_\_  
HILDA R. GAGE  
Circuit Court Judge

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM

Plaintiff(s),

SCHEDULING CONFERENCE ORDER

v

Docket No. \_\_\_\_\_

Defendant(s).  
\_\_\_\_\_ /

Present were:

\_\_\_\_\_

\_\_\_\_\_

Attorney for \_\_\_\_\_

Attorney for \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Attorney for \_\_\_\_\_

Attorney for \_\_\_\_\_

IT IS HEREBY ORDERED:

1. \_\_\_\_\_ Discovery shall be completed on or before the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_. No additional discovery will be permitted thereafter except upon motion for good cause shown.
2. \_\_\_\_\_ Names of all witnesses shall be exchanged no later than the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, except \_\_\_\_\_  
\_\_\_\_\_ Witnesses not so named shall not be permitted to testify except upon motion for good cause shown.
3. \_\_\_\_\_ All amendments to pleadings or amended pleadings must be filed on or before the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.  
\_\_\_\_\_ No amendments to pleadings or amended pleadings are required.
4. \_\_\_\_\_ All motions on the pleadings must be filed and heard on or before the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.  
\_\_\_\_\_ No motions on the pleadings are required.
5. \_\_\_\_\_ This matter may be set for mediation after \_\_\_\_\_, 19\_\_\_\_. Business \_\_\_\_\_ Tort \_\_\_\_\_
6. \_\_\_\_\_ Trial may be scheduled at any time after \_\_\_\_\_, 19\_\_\_\_, with Pretrial to precede at a date to be set by the Assignment Clerk: \_\_\_\_\_ in Chambers  
\_\_\_\_\_ by conference telephone call to be arranged by Plaintiff
7. \_\_\_\_\_ Counsel will be expected to be prepared to discuss settlement, trial procedures, proposed jury instructions, if applicable, and use of depositions and exhibits.
8. \_\_\_\_\_ Exhibits not exchanged and marked at the conclusion of the Pretrial Conference will not be admitted into evidence except upon motion for good cause shown.

There will be no extension of any deadline or date established in this Order by stipulation of the parties.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Michael G. Harrison  
Circuit Judge

Attorney for \_\_\_\_\_

Attorney for \_\_\_\_\_

Attorney for \_\_\_\_\_

Attorney for \_\_\_\_\_

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

\_\_\_\_\_  
Plaintiff,

-vs-

Case No: \_\_\_\_\_

Date Suit Filed: \_\_\_\_\_

\_\_\_\_\_  
Defendant.

CALENDAR CONFERENCE ORDER

At a session of the said Court held in the  
City of Pontiac, County and State aforesaid,  
on the \_\_\_\_ day of \_\_\_\_\_, A.D., 1986.

PRESENT: HONORABLE DAVID F. BRECK, CIRCUIT JUDGE

This matter having come on for a calendar conference and the parties, through their respective counsel, having been present and heard, and the Court being fully advised in the premises:

IT IS HEREBY ORDERED that all discovery shall be completed by \_\_\_\_\_.

IT IS FURTHER ORDERED that the lists of witnesses and exhibits shall be submitted to opposing counsel and the Court not later than \_\_\_\_\_.

IT IS FURTHER ORDERED that the within cause shall be set for mediation in the month of \_\_\_\_\_.

IT IS FURTHER ORDERED that the within cause of action shall be set for trial on the week of \_\_\_\_\_.

IT IS FURTHER ORDERED that all pretrial motions (except motions in limine) together with all supporting documents shall be filed and heard by the Court before \_\_\_\_\_.

IT IS FURTHER ORDERED that all depositions to be used at trial shall be purged no later than two weeks prior to trial or the objections shall be deemed to be waived.

IT IS FURTHER ORDERED that in jury cases, request for instructions shall be submitted in writing to the Court at the commencement of the trial.

IT IS FURTHER ORDERED that the appearance of counsel upon a pleading shall be deemed to be the appearance of every member of the firm. Such appearance shall require the presence of either the attorney who files the pleading or a member of his/her firm at the mediation or trial. NO ADJOURNMENTS OF THE MEDIATION OR TRIAL SHALL BE ALLOWED.

IT IS FURTHER ORDERED that the attorneys shall inform their clients of alternative means of dispute resolution, (i.e. binding arbitration) and if this case does not settle after mediation, and if the trial will take more than seven (7) days, the attorneys must so advise the Court, and at that time a Summary Jury Trial shall be considered.

APPROVED:

\_\_\_\_\_  
\_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
DAVID F. BRECK, CIRCUIT JUDGE

STATE OF MICHIGAN  
In The Circuit Court For The County of Muskegon

\_\_\_\_\_/ Court File No: \_\_\_\_\_  
vs.

\_\_\_\_\_/ ORDER AND NOTICE TO MEDIATION,  
PRE-TRIAL SETTLEMENT CONFERENCE,  
AND TRIAL

At a session of the 14th Judicial Circuit  
Court held on the \_\_\_\_\_ day of \_\_\_\_\_,  
19\_\_\_\_\_.

PRESENT: The Honorable Michael E. Kobza

IT IS HEREBY ORDERED:

1. Mediation will be held \_\_\_\_\_  
at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon.
2. The panel will consist of \_\_\_\_\_,  
\_\_\_\_\_, and \_\_\_\_\_.
3. A Pre-Trial Settlement Conference will be held on  
\_\_\_\_\_, at \_\_\_\_\_ o'clock  
in the \_\_\_\_\_ noon.
4. Trial is scheduled as a back-up on \_\_\_\_\_,  
\_\_\_\_\_,  
198\_\_\_, commencing at 8:45 a.m.
5. Trial is scheduled as the NUMBER 1 trial on  
\_\_\_\_\_,  
198\_\_\_; at 8:45 a.m.
6. All exhibits shall be pre-marked.

Dated: \_\_\_\_\_

\_\_\_\_\_  
MICHAEL E. KOBZA  
Circuit Judge

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF MUSKEGON

\_\_\_\_\_  
\_\_\_\_\_

vs.

File No:

Def 1 \_\_\_\_\_  
Def 2 \_\_\_\_\_  
Def 3 \_\_\_\_\_  
Def 4 \_\_\_\_\_

ORDER AND SUMMARY  
OF PRETRIAL

\_\_\_\_\_, 19\_\_

A Pretrial in the above cause was held on the above date. Following is the summary of such conference and orders:

EXPERT WITNESSES

1. Plaintiff shall list expert witnesses by \_\_\_\_\_, 198\_\_.

NO EXPERT SHALL BE ALLOWED TO TESTIFY IF NOT NAMED BY THE ABOVE DATE UNLESS THE COURT EXTENDS THE DEADLINE UPON MOTION FILED BEFORE THE DEADLINE.

EXHIBITS

2. All exhibits shall be exchanged by \_\_\_\_\_, 198\_\_.

UNLESS EARLIER REQUESTED UNDER THE MCR. ALL EXHIBITS MUST BE LISTED BY THE ABOVE DATE ON AN EXHIBIT LIST AND FILED WITH COURT, AND A COPY TO OPPOSING COUNSEL. EXHIBITS NOT LISTED ON TIME SHALL BE EXCLUDED, UNLESS SUCH EXHIBITS ARE USED FOR REBUTTAL AT TRIAL AND COULD NOT REASONABLY HAVE BEEN FORESEEN TO BE NECESSARY.

PLEADINGS

3. (A) In Order. . . . .

(B) Amendments to be filed by \_\_\_\_\_, 198\_\_.

MOTIONS

4. (A) Summary Disposition Motions shall be filed by \_\_\_\_\_, 198\_\_.

(B) Motions In Limine shall be filed by \_\_\_\_\_, 198\_\_.

No exhibit or witness's testimony will be excluded at trial unless a successful motion was timely filed; unless the Court determines at trial, for good cause, other than mere admissibility questions, such exhibit or testimony should not be allowed.

(C) Other Motions: \_\_\_\_\_, 198\_\_.

JURY INSTRUCTIONS

5. DUE: \_\_\_\_\_, 198\_\_.

Standard instructions proposed need only be listed by number, with Non-Standard Instructions proposed in the sequence the party desires them read. Non-Standard Instructions shall be attached in full with citations on separate sheets.

THEORY OF CASE

6. DUE: \_\_\_\_\_, 198\_\_.

This shall not exceed 1 page and is intended to be read to the jurors before the jurors are drawn, and if requested and appropriate, with other instructions at the end of the case.

7. TRIAL by  JURY  
 JUDGE

8. TIME: \_\_\_\_\_ days.

The above dates are maximum dealines and if earlier dates are necessary, either party may exercise additional rights of earlier discovery under the court rules, or petition the court for earlier relief. No adjournments shall be allowed except upon petition and order of the Court. The Court shall NOT grant adjournments except for good cause shown.

\_\_\_\_\_  
Honorable Michael E. Kobza  
P16100  
Circuit Judge

I have received a copy of the above.

\_\_\_\_\_  
P-1 Plaintiff's Counsel

\_\_\_\_\_  
D-1 Defense Counsel

\_\_\_\_\_  
P-2 Plaintiff's Counsel

\_\_\_\_\_  
D-2 Defense Counsel

\_\_\_\_\_  
D-3 Defense Counsel

\_\_\_\_\_  
D-4 Defense Counsel

drafted: 12/85  
mlw

S T A T E   O F   M I C H I G A N  
I N T H E   C I R C U I T   C O U R T   F O R   T H E   C O U N T Y   O F   M U S K E G O N

\_\_\_\_\_  
vs.  
\_\_\_\_\_

File No:

\_\_\_\_\_ (Pl/Def)

P R E - T R I A L   S T A T E M E N T

1. Pre-Trial is scheduled for \_\_\_\_\_.
2. I am/represent the Plaintiff/Defendant \_\_\_\_\_.
3. From my standpoint the main issues are: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.
4. Specific legal issues which could be a problem: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.
5. Are all parties necessary joined? \_\_\_\_\_.  
Why not? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.
6. I think the parties may be able to stipulate to the following facts: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

(Have you discussed this with opposing counsel?) \_\_\_\_\_

7. Are there admissions/request for admissions of essential facts in the record?

Yes  
 No

What is admitted? \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

8. Are there problems which could generate requests for delay in meeting the Judge's Standard Timetable attached?  
(Specify which case activity will be difficult to meet)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

9. Other Comments: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

SIGNED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 19 \_\_\_\_\_.

\_\_\_\_\_  
Name (Type)

P-

Address:

Phone:

NOTE: THIS STATEMENT IS TO BE FILLED OUT AND FORWARDED TO THE COURT BEFORE THE PRE-TRIAL WITH A COPY TO OPPOSING COUNSEL.

drafted: 12/85  
mlw

CRIMINAL PRE-TRIAL SUMMARY AND  
CALENDAR, COURT ORDERS

PEOPLE OF THE STATE  
OF MICHIGAN,

VS.

File No:

\_\_\_\_\_

At a session of the Court held on the  
\_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

IT IS ORDERED THAT:

1. People represented by \_\_\_\_\_.
2. Defendant represented by \_\_\_\_\_.
3. Defendant present?       Yes  
    No
4. Will trial by jury be waived?       Yes  
    No

Jury Trial must be waived at Pre-Trial, in person,  
before the Court. Waiver must be filed.

5. ALL THE FOLLOWING TYPES OF MOTIONS MUST BE FILED IN 14 DAYS  
BY \_\_\_\_\_, 198\_\_\_\_, OR THE RIGHT OF THE PARTY  
TO FILE SAME WILL BE WAIVED.

Indicate if such motion may be filed:

	YES	NO
A. Motion to Suppress		
(1) Evidence	<input type="checkbox"/>	<input type="checkbox"/>
(2) Identification	<input type="checkbox"/>	<input type="checkbox"/>
(3) Exhibits	<input type="checkbox"/>	<input type="checkbox"/>
(4) Prior Misconduct	<input type="checkbox"/>	<input type="checkbox"/>
(5) Prior Convictions	<input type="checkbox"/>	<input type="checkbox"/>
(6) Other _____	<input type="checkbox"/>	<input type="checkbox"/>

	YES	NO
B. Other Motions		
(1) Amendments	<input type="checkbox"/>	<input type="checkbox"/>
(2) Witness Endorsements	<input type="checkbox"/>	<input type="checkbox"/>
(3) Other _____	<input type="checkbox"/>	<input type="checkbox"/>

6. Is there a Supplemental Information filed?

Note that the Defendant must decide if he/she wants  
(a) a jury trial,  
(b) same or different jury as the jury trying the  
principal case.

ALSO, this Court will try the Supp. Information right after the principal information, if there is a conviction.

7. Will Defendant waive a jury trial on the Supplemental Information?

Yes  
 No

(Note: Waivers must be on the record and a written copy filed with the file).

8. If there is a conviction in the principal case, will Defendant use:

same jury  
 different jury

NOTE: This Court will grant no attorney to withdraw after pre-trial.

9. There will be no adjournments granted, unless required because of the Court having a conflict with the trial of another case.

Any actions required to be taken must be taken within the time period, or the requesting party (including Defendant) will be deemed to WAIVE HIS/HER RIGHT to act.

The Court will NOT accept any reduced pleas more than 7 days AFTER pre-trial, unless the Court will allow for a delayed plea pending the outcome of a motion to be filed.

THIS COURT  will allow  
 will not allow

a plea to be entered more than 7 days from this date.

9. Trial briefs and Jury Instructions are due by \_\_\_\_\_, 19\_\_\_\_. Instructions not found in the Michigan Standard Jury Instructions are to be written out with citations added, and exchanged with opposing counsel. Instructions not requested on time are deemed waived.

10. EXHIBITS:

The parties will introduce the following exhibits:

PROSECUTOR	DEFENDANT
1. _____	1. _____
2. _____	2. _____
3. _____	3. _____
4. _____	4. _____
5. _____	5. _____

PROSECUTOR	DEFENDANT
6. _____	6. _____
7. _____	7. _____
8. _____	8. _____
9. _____	9. _____
10. _____	10. _____

EXHIBITS NOT DISCLOSED AT PRE-TRIAL MAY NOT BE INTRODUCED AT TRIAL.

The persons who sign this Pre-Trial Summary and Order acknowledge they have read the Summary, understand its contents, and have received a copy.

\_\_\_\_\_  
Prosecutor

\_\_\_\_\_  
Defense Counsel

\_\_\_\_\_  
Defense Counsel

ORDER

The above Summary shall become an order of this Court. All time requirements shall be complied with, or the parties shall be deemed to have waived their rights.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
Honorable Michael E. Kobza  
Circuit Judge  
P16100

drafted: 12/85  
mlw

STATE OF MICHIGAN  
IN THE THIRTY-THIRD JUDICIAL CIRCUIT

Plaintiff,

vs.

File No. \_\_\_\_\_

Charlevoix County

Emmet County

Defendant.  
\_\_\_\_\_ /

SCHEDULING CONFERENCE ORDER

At a session of said Court held in the County  
Building, in said County, on the \_\_\_\_\_ day  
of \_\_\_\_\_, 19\_\_\_\_;

Present: HONORABLE RICHARD M. PAJTAS, Circuit Judge.

This matter having come before the Court for a scheduling  
conference and the parties, through their respective counsel  
having been heard, and the Court being fully advised in the  
premises;

IT IS HEREBY ORDERED:

PLEADINGS ARE:

Satisfactory, including joinder of parties  
and claims.

Unsatisfactory

Amendments shall be filed by \_\_\_\_\_.

WITNESSES AND EXHIBITS:

Counsel shall file and exchange a list of witnesses and exhibits no later than \_\_\_\_\_.

Special Provisions: \_\_\_\_\_

Failure to comply with this paragraph will bar the introduction of the evidence or testimony at trial.

DISCOVERY:

All discovery shall conclude on \_\_\_\_\_

MOTIONS:

All motions shall be HEARD PRIOR to the day of the final pretrial/settlement conference and shall strictly comply with MCR 2.119, including responses; otherwise, they will be considered untimely. Working copies of all motions and briefs in support of and in opposition to shall be forwarded to Honorable Richard M. Pajtas, Circuit Judge, City-County Building, Petoskey, Michigan 49770.

MEDIATION:

- Mediation is inappropriate in this case
- Mediation completed on \_\_\_\_\_.
- Mediation shall be scheduled for \_\_\_\_\_ at \_\_\_\_\_ .m. A mediation notice will be forwarded by the Mediation Clerk.
- Special Provisions: \_\_\_\_\_

FINAL PRETRIAL/SETTLEMENT CONFERENCE:

- Waived: Trial brief due \_\_\_\_\_
- Scheduled for \_\_\_\_\_ at \_\_\_\_\_ .m.
- Location: Petoskey
- Location: Charlevoix

At the Conference Counsel will tender to the Court their TRIAL BRIEFS, and if trial by jury, written THEORIES AND CLAIMS AND FULL TEXT JURY INSTRUCTIONS. Settlement will be fully explored at this conference. TRIAL counsel and clients SHALL be present. Insurance company representatives with ultimate authority shall be immediately available by telephone as long as necessary. Failure to comply with this paragraph may result in a default or dismissal against the offending party or attorney.

TRIAL DATE:

Estimated duration of trial: \_\_\_\_\_ days

JURY

Non-Jury

Set for \_\_\_\_\_ at \_\_\_\_\_ .m.

MISCELLANEOUS PROVISIONS:

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---

IT IS FURTHER ORDERED that all depositions shall be purged not later than two (2) weeks prior to trial or the objections shall be deemed to have been waived.

IT IS FURTHER ORDERED that No adjournments shall be allowed. Any objections to this Order shall be filed within seven (7) days from the date hereof.

Date Signed: \_\_\_\_\_

\_\_\_\_\_  
RICHARD M. PAJTAS  
Circuit Judge

xc:

STATE OF MICHIGAN  
IN THE THIRTY-THIRD JUDICIAL CIRCUIT

PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff,

vs.

File No. \_\_\_\_\_

Charlevoix County

Emmet County

Defendant.  
\_\_\_\_\_ /

CRIMINAL  
SCHEDULING CONFERENCE ORDER

At a session of said Court held in the County  
Building, in said County, on the \_\_\_\_\_ day  
of \_\_\_\_\_, 19\_\_\_\_;

Present: HONORABLE RICHARD M. PAJTAS, Circuit Judge

This matter having come on before the Court for a  
scheduling conference and the parties, through their  
respective counsel having been heard, and the Court being  
fully advised in the premises;

IT IS HEREBY ORDERED:

FORENSIC CENTER REFERRAL:

- Inapplicable
- Criminal Responsibility
- Competency to stand trial.

Order of referral entered on: \_\_\_\_\_

Special Provisions: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

TRIAL DATE:

Estimated duration of trial: \_\_\_\_\_ days

JURY

Non-Jury

Set for \_\_\_\_\_ at \_\_\_\_\_ .M.

MOTIONS:

All motions shall be heard not later than \_\_\_\_\_  
\_\_\_\_\_. Any motions not heard by such date shall  
be deemed waived in the absence of a showing of good cause  
for such untimeliness.

Motions requiring EVIDENTIARY HEARING shall be  
heard on \_\_\_\_\_ at \_\_\_\_\_ .M.

All parties shall strictly comply with MCR 2.119,  
including responses. Working copies of all motions and  
briefs shall be forwarded to Honorable Richard M. Pajtas,  
Circuit Judge, City County Building, Petoskey, Michigan  
49770.

JURY INSTRUCTIONS:

Not later than three (3) days before jury trial  
counsel shall submit full text jury instructions with title  
page listing the instructions in the order they are  
requested to be given. Copies of CJI will be acceptable.  
Blanks should be filled in and alternative provisions  
stricken so far as possible before trial.

Written theories shall be submitted on the first  
day of trial on letter size paper.

MISCELLANEOUS PROVISIONS:

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IT IS FURTHER ORDER that NO adjournments shall be allowed. Any objections to this Order shall be filed within seven (7) days from the date hereof.

Date Signed: \_\_\_\_\_

\_\_\_\_\_  
RICHARD M. PAJTAS  
CIRCUIT COURT JUDGE

xc:

STATE OF MICHIGAN  
IN THE THIRTY-THIRD JUDICIAL CIRCUIT

Plaintiff,

vs.

File No. \_\_\_\_\_

Charlevoix County

Emmet County

Defendant.  
\_\_\_\_\_ /

DOMESTIC RELATIONS  
SCHEDULING CONFERENCE ORDER

At a session of said Court, held in the County Building, in said County, on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_;

Present: HONORABLE RICHARD M. PAJTAS, Circuit Judge

This matter having come before the Court for a scheduling conference and the parties, through their respective counsel having been heard, and the Court being fully advised in the premises;

IT IS HEREBY ORDERED:

THE ISSUES TO BE DECIDED ARE:

- |   |  |
|---|--|
| <input type="checkbox"/> Custody                    | <input type="checkbox"/> Real Property Division                |
| <input type="checkbox"/> Child support              | <input type="checkbox"/> Pension <input type="checkbox"/> Wife |
| <input type="checkbox"/> Visitation                 | <input type="checkbox"/> Husband                               |
| <input type="checkbox"/> Alimony                    | <input type="checkbox"/> Other _____                           |
| <input type="checkbox"/> Personal Property Division |  |

APPRAISALS:

All necessary appraisals of real and personal

property, including pension values shall be completed in writing and exchanged between parties not later than \_\_\_\_\_.

WITNESSES AND EXHIBITS:

Counsel shall file and exchange a list of witnesses and exhibits not later than \_\_\_\_\_. Failure to comply with this paragraph will bar the introduction of the evidence or testimony at trial.

DISCOVERY:

All discovery shall conclude on \_\_\_\_\_.

TRIAL DATE:

Estimated length of trial \_\_\_\_\_.

Set for \_\_\_\_\_ at \_\_\_\_\_ .m.

TRIAL BRIEF:

SEVEN (7) days before trial both parties shall submit a Trial Brief covering all issues to be decided. If property is involved each party shall submit attached to their Brief the attached SCHEDULE which shall include debts as well as assets. Briefs shall be filed and exchanged and a working copy sent to Honorable Richard M. Pajtas, Circuit Judge, City-County Building, Petoskey, Michigan 49770

MISCELLANEOUS:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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IT IS FURTHER ORDERED that NO adjournments shall be allowed. Any objections to this Order shall be filed within seven (7) days from the date hereof or be deemed waived.

Date Signed: \_\_\_\_\_

\_\_\_\_\_  
RICHARD M. PAJTAS  
Circuit Judge

xc:



## **APPENDIX C**

### **OTHER PROPOSED FORMS**

# MCR 6.109 REPORT

## CIRCUIT COURT/RECORDER'S COURT

"CONTROL OVER THE TRIAL CALENDAR IS VESTED IN THE TRIAL COURT." MCR 6.109(C)

NOTE: These reports are due on the first of each month.

TO: State Court Administrator, c/o Regional Administrator, Region \_\_\_\_\_

FROM: \_\_\_\_\_ Circuit, \_\_\_\_\_ County(ies)

Below is the report of delinquent cases under Michigan Court Rules 1985, 6.109 (Speedy Trial) on the first of \_\_\_\_\_, 198 \_\_\_\_ :

I. The following cases involved periods of time required to be reported under MCR 1985, 6.109.

Cases Reported	Number Reported
A. Felony cases where defendant has been incarcerated more than 6 months.	
B. Felony cases where there has been a delay of 28 days or more between preliminary examination/waiver and arraignment on the information/indictment.	
C. Felony cases where there has been a delay of 6 months between arraignment on the information/indictment and the beginning of the trial.	
TOTAL REPORTED	

II.  There are no cases in this Circuit on the date of this report in which any of the delays required to be reported under MCR 1985, 6.109 exist.

Date \_\_\_\_\_

Chief Judge signature \_\_\_\_\_

Prepared by: \_\_\_\_\_

Court Administrator

# MCR 6.109 REPORT

CIRCUIT COURT/RECORDER'S COURT

"CONTROL OVER THE TRIAL CALENDAR IS VESTED IN THE TRIAL COURT." MCR 6.109(C)

I. The following cases involved periods of time required to be reported under MCR 1985, 6.109.

A. Felony cases where defendant has been incarcerated more than 6 months.

Case No./ Defendant's Name	Judge's Bar No./ Name	Date of Arraign. on Warrant/Compl.	Total Months & Days of Incarceration	REASONS For Delay

B. Felony cases where there has been a delay of 28 days or more between preliminary examination/waiver and arraignment on the information/indictment.

Case No./ Defendant's Name	Judge's Bar No./ Name	Date of Prelim. Exam./Waiver	Date of Arraign. on Inform./Indict.	REASONS For Delay

# MCR 6.109 REPORT

CIRCUIT COURT/RECORDER'S COURT

"CONTROL OVER THE TRIAL CALENDAR IS VESTED IN THE TRIAL COURT." MCR 6.109(C)

C. Felony cases where there has been a delay of 6 months between arraignment on the information/indictment and the beginning of the trial.

Case No./ Defendant's Name	Judge's Bar No./ Name	Date of Arraign. on Inform/Indict.	Adjourned & Current Trial Dates	REASONS For Delay

# MCR 6.109 REPORT

## DISTRICT COURT

"CONTROL OVER THE TRIAL CALENDAR IS VESTED IN THE TRIAL COURT." MCR 6.109(C)

NOTE: These reports are due on the first of each month.

TO: State Court Administrator, c/o Regional Administrator, Region \_\_\_

FROM: \_\_\_ District, \_\_\_\_\_ County(ies)

Below is the report of delinquent cases under Michigan Court Rules 1985, 6.109 (Speedy Trial) on the first of \_\_\_\_\_, 198\_\_ :

I. The following cases involved periods of time required to be reported under MCR 1985, 6.109.

Cases Reported	Number Reported
A. Misdemeanor cases where defendant has been incarcerated more than 28 days.	
B. Felony cases where defendant has been incarcerated more than 6 months.	
C. Misdemeanor cases where there has been a delay of 6 months or more between the date of arraignment on the warrant and complaint and the beginning of the trial.	
TOTAL REPORTED	

II.  There are no cases in this District on the date of this report in which any of the delays required to be reported under MCR 1985, 6.109 exist.

Date \_\_\_\_\_

Chief Judge signature \_\_\_\_\_

Prepared by: \_\_\_\_\_

Court Administrator

# MCR 6.109 REPORT

## DISTRICT COURT

"CONTROL OVER THE TRIAL CALENDAR IS VESTED IN THE TRIAL COURT." MCR 6.109(C)

I. The following cases involved periods of time required to be reported under MCR 1985, 6.109.

A. Misdemeanor cases where defendant has been incarcerated more than 28 days.

Case No./ Defendant's Name	M i s d.	F e l o n y	Judge's Bar No./ Name	Date of Arraign. on Warrant/Compl.	Total Months & Days of Incarceration	REASONS For Delay

B. Felony cases where defendant has been incarcerated more than 6 months.

Case No./ Defendant's Name	Judge's Bar No./ Name	Date of Arraign. of Warrant/Compl.	Adjourned & Current Trial Dates	REASONS For Delay

# MCR 6.109 REPORT

## DISTRICT COURT

"CONTROL OVER THE TRIAL CALENDAR IS VESTED IN THE TRIAL COURT." MCR 6.109(C)

C. Misdemeanor cases where there has been a delay of 6 months or more between the date of arraignment on the warrant and complaint and the beginning of the trial.

(Do not include cases where defendant has failed to appear and a bench warrant or capias has been issued and is still outstanding.)

Case No./ Defendant's Name	Judge's Bar No./ Name	Date of Arraign. on Inform/Indict.	Adjourned & Current Trial Dates	REASONS For Delay