

# CASE MANAGEMENT IN MASSACHUSETTS

## SUPERIOR COURT

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### I. Introduction

Federal Rules of Civil Procedure Rule 1 provides that the Rules should be construed, administered, and employed to secure the "just, speedy, and inexpensive determination of every action and proceeding." Similarly, Massachusetts Rules of Civil Procedure Rule 1 provides that the Rules "shall be construed to secure the just, speedy and inexpensive determination of every action." Like these Rules suggest, the purpose of the civil procedure lies on not only just, but also timely disposition of the dispute to make administration of justice.

Generally speaking, the cases are primarily on the control of each parties under the American civil procedure (adversary system). However, under this adversary system, there is always some possibility that cases get unduly delayed

and the cost gets too expensive to handle.

Thus, there is need to expedite the cases, nevertheless not violating due process of Constitution. For this purpose, many courts both federal and state try to handle bunch of cases by case management system. Under this management system, courts try to get some initiative regarding the process and intervene the process frequently, or sometime mediate the parties throughout the process.

For the federal level, Federal Judicial Center established in 1967 made the Manual for Complex Litigation in 1985. In addition, Congress enacted Civil Justice Reform Act of 1990 to deal with bunch of cases with efficiency and uniformity. Specifically, the Act suggested following principles and guidelines of litigation management and cost and delay reduction: (1) systematic, differential treatment of civil cases, (2) early and ongoing control by a judicial officer, (3) careful and deliberate monitoring to the complex and any other appropriate cases, (4) encouragement of cost-effective discovery through voluntary exchange of information and cooperative discovery devices, (5) good faith effort to reach agreement about discovery disputes, (6) alternative dispute resolution programs.

As for the state level, National Center for State Courts (NCSC) established in 1971 have studied various scope of state

courts to deal with the same problem. Additionally, in 1976, NCSC with the National Conference of Metropolitan Court tried to reduce delay in trial courts and improve the quality of the process.

In this paper, the focus is put on the case management system by the courts to deal with this problem, especially, the effort done by the Massachusetts Superior Courts.

## **II. Case Management Implementation**

### **1. Basic Concept of Case Management - Early and Continuous Intervention by Judges**

Strong judicial commitment is essential to reduce delay and, once achieved, maintain a current docket.<sup>1</sup> Many studies showed that delay is largely caused by the loss of control of judges over the cases. Thus ABA admitted that the court should have an initiative over the case, thereby making the appropriate schedule for the cases in the Standards Relating to Trial Courts. Especially in complex cases, the control over cases by judges is extremely demanded.

This makes it the essential elements for the purpose of case management that trial court should use to manage its cases by supervising and controlling the movement of all cases from the

time of filing of the first documents invoking court jurisdiction throughout the final disposition of the cases.<sup>2</sup> In this regard, many courts demand the notice to the judges when complex cases like antitrust or class action are filed to enable early judicial intervention. It is empirically proved that early case management can reduce the delay or the time needed to the disposition.<sup>3</sup>

## **2. Differential Case Management**

### **a. Differential Case Management**

"Differential case management" (DCM) is a sophisticated means of early case categorization to facilitate individual case management and to move the cases in each category to conclusion with the procedures, informational support, speed, and resources appropriate for the particular category.<sup>4</sup> DCM thus presumes that that for the purpose of expediting cases, every case is designated by some "tracks", and dealt with accordingly. It is also premised that every case is not same, and there should be differences in proper degree of court's intervention to the different types of cases.

Through this system, courts try to find an efficient way to dispose of the many cases, not neglecting the fairness. For example, if all the cases should be put on the demanding

pretrial procedure or long lasting timeline, the easy cases take more time than necessary. In contrast, the complex cases which need more time than average cases do not have enough time because of the limited resources.

The benefits of DCM can be demonstrated as follows: 1) DCM produces cost savings and benefits including personnel and material costs, 2) DCM reduces time to disposition and case backlog, 3) DCM makes improved use of judges' and attorneys' time focusing on harder cases, 4) DCM makes participants more satisfied by effectiveness, and 5) DCM causes Informational development of the court system.<sup>5</sup>

In this regard, in general, DCM is regarded to be more appropriate for the civil cases because: 1) civil cases are not driven by constitutional imperatives such as strict speedy trial rules and in turn largely dedicated on the judicial commitment, 2) by the discovery, court can have more time to sort out cases and place them under appropriate management control, 3) there is no prosecutors who sometimes reflect other point of view for the case management by the judiciary, 4) civil procedure is more structured and deliberate than criminal procedure which enables it to be formed in the formal and predictable rules, and 5) civil cases are relatively easy to categorize because they do not involve as many diverse factors as criminal cases (e.g., prosecutorial priorities,

related conduct of the defendant, defendant's status of custody, defendant's criminal history, etc.).<sup>6</sup>

When the cases are to be designated to one of the tracks, various factors should be taken into consideration, such as nature of cases, complexity, amount in controversy, needed time for discovery, cost of attorney and the like. Accordingly, there should be time standards and deadline set for each actions or motions during the cases pending. Additionally, the court system both personnel and material should insure that it can track the cases as the process proceeds ahead.

To make the system working properly, it is necessary that the case is to be designated as soon as possible after the filing. To be sure, the plaintiff should designate the proper track when he files the suit and the defendant has to inform the court his opinion about the designated track within the reasonable time. As seen above, court system should follow the track by case tracking system, and the court staff should inform the judge, or meet the parties when there is a problem about the time line within the designated time standard.

#### **b. Calendar System**

The ways of assigning cases to judges are mainly divided into two categories: individual calendar system and master calendar system (or somewhat between, hybrid calendar systems).

Individual calendar system means that specific judge deals with a certain case entirely from the filing to disposition. It is sometimes referred as individual assignment system. This system enables judges to perform all the process such as pretrial, discovery and the like, thus making him somewhat familiar to the cases and making him more capable to dealing the cases in merits. However, it cannot well adapt to the changing situation such as abrupt dismiss of the case or arbitration.

In contrast, master calendar system means that specific judge only deals with the certain type of process of a case, thus a handful of judges are engaging the same case. It is sometimes referred as central calendar system. This system makes that different judges engage in different procedure such as motion, pretrial conference and trial. This system enables efficient allocation of judges according to the need and can be well adapting the sudden situations. However, it can cause somewhat irresponsibility of judges to the assigned cases because it is not sure that he will eventually preside the case in trial or not.

As seen above, each calendar system has its benefits and deficiencies. However, under individual calendar system, judges relatively feel responsible to the assigned case. This factor makes it more appropriate when the case such as complex

cases needs intensive intervention of the judges. Thus the federal court recommends that the certain judge deals with the case throughout the proceeding such as pretrial and trial when it is the complex case.<sup>7</sup>

**c. Time Standard.**

For the success of the DCM, it is important to set an appropriate time standard for each type of cases and thereby limit the scope of subsequent motions, discovery and the like.

**III. Case Management in Massachusetts Superior Court**

**1. Overview - Structure and Jurisdiction**

The Superior Court in Massachusetts is a statewide court of general jurisdiction handling both criminal and civil actions. The court's 82 justices sit in 20 courthouses in all 14 counties of the Commonwealth. The Superior Court has original jurisdiction in civil actions over \$25,000.<sup>8</sup> The superior court department is divided into geographic regions. For example, Superior Court for Suffolk County deals with the case from Boston, Winthrop, Chelsea and Revere.

**2. Standing Order 1-88: Time Standards<sup>9</sup>**



**a. Rule-based model - 3 track system**

Massachusetts Superior Court has a Standing Order 1-88 which rules the manner of designating tracks to each cases. All civil actions shall be designated within one of three tracks based upon the nature of the case: Fast Track ("F"), Average Track ("A"), Accelerated Track ("X").<sup>10</sup> Within the meaning of this Standing Order, Massachusetts Superior Court decided to use rule-based model, which put great emphasis on the type of the cases for the purpose of case designations.

**b. Time Standard**

When certain case is designated to one of the tracks, time line for that case is determined accordingly. Thus, every deadline for the process, such as pleadings, service, discovery, pre-trial conferences and the like is set when the complaint is filed.<sup>11</sup>

**c. Possibility of Changing Track**

There is possibility that the initial designation of a case to a particular track is inappropriate or the tracking deadlines are not reasonable. The Standing Order allows the court to authorize the change of the tract in cases where: (1) amendments to the tracking order of a case may be granted upon motion, filed in accordance with Superior Court Rule 9A, and for good cause shown, and (2) all motions to amend a tracking

deadline shall be referred to the attention of the Session Judge for decision. Motions (or oppositions thereto) shall be submitted on the papers, without oral argument. See Standing Order D. Amendments to the Tracking Orders.

If the designated track to a certain case is changed, all time lines change accordingly. Thus, this is distinguishable from the change in delaying or postponing certain process within the same type of track.

#### **d. Characteristics**

Only factor for the purpose of designation of the track is the "type of case." The benefit of this system is that it is determined by an objective factor, thereby reducing the need of resources to make the first designation of the cases. However, for the success of this system, common characteristics of the cases such as complexity and the expected time to disposition should exist within the same type of the cases. But this is not always true thus making some exception or change of the cases is inevitable. In sum, the court should have a specific categorization regarding the type of cases, and appropriate method to deal with some exception or need for change of the tracks.

When individual cases are proven not to be appropriate to the initial designated track, there are multiple ways to deal

with this problem such as by pretrial conference, by motion from the parties, and the like. However, on the one hand, if the pretrial conference convenes after the discovery, there is not much thing for the court to do for efficiently proceeding the cases. On the other hand, it is unlike that each party file a motion for the change of tracks in that after the case filed, they focus on the merits of the case rather than the change of designated track itself.

The other characteristic is about the scope of limitation within the track. Even though there is limitation about the deadline by when the certain action should be done upon the designation of the track, there is no limitation on numbers of witness, numbers of question and the like, which could be significant factor for needed time to dispose the case and the cost for the parties. It seems that such deficiency was one of the reason why the Superior Court proposed civil initiative in 2016, *infra*.

Lastly, there is no individual calendar system in Superior Court. Actually, Superior Court has a kind of hybrid calendar system. Cases are assigned to a specific session not to an individual judge, but judges are rotating in certain time period interval. This system makes a handful of judges to engage the same case.

### **3. Evaluation on the Case Management System of Superior Court**

#### **a. Historical Aspects**

The initial change about the case flow concern came from the court's efforts to reduce civil case backlog and delay in Suffolk County. The first attempt was in 1986, when the Supreme Judicial Court of Massachusetts (SJC) adopted time standards calling for all civil cases filed on or after July 1, 1988 to be completed within two years after filing. In February 1988, the Superior Court adopted 1) Time Standards Standing Order and 2) Time Standards Implementation Plan, designed to respond the Supreme Judicial court's calling.<sup>12</sup>

These orders said "The concept of early and continuous judicial supervision and control is intended to enhance the quality of litigation and ensure that justice is fairly rendered." The standing order at that time established three distinct case tracks which are similar to today's order: X Track (Accelerated Track), F Track (Fast Track) and A Track (Average Track). And the time standards implementation plan set forth the detailed plan including times for court operations, procedures concerning motions, and staffing patterns for each of the counties in the state.<sup>13</sup>

After this reform, the Superior Court has made

significant progress in improving its capacity for effective case management by reducing not only the size of overall caseloads but also the age of its pending civil cases.<sup>14</sup> It showed a steady decrease in the pending civil cases in Suffolk County since the inception of the Time Standards program during 1988 and 1991. As the below table shows, pending cases was decreased by 4,625 cases (32.4% decrease).<sup>15</sup>

**Total Pending Caseload in the Suffolk County Superior Court  
July 1988-December 1991, by Age Intervals**

	0-1 Years	1-2 Years	2-4 Years	Over 4 Years	TOTAL
<b>July 88</b>	5889 41%	2904 20%	3597 25%	1851 13%	14,241 100%
<b>Jan 89</b>	5620 40%	3193 24%	3334 24%	1999 14%	14,146 100%
<b>July 89</b>	4687 33%	3702 26%	3429 25%	2280 16%	14,098 100%
<b>Jan 90</b>	4855 36%	2382 17%	4016 29%	2365 17%	13,618 100%
<b>July 90</b>	5161 44%	1585 14%	3597 30%	1373 12%	11,716 100%
<b>Jan 91</b>	5872 52%	1719 15%	1396 12%	2370 21%	11,357 100%
<b>July 91</b>	6249 60%	1861 18%	602 6%	1676 16%	10,388 100%
<b>Dec 91</b>	6149 64%	1785 19%	709 7%	973 10%	9,616 100%

Source: Office of the Chief Administrative Justice of the Trial Court (OCAJ) Monthly Reports<sup>16</sup>

In addition, there was the decrease in the number of relatively old cases. There was 47% decrease in the number of cases over 4 years old and 80% decrease in the number between 2 and 4 years old.<sup>17</sup> Overall, the number of cases pending over

two years since filing has dropped from 5,448 in July 1988 to 1,682 in December 1991 - 69% decrease.<sup>18</sup>

**Changes in Caseload Size and Age  
July 1988-December 1991**

	0-1 Years	1-2 Years	2-4 Years	Over 4 Years	TOTAL
July 88	5889	2904	3597	1851	14,241
Dec 91	6149	1861	709	973	9,616
Change in Number	+260	-1,043	-2,888	-878	-4,625
Change in Percent	+4%	-36%	-80%	-47%	-32%

Source: OCAJ Monthly Reports<sup>19</sup>

But it is not sure that this improvement solely dedicated to the case management plan. The report analyzed this improvement on the five factors: 1) an automated system which made it possible to do case docketing, 2) education and training including judges, court staff, and members of the practicing bar, 3) newly created senior-level managers such as Regional Coordinator, 4) strengthened authority for the regional administrative justices, and 5) improved management of cases and caseloads in time standard sessions.<sup>20</sup> However, it seems clear that the court's initiative for the time standard was one of the main reason for this improvement.

**b. Ongoing Efforts for Improvement of the Case Management System**

It was not done job. Improving case management system was

still on the move. In August of 2002, the Justices of the SJC established the Monan Visiting Committee (commonly referred to as the "Monan Committee") to assess the managerial practices and policies in the Massachusetts court system and to make recommendations to improve the administration of justice in the Commonwealth.<sup>21</sup> The Monan Committee issued its highly influential report (the "Monan Report") to the SJC in March, 2003.<sup>22</sup> One of the report's recommendation for change was focused on resource allocation and performance measurement and accountability in the Trial Court for more timely and expeditious disposition of cases.<sup>23</sup> Additionally, consistent with the Visiting Committee recommendation that a "high-profile and respected advisory board" be created to advise on the management of the courts, the legislature established the Court Management Advisory Board (CMAB) to advice on the management of the courts in 2003. G.L. c. 211Bm s.6A.

Since 2003, responding to this recommendation, significant progress has been made such as the introduction of time standards and performance metrics.<sup>24</sup> The Trial Court began to implement a number of the measures advanced by the National Center for State Courts.<sup>25</sup> Metrics introduced in 2006 focused on such as timeliness of case flow management including 1) case clearance rates, 2) time to case disposition, 3) age of active pending caseload, and 4) trial date

certainty.<sup>26</sup> This kind of metrics have enabled the Trial Court to identify where delays in justice were occurring, and whether delays had been resolved in an objective manner. In addition, attention to time standards and performance metrics have given a positive cultural change for the Trial Court.<sup>27</sup>

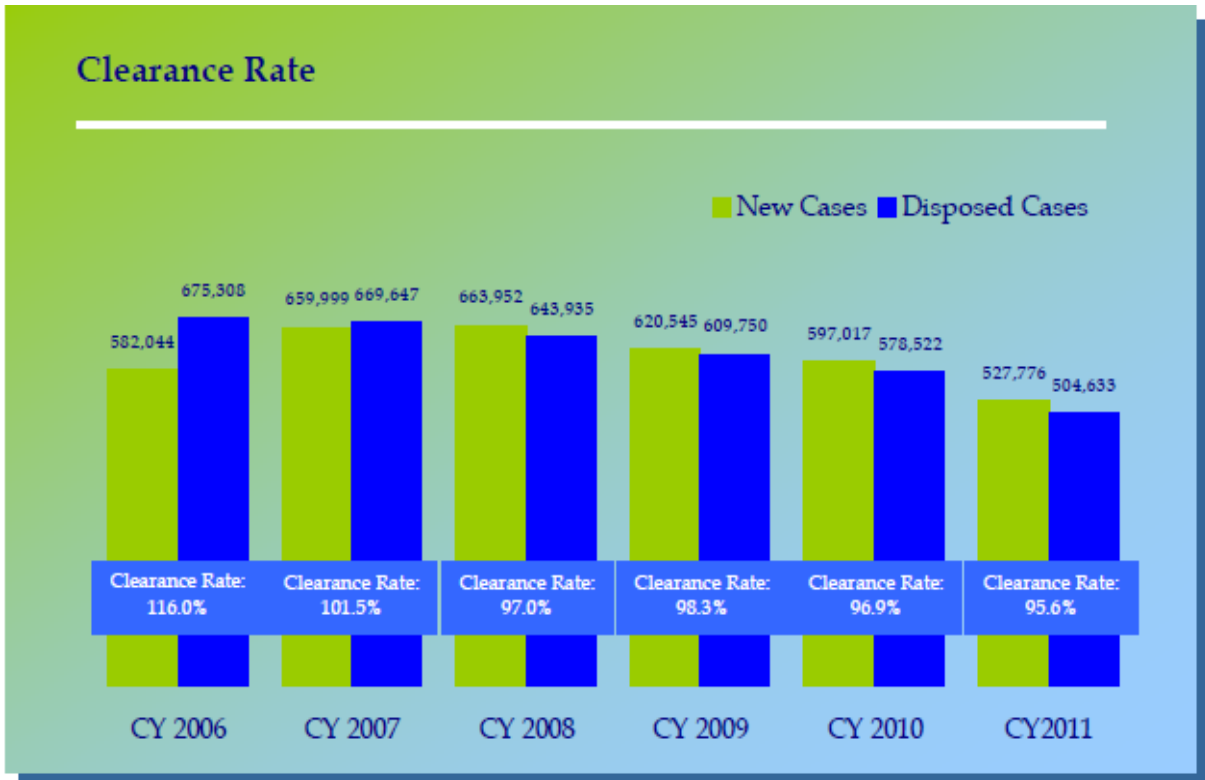
### **c. Recent Statistics in 2011<sup>28</sup>**

#### 1) Using the Court Metrics Report

As seen above, Massachusetts Trial Courts had stated using the court metrics report as a mean of dynamic initiative for enhancing the delivery of quality justice by enabling more effective operation of the Massachusetts Trial Court.<sup>29</sup> 2006 was the first year when this metrics started.<sup>30</sup> 2011 was the six year after the inception of the metrics to monitor the delivery of quality justice throughout the Massachusetts court system.<sup>31</sup> Specifically, it used 'Courtools', a set of performance measures promulgated by the Nation Center for State Courts.<sup>32</sup> It was intended initially to improve the timely and expeditious delivery of justice and quality of justice and to provide a framework for analyzing and managing court operations.<sup>33</sup> As seeing the following metrics, attention should be made to the fact that court metrics report below includes every trial courts in Massachusetts, so was not limited to the Superior Court.



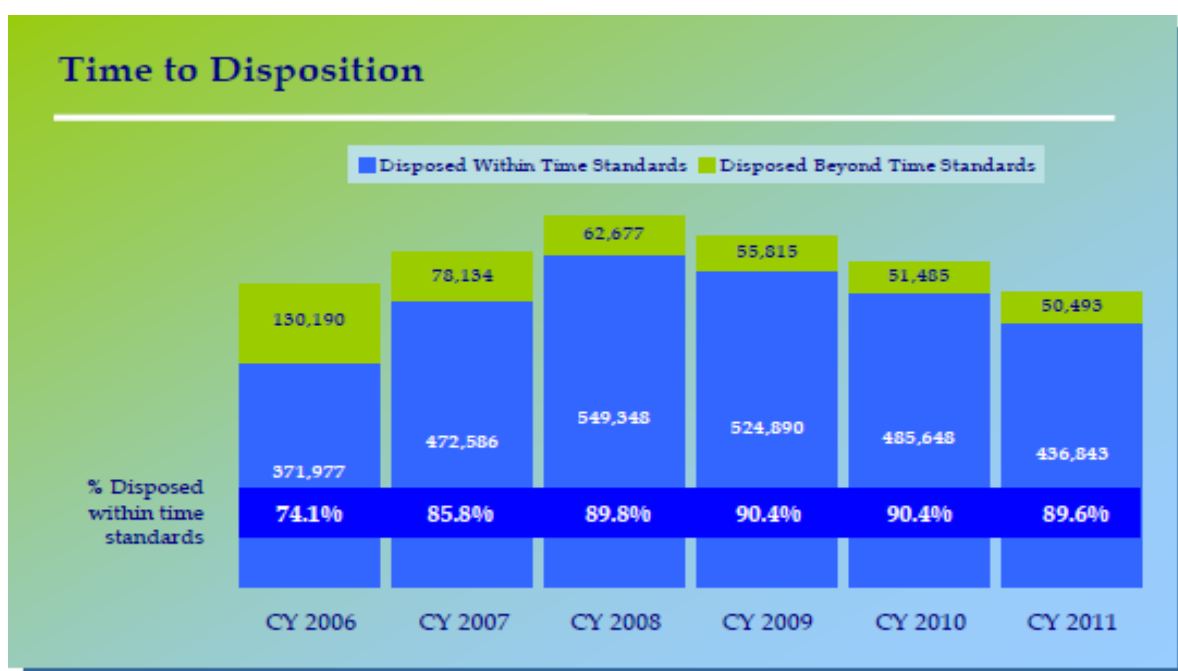
## 2) Clearance Rate



Clearance rate means the number of outgoing cases as a percentage of the number of incoming cases.<sup>34</sup> The goal of the clearance is 100% in order to maintain a constant level of pending cases.<sup>35</sup> After the 2008, the clearance rate was below 100% which means that the trial court disposed of fewer cases than the new cases filed. Even though the 2011's clearance rate is 95.6% which was somewhat similar to that of the previous year, the caseload might be significantly affected, because the number of the cases increased were whopping 23,143 in 2011 alone. Although the clearance rate was over 100% before 2007, it should be considered that it could be benefited from the clean-up activity that many court's

departments undertook in the inception of the automated systems.<sup>36</sup> Also, despite the fact that the clearance rate was somewhat stable after 2008 when staffing shortage happened, it should be considered that during this period, the number of cases filed were also significantly down by 20.8%.<sup>37</sup> For reference, clearance rate in Superior Court in 2011 was 104%.<sup>38</sup>

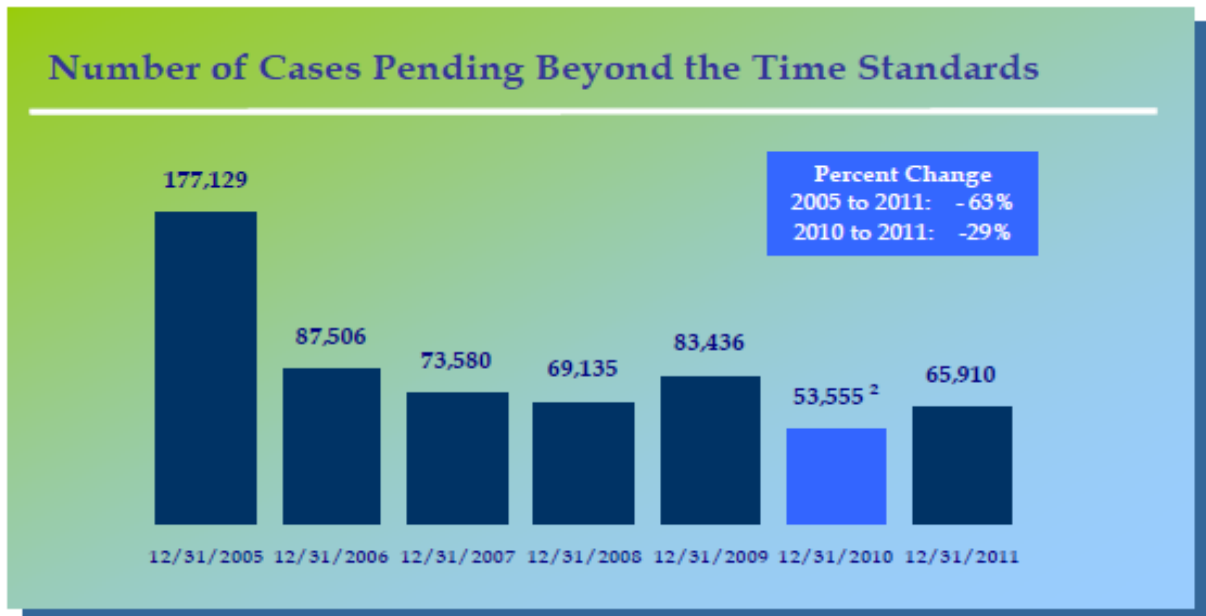
### 3) Time to Disposition



Time to disposition means the percentage of cases disposed or resolved within established time frames.<sup>39</sup> 2011 statistic shows that timely disposition rate gradually had increased from the inception for the metrics in 2006, and 2011 was the first year that the reduction of this rate happened despite the number of percentage reduced was quite a small one

(reduction rate of 0.8%).<sup>40</sup> For reference, time to disposition rate in Superior Court in 2011 was 67%.<sup>41</sup>

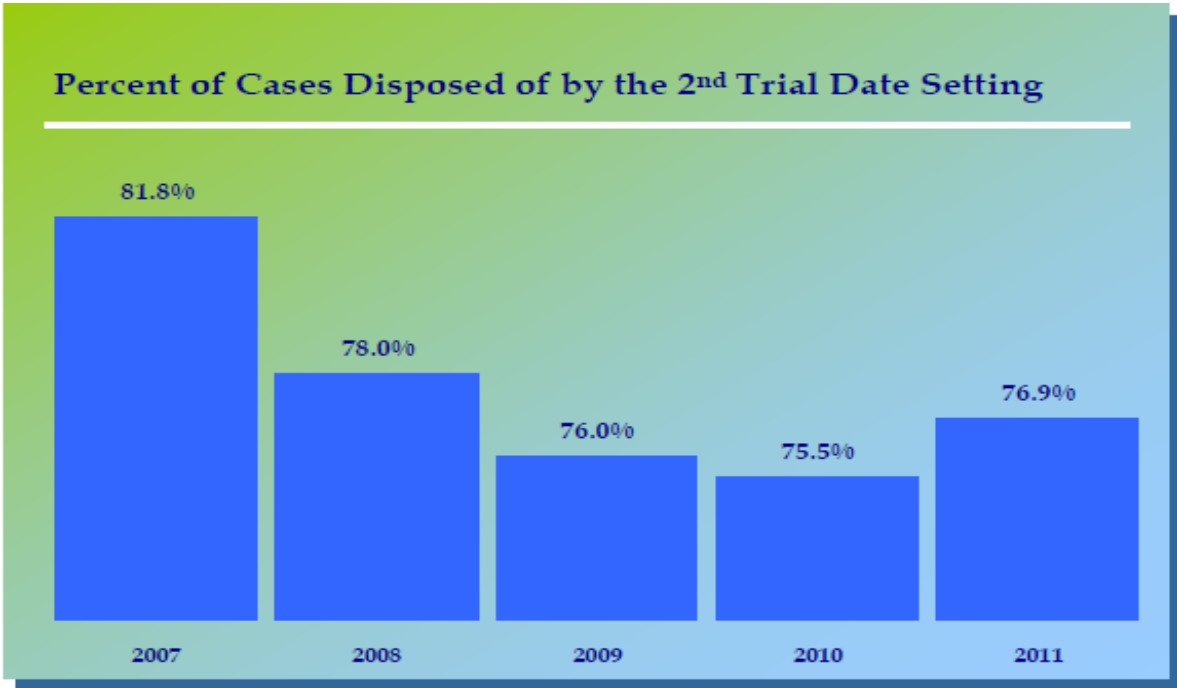
#### 4) Number of Cases Pending Beyond the Time Standards



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The number of pending cases are cases beyond the disposition date set by the time standards.<sup>43</sup> It shows that in 2011, the number of pending cases beyond the time standards had increased by 12,355 cases (23.1%), and the overall reduction rate of the number of cases pending beyond the time standard gradually had dropped.<sup>44</sup> For reference, the number of pending cases in Superior Court in 2011 was roughly the same compared to the previous year.<sup>45</sup>

#### 5) Trial Date Certainty(Percent of Cases Disposed of by the 2nd Trial Date Setting)



Trial Date Certainty means the percentage of cases disposed or resolved within established time frames.<sup>46</sup> Interestingly, the goal for Trial Date Certainty was differently set for the Superior court and the rest courts. The goal for the Superior Court was to have 75%, and that for the rest trial courts was to have 90%.<sup>47</sup> For reference, Trial Date Certainty rate in Superior Court in 2011 was 62%.<sup>48</sup> It should be noted that because the Superior Court deals with relatively important and complex cases compared to other trial courts, the time to disposition and number of cases pending beyond the time standards tend to be higher than other trial courts.

#### 6) Overall Evaluation about the Statistics in 2011

There was some retarded showings on the statistics in

2001: the clearance rate was a little bit declined, number of cases pending beyond the time standard increased, cases disposed within time standard also declined a little bit. The report analyzed the reason as the impact of constrained resources such as understaffing.<sup>49</sup> Specifically, the Trial Court implemented a hiring freeze in October 2008, resulting in staffing reductions. Trial Court staffing levels declined by 254 or 3.8%, from 6,613 on January 1, 2011 to 6,359 on January 1, 2012.<sup>50</sup> The staffing level has declined by 1,270 employees or 16.6% since July, 2007 to January 1, 2012.<sup>51</sup>

#### **d. Proposed Superior Court Initiatives**

The Superior Court recently proposed civil initiatives which could make significant changes in the conduct of civil litigation in the Superior Court designed to make civil litigation more just, speedy, and inexpensive.<sup>52</sup> Among them 2 proposed initiative related to the case management system.

Proposal #1 is about Menu of Options- Right to Individual Case Management and Tracking. Parties could seek an individual tracking order by filing a Motion for Case-Specific Management, which would be authorized by changes to Superior Court Standing Order 1-88.<sup>53</sup> Then, the parties would have the opportunity to agree to vary standard procedures throughout the process. The proposal exemplified it as an early and firm trial date, with or without a jury, and with a variety of

limits on the quantity and kind of evidence.

Proposal #2 is about Pilot Program for Early Case Management Conferences for Qualifying Cases. It made four categorical cases: real estate, construction, products liability, and employment discrimination. An amendment to Superior Court Standing Order 1-88 would establish procedures for the early conferences within 90 days after service of process, and provide the form regarding case management for the parties. In addition, the Superior Court would recommend that the Supreme Judicial Court amend Massachusetts Rules of Civil Procedure to reduce the time limit for service of process or to provide expeditious alternative thereby service is required only when a defendant fails to respond to notice by mail.<sup>54</sup>

There are some anxieties about these proposals. The most worrying thing about the proposal #1 is that the proposal allows the judge to adopt a case management over an objection of the other party and it also allows the judge who offers an early case assessment to preside over the subsequent trial.<sup>55</sup> However, the proposal also has the clause that "nothing in this Order purports to authorize the court to restrict any party's right, if protected by law from impairment over that party's objection". (PROPOSED NEW SUPERIOR COURT RULE 3.). Additionally, there was always some judicial discretion about

the process on motions regarding discovery, deadlines and the like. Thus, the new rule does not significantly changes the current practice.<sup>56</sup> Thus, it does not seem that there are fundamental changes about the procedural rights of the parties.

It is true that there are some advantage of the judge's early case management in that it can help attorneys to deal with difficult clients by giving a unbiased, objective, clean view about the case from the outside the case.<sup>57</sup> However, there definitely is a fair concern about the judge who offered early case assessment, then later preside the subsequent trial. This kind of concern should be resolved by the sound practice by the judge. Like Superior Court Judge Raymond J. Brassard, chairman of the 13-member working group suggested, judges who seeks to settle with the early case assessment should always be sensitive to whether that they should sit on the merits, and it is highly unlikely that judges would decide the merits over the parties' objection in that situation.<sup>58</sup>

The other concern is that this kind of flexible process will inextricably culminate to the status that generally reduces discovery, time limits, full access to the courts and to a jury trial on most of the cases.<sup>59</sup> However, as seen above, proposal on individual case management and tracking does not allow a judge to abridge the rights of parities by the law, and the law always allowed judges to make some decisions over

their objections. Eventually, the proposal has possibility that it will reduce the cost and enhance the period of disposition at least some significant portion of the cases which are more susceptible to the proposal.

About the proposal #2, some lawyers suggested that there should be some exceptions for the certain type of cases because the proposal does not allow the deadline longer than the tracking order dates that apply to that case type.<sup>60</sup>

However, the purpose of the proposal is reducing time and costs of the cases in a fair and efficient way and is not intended to an individualized case management.<sup>61</sup> And also, there are some exception for the extending the deadlines such as judges would extend the 30-day period for service of process by a motion for good reason. See Massachusetts Rules of Civil Procedure Rule 4(j). In fact, however, the great majority of cases which are the main target of that proposal are currently to be served within a 30-day time frame.<sup>62</sup> In sum, at the outset, the propose rule is aimed at streamlining civil litigation to resolve the problem of high cost and long trial.

For now, comments period was over after March 4, 2016. After the comment period, the members of the Superior Court will review all of the comments and determine whether there are some meaningful comments enough to make changes to the



proposal.<sup>63</sup> Then, the Superior Court will decide whether to submit in part or as a whole of the proposals to the Supreme Judicial Court and the chief justice of the Trial Court for their approval.<sup>64</sup>

#### **IV. Conclusion**

Just and speedy disposition of the cases is the main purpose of the civil procedure. To that end, Massachusetts Superior Court implemented the case management system. As the times passed by and as the statistic shows, it can be arguably said that the case management system of Superior Court has been stable, accumulated many valuable practices and experience, and established the firm legal culture.

However, there are still some considerations need to be taken into account.

First, the system does not do well by itself. There always should be strong commitment by the participating persons. As many reports suggested, Superior Court obtained valuable achievement despite of the restrained resources in part because of the commitment of its participants including judges and staffs, and continuous education about the system.

Second, there should be an objective method of evaluation

and periodical inspection about the system as a whole. In this regard, Superior Court has tried to get an ideal system of the statistics, and the system was continuously inspected by the state legislature or committee created by the state law.

Lastly, there should be enough resource to make the case management work well. There should be enough court staffs to do the case management work. And there should be an effective informational system to follow up all the cases and to evaluate judicial performance later. Additionally, inception of the similar position as magistrate or master in the federal civil system could be a great momentum to do the effective case management.

In sum, the desirable case management system itself could not be a panacea. Even though the Superior Court has been experienced the restrained resources during the years, there should be a persistent effort to reach the end goal. It could be scientific re-location of the staff, establishment of the system which can evaluate and follow the case management system to achieve that goal. And the metrics should be an informative, objective statistics for the public and the other departments of the government to get insight and workable feedback about the whole system.

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<sup>1</sup> ABA, Standards Relating to Trial Courts (1992) §2.50.

<sup>2</sup> ABA, Standards Relating to Trial Courts (1992) §2.51 A.

<sup>3</sup> James S.Kakalik, speedy, and inexpensive? Judicial case management under the Civil Justice Reform Act, Judicature Volume 80 Number 4 (January-February 1997), at 187

<sup>4</sup> Thomas A. Henderson, Janice Munsterman, Robert Tobin, DIFFERENTIATED CASE MANAGEMENT; Final Report(July 31, 1990) at 2

<sup>5</sup> Supra pp 2-6

<sup>6</sup> Supra at 7

<sup>7</sup> Manual for Complex Litigation, Fourth, Federal Judicial Center 2004, §10.12

<sup>8</sup> <http://www.mass.gov/courts/court-info/trial-court/sc/>

<sup>9</sup> <http://www.mass.gov/courts/case-legal-res/rules-of-court/superior/sup-orders/sup1-88.html#AppendixA.NoticetoAppearforFinalPre-TrialConference>

<sup>10</sup> **Superior Court Standing Order 1-88**

#### **Schedules of Case Types by Track**

##### **Schedule 'F' (Fast Track)\* Contract**

A01 Service, labor, and materials

A02 Goods sold and delivered

A03 Commercial paper

A08 Sales or lease of real estate

A99 Other (specify)

##### **Tort**

B03 Motor vehicle negligence - personal injury/property damage

B04 Other negligence - personal liability/property damage

B20 Personal injury - slip and fall

B21 Environmental

B22 Employment discrimination

B99 Other (specify)

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**Real Property**

- C01 Land taking (eminent domain)
- C02 Zoning appeal, [G.L. c. 40A](#)
- C03 Disputes concerning title
- C99 Other (specify)

**Equitable Remedies**

- D02 Reach and apply
- D06 Contribution or indemnification
- D12 Dissolution of partnership
- D99 Other (specify)

**Miscellaneous**

- E95 Forfeiture [G.L. c. 94C, s. 47](#)
- E96 Prisoner cases

\* Excluding claims against the Commonwealth or a municipality, which are type E03 cases under Schedule 'A' (Average Track).

**Schedule 'A' (Average Track)****Contract**

- A12 Construction dispute

**Tort**

- B05 Products liability
- B06 Malpractice - medical
- B07 Malpractice - other (specify)
- B08 Wrongful death, [G.L. c. 229, s. 2A](#)
- B15 Defamation (libel/slander)
- B19 Asbestos cases

**Equitable Remedies**

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D01 Specific performance of contract  
D07 Imposition of a trust  
D08 Minority stockholder's suit  
D10 Accounting  
D13 Declaratory judgment, [G.L. c. 231A](#)

**Miscellaneous**

E03 Claims against Commonwealth or Municipality  
E09 General contractor bond, G.L. c. 149, ss. [29](#) , [29A](#)  
E17 Civil Rights Act, [G.L. c. 12, s. 11H](#)

**Schedule 'X' (Accelerated Track)**

**Real Property**

C04 Foreclosure of mortgage  
C05 Condominium lien and charges

**Miscellaneous**

E05 Confirmation of arbitration awards, [G.L. c. 251](#)  
E07 [G. L. c. 112, s. 12S](#) (Mary Moe)  
E08 Appointment of receiver  
E11 Workers' compensation  
E12 [G.L. c. 123A, s. 12](#) (SDP initial commitment)  
E15 Abuse petition, [G.L. c. 209A](#)  
E16 Auto surcharge appeal  
E18 Foreign discovery proceeding  
E19 Sex Offender Registry, [G.L. c. 178M, s. 6](#)  
E97 Prisoner habeas corpus  
E99 Other (specify)

**No Schedule and No Track**

**Miscellaneous**

E25 Pleural Registry (Asbestos cases)  
E14 [G.L. c. 123A, s. 9](#) (SDP petition for release)

**F. Tracking Deadlines**

The following tracking deadlines shall be mandatory except as modified by order of the Session Judge or Regional Administrative Justice. [\[Note 4\]](#) Documents filed outside the tracking deadlines without leave of court need not be acted upon by the Court, even if filed by agreement between the parties. The tracking deadlines for F and A Track cases will be calculated from the date of filing of the complaint.

**(i) After Designation to Fast ("F") Track:**

**(1) Three months (90 days)**

- Service shall be completed on all parties.
- All returns of service shall be filed.
- If service is not made upon a defendant within 90 days after filing of the complaint, the action shall be dismissed as to that defendant without prejudice unless the Court has found good cause to extend the time for service.[\[Note 5\]](#)

**(2) Four months (120 days)**

- Rule [12](#), [15](#) [\[Note 6\]](#), [19](#) and [20](#) motions shall be served.
- If no answer or motion to dismiss is filed by a defendant within 120 days of the filing of the complaint, the clerk shall issue a default as to that defendant and notify all parties of the default, unless the Court has found good cause to extend the time to file the answer or motion to dismiss.[\[Note 7\]](#)

Nothing in this Standing Order bars the earlier issuance of a default when legally appropriate. When appropriate, cases will be ordered for assessment of damages.

**(3) Five months (150 days)**

- Rule [12](#), [15](#), [19](#) and [20](#) motions shall be filed with the Court.

**(4) Six months (180 days)**

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- Rule [12](#), [15](#), [19](#) and [20](#) motions shall be heard by the Court.

(5) Ten months (300 days)

- All discovery requests shall be served and non-expert depositions completed. [[Note 8](#)] Requests for admissions are not included within this deadline but a party may not request of an adverse party the admission of more than thirty factual assertions after this deadline, except with leave of court.

(6) Eleven months (330 days)

- All motions for summary judgment shall be served. Nothing in this Standing Order bars summary judgment motions from being served earlier in the litigation.

(7) Twelve months (360 days)

- All motions for summary judgment shall be filed.

The remaining tracking deadlines assume that a motion for summary judgment has been filed. If no summary judgment motion is filed, earlier tracking deadlines may be set by the Court.

(8) Sixteen months (480 days)

- A pre-trial conference shall be conducted by the Court. [[Note 9](#)] The joint pre-trial memorandum shall be filed with the Court no less than three business days prior to the pre-trial conference. A firm trial date shall be set by the pre-trial conference judge.
- The minimum requirements of the joint pre-trial order are attached to and made part of this Standing Order as [Appendix A, "Pre-Trial Order."](#)

(9) Twenty-two months (660 days)

- The case shall be resolved and judgment shall issue.

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**(ii) After Designation to Average ("A") Track:**

**(1) Three months (90 days)**

- Service shall be completed on all parties.
- All returns of service shall be filed.
- If service is not made upon a defendant within 90 days after filing of the complaint, the action shall be dismissed as to that defendant without prejudice, unless the Court has found good cause to extend the time for service.

**(2) Four months (120 days)**

- Rule [12](#), [19](#) and [20](#) motions shall be served.
- If no answer or motion to dismiss is filed by a defendant within 120 days of the filing of the complaint, the clerk shall issue a default as to that defendant and notify all parties of the default, unless the Court has found good cause to extend the time to file the answer or motion to dismiss. Nothing in this Standing Order bars the earlier issuance of a default when legally appropriate. When appropriate, cases will be ordered for assessment of damages.

**(3) Five months (150 days)**

- Rule [12](#), [19](#) and [20](#) motions shall be filed with the Court.

**(4) Six months (180 days)**

- Rule [12](#), [19](#) and [20](#) motions shall be heard by the Court.

**(5) Fourteen months (420 days)**

- Rule [15](#) motions shall be served.

**(6) Fifteen months (450 days)**

- Rule [15](#) motions shall be filed and resolved, with or without hearing.



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(7) Twenty-four months (720 days)

- All discovery requests served and non-expert depositions completed. Requests for admissions are not included within this deadline but a party may not request of an adverse party the admission of more than thirty factual assertions after this deadline, except with leave of court.

(8) Twenty-five months (750 days)

- All motions for summary judgment shall be served.

(9) Twenty-six months (780 days)

- All motions for summary judgment shall be filed.

The remaining Tracking Deadlines assume that a motion for summary judgment will be filed. If no summary judgment motion is filed, earlier tracking dates can be set by the Court.

(10) Thirty months (900 days)

- A pre-trial conference shall be conducted by the Court. The joint pre-trial memorandum shall be filed with the Court no less than three business days prior to the pre-trial conference. A firm trial date shall be set by the pre-trial conference judge.
- The minimum requirements of the joint pre-trial order are attached to and made part of this Standing Order as Appendix A, "Pre-Trial Order."

(11) Thirty-six months (1,080 days)

- The case shall be resolved and judgment shall issue.

**(iii) After Designation to Accelerated ("X") Track:**

All X Track cases seeking judicial review of administrative agency proceedings on the administrative record pursuant to the standards

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set forth in [G.L. c. 30A, s. 14](#) , [G.L. c. 249, s. 4](#) , or similar statutes are governed by [Standing Order 1-96](#), and the tracking deadlines set forth in that Order. Those tracking deadlines are as follows:

- No later than 90 days after service of the complaint, the administrative agency whose decision is at issue shall file a record of the proceeding.
- No later than 20 days after service of the record, all motions to dismiss or for a more definite statement under Mass. R. Civ. P. 12 [\(b\)](#) or [\(e\)](#) , all motions for leave to present testimony of alleged irregularities in the procedure before the agency that are not shown in the record under [G.L. c. 30A, s. 14\(5\)](#) , and all motions for leave to present additional evidence under [G.L. c. 30A, s. 14\(6\)](#) shall be served.
- No later than 30 days after service of the record or the Court's decision on any motion specified above, whichever is later, the plaintiff shall serve a motion for judgment on the pleadings under [Mass. R. Civ. P. 12\(c\)](#) .
- No later than 30 days after service of the motion for judgment on the pleadings, the defendant shall serve an opposition.
- All X Track cases under [G.L. c. 123A, s. 12](#) (SDP initial commitment) shall be governed by the deadlines set forth in [G.L. c. 123A](#) or otherwise established by law.
- Unless an earlier date is required by law, all disputes in X Track cases shall be resolved and judgment shall issue no later than 12 months (360 days) after the filing of the complaint.

<sup>12</sup> Barry Mahoney, Holly C. Bake, Antoinette Bonacci-MillerCivil, Caseflow Management Improvement in the Superior Court, Suffolk County (Boston, MA), 1987-1991 (National Center for State Courts, July 1992).

<sup>13</sup> Barry Mahoney, *supra* at 6

<sup>14</sup> Barry Mahoney, *supra* at 11

<sup>15</sup> Barry Mahoney, *supra* at 13

<sup>16</sup> Barry Mahoney, *supra* at 12

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<sup>17</sup> Barry Mahoney, *supra* at 13

<sup>18</sup> Barry Mahoney, *supra* at 13

<sup>19</sup> Barry Mahoney, *supra* at 13

<sup>20</sup> Barry Mahoney, *supra* pp 15-17

<sup>21</sup> Management Excellence for the 21st Century Massachusetts Trial Court: Facing Challenges and Embracing Change, Court Management Advisory Board 2014 Report (Dec, 2014), at 6

<sup>22</sup> *Supra*

<sup>23</sup> *Supra* at 7

<sup>24</sup> *Supra*

<sup>25</sup> *Supra*

<sup>26</sup> *Supra* pp 7-8

<sup>27</sup> *Supra* at 8

<sup>28</sup> The statistics are from 'Enhancing the delivery of quality Justice court report - calendar year 2011', Administrative office of the trial court, June 2012

<http://www.mass.gov/courts/docs/cmab/metrics-report-2011.pdf>

<sup>29</sup> *Supra* at preface.

<sup>30</sup> *Supra* at 1

<sup>31</sup> *Supra* at preface

<sup>32</sup> In 2005 the NCSC developed CourTools a streamlined set of ten trial court performance measures. MA state court adapted four of the CourTools measures which focus on timeliness and expedition: clearance rate, time to disposition, age of pending cases, and trial date certainty in 2006. *Supra* at 3

<sup>33</sup> *Supra* at 1

<sup>34</sup> *Supra* at 4

<sup>35</sup> *Supra* at 6

<sup>36</sup> *Supra*

<sup>37</sup> *Supra*

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<sup>38</sup> Administrative Office of the Trial Court Case Flow Metrics Report, Calendar Year 2011 Quarter 4, March 8, 2012

<http://www.mass.gov/courts/docs/cmab/metrics-report-4quarter11.pdf>

<sup>39</sup> Supra court report - calendar year 2011 at 4

<sup>40</sup> Later statistics shows that the time to disposition rate did not recover the percentage of 90% throughout 2015. Executive Office of the Trial Court, Case Flow Metrics Report Calendar Year 2015 Quarter 4, March, 2016.

<sup>41</sup> Supra Case Flow Metrics Report Calendar Year 2011 Quarter 4

<sup>42</sup> The number of cases pending beyond the time standards at the end of 2010 was adjusted to reflect the increase in the number of District Court civil cases captured for analysis due to improved reporting of case status due to expanded Trial Court automation, and to reflect the disposal of a large number of Probate and Family Court cases that had gone without activity for at least 24 months. Supra court report - calendar year 2011 at 11.

<sup>43</sup> Supra at 4

<sup>44</sup> Supra at 11

<sup>45</sup> Supra Case Flow Metrics Report Calendar Year 2011 Quarter 4

<sup>46</sup> Supra court report - calendar year 2011 at 4

<sup>47</sup> Supra at 13

<sup>48</sup> Supra Case Flow Metrics Report Calendar Year 2011 Quarter 4

<sup>49</sup> Supra court report - calendar year 2011 at preface

<sup>50</sup> Supra

<sup>51</sup> Supra

<sup>52</sup> Notice to Bar Inviting Comment on Proposed Superior Court Initiatives

<http://www.mass.gov/courts/court-info/trial-court/sc/notice-to-bar-inviting-comment-on-proposed-superior-court-initiatives.html>

<sup>53</sup> Supra

<sup>54</sup> Supra

<sup>55</sup> Court initiative looks to move civil cases faster, Includes 'menu

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options' some see as controversial, Massachusetts lawyers weekly, January 28, 2016

<sup>56</sup> Judge Raymond J. Brassard, 'Civil initiatives' will trim the fat, not litigants' rights, Massachusetts lawyers weekly, February, 11, 2016

<sup>57</sup> Court initiative looks to move civil cases faster, Includes 'menu options' some see as controversial, Massachusetts lawyers weekly, January 28, 2016

<sup>58</sup> Judge Raymond J. Brassard, Supra

<sup>59</sup> Court initiative looks to move civil cases faster, Includes 'menu options' some see as controversial, Massachusetts lawyers weekly, January 28, 2016

<sup>60</sup> Supra.

<sup>61</sup> Supra. Said by Suffolk University Law School professor Linda S. Simard, a member of the working group

<sup>62</sup> Judge Raymond J. Brassard, Supra

<sup>63</sup> Judge Raymond J. Brassard, Supra

<sup>64</sup> Judge Raymond J. Brassard, Supra