

Improving User Experience Through Caseflow Management

A Brief History of Our Attitudes and Our Practices
And a Glimpse Into the Future
John Greacen
Greacen Associates, LLC
Regina, New Mexico

What I am trying to do today

- Retrace our steps in California and elsewhere on our attitudes towards case management in family cases and with self-represented litigants.
- Show how our attitudes have changed over time.
- Help you to understand where your conflicting attitudes come from.
- Describe an automation-assisted approach to family case management, drawing on examples from California and elsewhere.
- Show how our future direction is consistent with most but not all of our attitudes.

Two tracks

- Our attitudes towards case management in family cases
- Our attitudes towards self-represented litigants
- They converge, because as many as 85% of California family cases have at least one SRL
- The needs of the courts in dealing with SRLs have led the courts to embrace case management in family cases

The Starting Point

For family case management

- The doctrine of “private ordering”
- Cases involving family relationships are unlike cases involving commercial interests
- Courts can never be certain that their actions will improve the lot of family members; better results are likely to flow from decisions that the parties make themselves.
- The parties should not only be free to reach their own substantive agreements; they should also be free to decide the pace at which those agreements are reached.
- Attempts to press family cases to resolution may interfere with desires and efforts of the parties to reconcile.

For family case management

- Family Code Section 2450(b) provided that no case management plan shall be ordered in a particular case absent the stipulation of the parties, and the case management plan may be terminated at any time upon stipulation of the parties or order of the court.
- Since the principal mechanism for case management in civil cases was the issuance of a written case management plan, Section 2450(b) was a statement of policy against judicial case management in any form in the family arena.

For self-represented litigants

- Just as when women first applied to law school, entered the bar, and took the bench, the reaction of the system to the first self-represented litigants was, “These are odd balls.”
- And many of them were.
 - They had to be tough to start with.
 - And the reaction to them caused them to become tougher, and more obstreperous.
- Hence, our first stereotype of SRLs was “vexatious litigants” and our first actions were to erect barriers to minimize their impact on the court.

Our attitudes at the starting point

- All parties in family cases are represented by lawyers; we let the lawyers set the pace for the case and settle most of them. We try cases when required. Case management practices developed for civil cases have no applicability in family cases.
- Persons who come to court without lawyers do so at their peril. They are held the same standards as lawyers and must be prepared to use correct legal language and procedures. It is an ethical violation for us to treat any party differently.
- Persons representing themselves are choosing to do so. They must learn to function within our system. We are not going to change the system to function at their level. They are responsible for moving their case forward.

Phase One – Initial Efforts

Inroads into “private ordering”

- Mandatory mediation
- Child support guidelines
- Domestic violence
 - Protective orders
 - Presence of domestic violence means unequal bargaining power

Inching into family case management

- San Diego’s 120 day status conference
- Questionnaires completed by persons attending those conferences showed that only 8% of persons whose cases were not progressing had tried or were trying to reconcile
- 60% did not know that they had to do anything other than file a petition, did not know how to proceed, or were waiting to hear from the court on next steps

Maricopa County’s Self Help Center – 1995

Maricopa County Self Help Center

- There are so many of them; they can't all be nuts.
- But they are still creating a burden for us; how do we minimize the burden?
- Provide targeted services
 - Phone tree for legal information
 - Walk in Self Help Center
 - Access to unbundled legal services
- Paternalism was a major concern: It is their case and they must understand at every juncture that they, and only they, are responsible for it.

Practical impact of fear of paternalism

- The court minimized its interaction with SRLs
- The phone tree had no live operator option.
- Staff were not allowed to give any information to SRLs.
- Forms packets were labeled with information on their intended use.
- Staff distributed (later sold) packets that the litigants chose as being applicable to their situation.
- Access to unbundled services was through a loose leaf notebook containing one page promos from lawyers who had taken an ethics class on providing limited scope representation.

Initial courtroom approach

- A self-represented litigant will be treated the same as a lawyer.
- It is your responsibility to learn the rules so that you can "make a noise like a lawyer."
- In cases in which both parties were self-represented, some judges began to swear the parties at the beginning of a hearing, dispense with the traditional question and answer evidence presentation, and ask questions to elicit the information they needed.

Our Attitudes at Phase One

- The influx of SRLs requires us to do something differently.
- Staff and judges are drowning in illegible and unacceptable legal documents. So we must provide form documents that SRLs can complete.
- Courtroom time is wasted when SRLs are not prepared. It is pretty obvious that SRLs are not able to get their cases through the court. We need to provide them with information so they can move their case through the process and present their case in court.
- But they remain responsible for moving their case to completion.

Phase Two – A Proactive Response

“Private ordering” eroded further

- Delay in creating stable living arrangements for children in dissolving or reorganizing families is detrimental
- Parenting plans in paternity cases assume greater importance as the percentage of “never married” and “never even had a serious relationship” cases increases

Proactive Case Management

- While family law judges did not promulgate case management plans, they did institute proactive case management practices
- 2005 CFCC “Developing Effective Practices in Family Caseload Management” manual and three workshops for teams from 37 courts that chose to participate
- Many courts instituted some form of case management for family cases, typically an order setting an initial case status conference at 120 to 80 days to be served with the petition and summons. Subsequent proceedings differ from court to court.

Proactive Case Management

- Courts began to pay attention to the judgment phase, reviewing older pending cases and setting them for a show cause hearing and helping those who appeared to get their cases finished.
- Many of the court processes depended heavily on FLF and Self Help Center staff to provide assistance to SRLs at the time of those hearings.
- Inclusion of represented cases varies from court to court.

Self-represented litigants

- Early 2000 policy, video, and “How May I Help You?” brochure defining legal information (as contrasted with legal advice) and encouraging court staff to provide it
- The policy authorized staff to provide the public with the right form for their situation; staff were authorized to fill out forms when necessary
- Partial reimbursement from the Office of Child Support Enforcement provided funding for Family Law Facilitators focused on paternity and child support
- Legislative appropriation, often supplemented locally, supported the creation of Self Help Centers

Self-represented litigants

- 6000 page self help website accessed from the California Supreme Court webpage
- Forms rewritten to be in plain English
- Many local court websites
- Publication of SRL benchbook for judges, with chapter on ethics itemizing the techniques that judges can use to “engage” with SRLs without losing their impartiality.
- Self-Represented Litigation Network courtroom communications study found that the most accommodating courts produced SRL understanding at a level of 8.7 on a 10 point scale.

Our attitudes at Phase Two

- It is not enough to let them in the front door; we have to make sure they can get out the back door. Self-represented parties in family cases cannot be expected to move their case through the system; the court must help.
- Self help staff provide a broad range of assistance for SRLs including preparation of documents, explanation of process, and preparation for hearings. Staff develop workshop formats in which multiple SRLs are assisted by one or a few court personnel.
- Judges work closely with SRL staff to develop processes to monitor the progress of SRL cases and ensure that they move to completion if a party appears to want to proceed.

Our attitudes at Phase Two

- Every time a party comes into the courthouse, we make every effort to finish as much of the case as possible.

Phase 3 – Implementing Rule 5.83

Family Centered Case Resolution Act of 2010

- After the Elkins Case and the Elkins Task Force and the Family Law Resource Guidelines, the California legislature passed AB 939, requiring that California trial courts implement proactive case management
- The legislative history showed that legislature wanted to ensure that neither party would be able to prevent the speedy resolution of a family case in the future.
- The Judicial Council promulgated Rule 5.83 of the California Rules of Court, Family Centered Case Resolution, effective January 1, 2012, to be implemented by January 1, 2013
- Reverses Family Code Section 2450(b)

Rule 5.83

- Requires courts to develop processes to implement the Rule
- Sets procedural milestones (e.g., service within 60 days of filing) for family cases
- Sets timely disposition standards for family cases
 - 20% within 6 months of filing
 - 75% within 12 months of filing
 - 90% within 18 months of filing
- Court's process must include a review within 180 days of filing and every 180 days thereafter for the first 18 months of every family law filing

Rule 5.83

- If milestones are not met, the review must include a status conference or family centered case resolution conference (latter requires a judge)
- At a family centered resolution conference a judge can issue a specific case resolution plan, but cannot mandate the use of private ADR services.
- The court is required to provide parties in family cases, upon the filing of first papers, written information on the case process, local resources (including a self help center), keeping the court informed of address, phone number and email address, and how to request a court hearing

Implementation of Rule 5.83

- A variety of approaches employed by different courts
- Required rethinking the roles of judicial officers and SRL staff
- Although a reading of the Rule would suggest that the court should continue to take advantage of a party's appearance in court to complete as much of the case as possible, that was not apparent in the one court I have observed since the rule was implemented.

Attitudes exemplified in Rule 5.83

- Speedy resolution of family cases is a priority in California
- The trial courts are required to do what they can to help parties resolve cases quickly.
- 75% of family cases should be resolved within a year of filing
- 90% should be resolved within 18 months of filing
- Courts are responsible for monitoring cases' reaching explicit milestones and taking steps (including the scheduling of court hearings) if the milestones are not met
- In complex cases, the court may issue a scheduling order setting forth the process a case will follow

Attitudes exemplified in Rule 5.83

- But the parties are still responsible for taking advantage of the assistance provided by the court. If the parties ignore the court's messages and orders, the court is relieved of its obligation to continue to review the case until the three or five year dismissal period runs.

Phase 4 – An Automated Future

Using automation to improve the user experience

- Proactive event prompting
- Orange County's Customer Relations Management software project
- Triaging portals

Proactive event prompting

- California courts have been using outbound dialers to remind users of mediation appointments and scheduled hearings. They work.
- The next step is to combine them with exception reports from a case management system to alert users to process requirements.
- We should rely on this technology to the maximum extent possible to:
 - Save staff time and effort – it happens automatically
 - Save judge time by getting parties to comply voluntarily
 - Provide users with information they way they want to get it today

Proactive event prompting

- There are at least five categories of case alerts:
 - You have a deadline, e.g. a proof of service must file be filed within 60 days
 - You have missed a deadline, e.g., 60 days have passed without a proof of service
 - You have an opportunity, e.g., the other party has not filed a response; you can ask for a default to be entered and submit a default judgment
 - Second warning. We have already told you once before that you have missed a deadline
 - Notice of court conference

Proactive event prompting

- Courts must collect contact information on parties and their preferences for communicating with them (email and voice message/text). Use of cell phone numbers and email addresses should eliminate the problems associated with changing physical addresses.
- It is not clear from the rule whether a party can consent to receive all court notices electronically.
- It is not clear from the rule whether a court's plan can refuse the option of snail mail.

Proactive event prompting

- It is not clear what the court should do when a party has no phone or email address. Creating a gmail address for a party is easy; however, s/he has to check her/his mail box for messages.
- At least one case management vendor has included an automated emailing feature in its product. I am told by Tyler that it does not – yet.

Orange County's CRM

- Each party will receive a customer ID card
- Swiping or scanning the card will call up the case and information about the assistance rendered during previous visits or calls
- The application will present all the steps in the case with a radio button for each step. The button will turn green for each completed step.
- The system is being built using Microsoft Dynamics.

Triaging portals

- The concept is to provide some form of effective assistance to every person with a civil legal problem
- It is a collaborative process involving the courts, legal aid, the bar, DV advocates, libraries, and social service agencies
- It starts with a highly publicized website
- The user enters information about the issue and her or himself
- An artificial intelligence engine predicts the most likely legal categorization presented and asks confirming follow up questions

Triaging portals

- Based on information about the issue, the person, and the person's use of the website, and information from service providers on their availability, the AI makes a referral
- If referral to an information website and forms is predicted to be sufficient, that is the referral
- Otherwise the referral is to an appropriate participating entity
- Information about legal services – including limited scope representation – will always be provided as an option
- If representation is required, income information will be solicited

Triaging portals

- If the referral entity requires information for its intake process, the user will be asked to consent to passing on that information
- All of the participating entities can put people into the system
- They can also decline a referral and send the person back into the system for a different referral; e.g., legal aid has a conflict
- The portal will enable all users to enter their own desires concerning speed, cost, and adversariness of the process and referrals will reflect those choices

Triaging portals

- The system will capture data from participating entities on the processes and outcomes produced by referrals (including automated satisfaction surveys of users) and make appropriate changes to the referral algorithms

Triaging portals – current status

- Southern California small claims portal – leads users to choices of demand letter, negotiation, ADR, and filing a small claim
- New Mexico Legal Aid portal – involves six New Mexico legal aid entities; no court or bar participation; in development for over a year and a half; extensive user testing phase
- SJI-funded SRLN/National Center for State Courts business and technical requirements project; report will be submitted by the end of 2015

Triaging portals – current status

- Florida Triaging Gateway – highest priority of Florida Access to Civil Justice Commission; will begin with a pilot project in two counties in northeast Florida; using same vendors as New Mexico

How our attitudes apply to the technical opportunities

- Technology can connect users directly to resources that can get them in the front door and out the back door.
- Most users can take advantage of these technologies.
- The courts will be the fall back support for users who cannot, with the help of collaborating intermediaries such as libraries, senior centers, and social service agencies.
- Users retain the option of “privately ordering” the substance of their family relationships (with significant exceptions for child support and domestic violence); they are no longer able to decide the pace at which the process will move forward.

How our attitudes apply to the technical opportunities

- The courts now embrace a paternalistic approach to family cases, subject to a party's ability to ignore the court's efforts to move a case to timely resolution. The court's paternal obligation is time limited.
- The triaging portal introduces a new value of "100% access" for persons with civil legal problems.

Discussion Questions

Questions

- How is Rule 5.83 working in your court? Lessons learned?
- Is any court currently using the automated alert process outlined in the presentation? How is it working?
- Do old attitudes continue to play a role in how family cases, including SRL cases, are handled in your court?
