

Massachusetts Trial Court

Open Dialogues on Court Practices

**A Statewide Opportunity for Dialogue Among
Judges, Lawyers and Court Personnel on
Court Practices and Procedures**

2008

**Brockton
Lawrence
Boston
Springfield
Worcester**

In partnership with

**Court Management Advisory Board
Massachusetts Bar Association
Local and County Bar Associations**

The Massachusetts Trial Court

Administrative Office of the Trial Court

Honorable Robert A. Mulligan
Chief Justice for Administration & Management

Trial Court Departments

Honorable Paula M. Carey
Chief Justice – Probate and Family Court

Honorable Lynda M. Connolly
Chief Justice – District Court

Honorable Michael F. Edgerton
Honorable Martha P. Grace (retired February 2009)
Chief Justice – Juvenile Court

Honorable Charles R. Johnson
Chief Justice – Boston Municipal Court

Honorable Steven D. Pierce
Chief Justice – Housing Court

Honorable Barbara J. Rouse
Chief Justice – Superior Court

Honorable Karyn F. Scheier
Chief Justice – Land Court

Open Dialogues on Court Practices

Introduction

The Massachusetts Trial Court conducted a series of *Open Dialogues on Court Practices* in 2008 to seek input from attorneys on the impact of recent court management reforms. Five regional meetings were held at courthouses across the state, with sessions conducted in Brockton, Lawrence, Boston, Springfield and Worcester. The *Open Dialogues on Court Practices* were co-sponsored by the Court Management Advisory Board (CMAB), the Massachusetts Bar Association and local bar associations.

Over the course of the five sessions more than 1,000 attorneys provided valuable input to trial court judges, Chief Justice for Administration & Management Robert Mulligan and the Chief Justices of the seven Trial Court departments. Breakout sessions were conducted by the individual Trial Court departments affording lawyers, judges and court staff the opportunity for dialogue on how to obtain greater efficiency and effectiveness for lawyers and the courts.

This outreach effort was complemented by the Trial Court's utilization of an Access and Fairness survey originally developed as a performance metric by the National Center for State Courts. The survey was piloted in the Boston Municipal Court in 2007 and expanded statewide in 2008, which generated input from more than 9,000 court users at each of the state's 106 courthouses.

In recent years, the courts introduced performance-based metrics to inform decision making and achieve accountability in areas including staffing, timely case management and effective use of jurors. Posting of quarterly data and annual reports has provided transparency to the court's goals and progress in these efforts. Ongoing dialogue and review of the impact of management changes represents adoption of a management best practice that provides critical qualitative input.

Such dialogue and input is also valuable to the CMAB, which was formed in 2003 by the Legislature after the Visiting Committee on Management in the Courts (the "Monan Committee") issued a report critical of court management practices. Board members from the legal, business and public sectors meet regularly with the leaders of the Trial Court to assess court reforms and discuss management of the courts.

The CMAB and the Chief Justices recognize and appreciate the importance of seeking feedback from the general public and the bar to enable continuous improvement in court practices. The five regional *Open Dialogues* were held across all court departments which increased the visibility and expectations associated with these discussions. They build upon the effective bench/bar meetings held at the local level by individual courts.

As a result of the input and discussions at the *Open Dialogues*, each of the Trial Court departments identified the following areas and issues for further consideration and implementation. The success of the sessions will result in the planning of additional Trial Court-wide dialogues in future years.

Follow Up Actions by Trial Court Departments

Boston Municipal Court Department

- **“Green Light” Trial Check and “Trial Priority Period” Resource Deployment**

After discussions with the bar, the court department is determining the feasibility of its divisions to more closely monitor trial dates, based on the availability of staff and judicial resources. For example, if court dockets exceed the availability of judges on a particular day, the court will reschedule cases to days when judges are more available to hear trials. The court will develop a standby list of prearranged cases that could be called to trial on short notice when scheduled cases settle or fail to appear for trial.

If feasible, each division will be given a “Trial Priority Period” once each month, whereby extra judicial resources will be reserved over a three day period to address outstanding trial cases in each division. The Trial Priority Period will be fixed in advance at the beginning of the year and not subject to cancellation, absent exigent circumstances. If judicial resources permit, a judge from the department may be designated as a departmental circuit judge and rotate throughout the department to assist with dispositions of such cases during the Trial Priority Period of each division. This judge will not be diverted from these sessions under normal circumstances. A judge with experience in case management would be selected to fill this important position.

- **Case File Reliability and Integrity**

Duty Attorneys reported problems with missing paperwork on defendants and incomplete court files. The court department had begun to address this issue in 2008 by establishing the Case File Reliability and Integrity Committee chaired by Judge Eleanor Sinnott which reviewed approximately 1,600 criminal and civil case files throughout the department. Through this progressive initiative, the committee was able to obtain empirical and objective measures of courts’ performance, including the results of a new metric specific to case file reliability and integrity.

The measurement provided information on (a) how long it takes to locate a file, (b) whether the file’s contents and case information match up, and (c) the organization and completeness of the file. The review reflected department-wide figures exceeding 80 percent in all measurements. The committee was then able to establish performance standards and goals for the future. As a follow-up, in early 2009, the court department established the Case File Content Committee. The committee is currently proposing uniform guidelines and standards for the content of civil and criminal files in all divisions of the court department. The court department is also in the process of modifying its website to include more useful information and additional forms for online accessibility, including probation and criminal forms.

- **Expanded Pre-Trial Conferences**

The bar expressed high satisfaction with the court department's (central division) Pre-Trial Conference Program in collaboration with the Boston Bar Association. After consultation with the Boston Bar Association, the voluntary program may be expanded to other divisions of the court department, if resources permit. This unique and collaborative program encourages the resolution of cases prior to trial, conserves judicial resources, and promotes satisfactory outcomes for parties.

- **Sealing Records**

The bar reported problems associated with sealing defendants' records, including attorneys having to go to several divisions of the court department and/or to other trial court departments to file the same motion (to seal a record) when multiple criminal records are involved. After careful review and consideration, the Boston Municipal Court Department has initiated a pilot program for a consolidated procedure for sealing criminal records when warranted.

District Court Department

The Open Dialogue discussions with the bar informed the following plans being implemented by the District Court:

- **Case Management Conference Initiatives**

The Court has implemented a pilot in the Worcester District Court to allow for the waiver of a scheduled Case Management Conference in civil litigation, if all parties are represented by counsel and they file a joint stipulation regarding discovery. This pilot will be reviewed in six months to determine if it should be extended.

Telephonic Conference Case Management

The Court has implemented a pilot in Western Massachusetts to conduct Case Management Conferences via telephone.

- **Pilot Program for 209A Petitioners**

The Court has launched a pilot in Worcester and is planning a pilot for Brockton to promote enhanced understanding of the relief available to petitioners seeking 209A orders in the District Court and the Probate and Family Court. At both the District Court Clerk's Office and the Probate and Family Court Register's Office "Safeplan" Advocates will meet with persons seeking 209A relief to help them assess which court is most appropriate to address their needs, especially given the District Court's inability to order visitation. The petitioner will make the final decision on where to file.

- **Enhanced District Court Internet Site**

The District Court has formed a Website Committee of judges and clerks to enhance its internet site. The District Court internet site address has been simplified to make it user friendly. A "Frequently Asked Questions" section for CMVI cases has been added and other "Frequently Asked Questions" are being prepared to address common questions. A link to directions to District Courthouses has been added. The Court also is formatting the Small Claims form for availability online.

- **Enhanced Interpreter Services**

To increase the availability of interpreters, the 62 District Courts have begun to conduct very brief hearings requiring interpreters via speaker phone. This saves money and insures that the interpreter staff is available to address more complex matters. Also, a pilot project in the Holyoke District Court in cooperation with the Office of Court Interpreters Services and Mt. Holyoke College will use college foreign language majors to interpret for non-courtroom events under the supervision of a staff interpreter. The Court hopes to expand this pilot statewide.

- **Enhanced Video Conferencing**

Discussions are underway with Sheriffs' offices to provide video conferencing equipment to courts at no cost to the Trial Court. The Bar and the courts are interested in initially using this technology to address speedy trial requests.

Housing Court Department

- **Scheduling Issues**

Attorneys discussed a variety of options related to scheduling. The Court will explore ways to improve scheduling, such as dividing the summary process list to separate days and allowing parties to mark up motions for hearing.

- **Uniform Practices**

In a couple of the sessions, attorneys discussed different practices between court divisions. The Court has reconvened its Uniform Practices Committee to study all practices, procedures and forms in the Divisions to achieve greater consistency and uniformity.

- **Time Standards**

In response to issues raised, the Court will review the existing time standards established four years ago with a view to possible modification.

- **MassCourts**

The Court will continue to address MassCourts issues identified by the bar. On a monthly basis the Local User Experts from each division meet to share issues raised by court staff and court users and identify ways to modify and improve MassCourts to meet the needs of the bar and the court.

Juvenile Court Department

The Juvenile Court discussed the following issues with the bar.

- **Tracking of Delinquency and Youthful Offender at the Outset**

The Court will explore with the first justices and clerks' offices the possibility and practicality of setting, at the arraignment, all subsequent court dates required by the Rules of Criminal Procedure. This will enhance compliance with time standards for these cases.

- **Successive Trial Days**

Once the two current judicial vacancies are filled, the Court will explore the possibility of having trials heard on successive days for care and protection cases, where practical.

- **Bench/Bar Meetings**

Many of the Juvenile Court divisions will continue to hold monthly bench-bar meetings to address case management and customer service issues.

- **Division Management Meetings**

Court Divisions will hold meetings periodically with the judges, clerk's office and probation office. The first justice, the clerk-magistrate and the chief probation officer will meet weekly/monthly. These meetings will address areas of administration, case management and customer service.

Land Court Department

- **Consistency of Practice**

Lawyers reported some inconsistencies in policies at the Land Court offices at Registries of Deeds throughout the Commonwealth. These offices are not under the auspices of the Trial Court but the Land Court does set policy for them on matters relating to registered land. In response to some specific concerns expressed by the bar, the Land Court's Chief Title Examiner issued several directives to the registries which will provide consistency of practice, and lawyers will know what to expect from district to district.

- **Teleconferences**

Lawyers expressed appreciation for the Land Court's regular use of telephone conferencing, and requested more of it. The Court has statewide jurisdiction and the expense and inconvenience of travel to Boston is often problematic for the bar. The Court has liberally used the telephone for status conferences and scheduling matters. Based on the feedback, especially from the western part of the state, the Court will see if lawyers would like to handle more substantive matters over the phone. This is not always appropriate, since Land Court cases often involve plans and surveys and other chinks. In appropriate cases, the Court will offer lawyers the chance to conduct a motion hearing by telephone. While the Court does not currently have available video conference capability, it will look into that as well.

- **Case Processing Changes**

The Court has adopted some changes in processing servicemember /foreclosure cases. As a follow up to the Open Dialogues, court staff contacted representatives from title insurance companies to see if the bar's suggestions could be implemented without causing concerns about the title. After receiving those assurances, the Court is in the process of implementing the requested changes.

- **Online Access**

The most consistent request from the bar was for online access to MassCourts dockets. The Court continues to work toward that goal. A pilot project is now underway to enable a group of attorneys to electronically access detailed case information on tax lien foreclosures.

Probate and Family Court Department

- **Scheduling**

The court received mixed commentary on how cases are scheduled. A report from a Scheduling Task Force is expected shortly. Anticipated recommendations include staggered scheduling of some sessions; a protocol for telephone case conferences, when appropriate; increased focus on next event scheduling; streamlining of the process for dispute intervention so that parties and lawyers are not required to check in twice. Any reform will be generally implemented state wide so that lawyers and parties will have consistency for scheduling procedures from division to division.

- **Self Represented Litigants**

A number of Open Dialogues raised the issue of self represented litigants and the high volume of them in the Probate and Family Court. Some lawyers were concerned that the number of self represented litigants slowed down the Court process both in and outside the courtroom. Some wanted separate sessions for lawyers, which cannot happen for policy reasons in that both those who are represented and those who are not should get the same justice and attention.

The Court has identified the following initiatives to address the challenge of self represented litigants. They are intended to either increase the number of people who are represented by counsel or to provide those who go it alone with the resources to enable them to more clearly prepare their paperwork and present their case in Court, which will increase the efficiency of court sessions and decrease waiting time for all.

Statewide Expansion of the Limited Assistance Representation Pilot Projects

Limited assistance representation pilots in three Probate and Family courts to allow a lawyer and client to agree that the lawyer will assist with part of a legal matter, while the client will self-represent on other aspects of the case, have achieved positive results and national recognition. Supreme Judicial Court approval of the expansion of Limited Assistance Representation to other court departments will increase the number of parties who are represented at least some of the time. This project also will help increase the likelihood that pleadings will be prepared properly and are more easily understandable for the court.

Simplified Forms on Website. An ongoing effort is underway to put all forms on the court's website in fillable form with instruction. Most frequently used forms now are on the site and are used regularly as evidenced by the number of hits recorded. When new initiatives such as the new medical certificate and guardianship petition are implemented, an increase in activity is evident.

Form for Counsel Fees pendent lite. A sample form for counsel fees pendent lite developed by the Administrative Office of the Probate and Family Court and Legal Services organizations is on the court's website. Concern was raised that the forms are not used often. The Court conducted a survey which indicated that many in the registry and judicial unit, including judges, did not know the forms existed. The forms and their availability now have been widely disseminated allowing more motions to be filed and more litigants to obtain counsel.

Pilots with the Law Libraries in Norfolk, Worcester and Plymouth Counties. The Court is collaborating with the Manager of the Law Libraries and the county head Law Librarians to leverage resources. Monthly information sessions will begin in Norfolk County due to the number of users there. These sessions for litigants will review court process generally and in specific areas such as divorce, paternity and guardianship. The initial session is planned for March at Canton High School with additional sessions each month thereafter. Publicity for the sessions is being done in the Court itself, as well as local papers. Sessions also will be conducted at the Law Library in Norfolk County to allow a demonstration of resources such as internet access. Sessions will be run by volunteers from probation, the judicial unit (judge, judicial case manager), law librarians and registry personnel (pro se coordinator). The hope in conducting sessions in the community will be to increase the visibility of the Court.

Community Outreach at Roxbury Community College. In conjunction with the college, the Court plans to run two education sessions in the spring for the public on the Child Support Guidelines.

- **Interpreters**

In an effort to avoid having lawyers and litigants wait for Interpreters, the Court is scheduling cases with Interpreters at 11:00 a.m. and 2:00 p.m.

- **Guardians Ad Litem**

The bar raised the issue of the cost of private pay guardians ad litem. Costs of a GAL for parties can get out of control, if not controlled by the Court. Judges have been informed that they must carefully control the cost of GALs, state pay and private pay, by limiting the number of hours for GALs or by capping the amount to be paid. Additionally, Judges have been asked to consider narrowing the nature of the appointment to address only the issue the Court needs evaluated or investigated, where possible.

Superior Court Department

- **Increased Use of Video Conferencing**

The Court continues to work with the Massachusetts Medical Society to video conference medical malpractice tribunals. The Court has reviewed the bundling of cases from more than one county involving the same specialist in order to convene the tribunals in a more efficient manner. The Court has increased the use of videoconferencing for hearings in civil prisoner cases and plans are being made for expanding bail reviews via video in Essex and Worcester counties.

- **Business Litigation Session**

The Superior Court issued Administrative Directive 09-1 relative to the Superior Court Business Litigation Sessions. The Administrative Directive clarified issues of venue and procedures for having cases transferred to the BLS from other counties.

- **Early Intervention Program**

In conjunction with the Massachusetts Bar Association, the Court is piloting an early intervention program in three counties – Essex, Suffolk and Middlesex. The objective of this pilot program is to have the court meet with attorneys early in the life of a case to streamline discovery, manage the case efficiently, and encourage early settlement. The Court has sought more input from the MBA Task Force with respect to the program.

- **A-Track Time Standards**

The court's Criminal Committee is actively considering various amendments to Standing Order 2-86, including which cases should be on the A track and whether the track deadlines should be extended.

Acknowledgements

The statewide participation of bar associations and attorneys with the chief justices, judges, local court leaders and court staff ensured successful *Open Dialogues* sessions. Thanks and appreciation are extended to all participants, to the official moderators and recorders, and to the court facilities and security staffs who provided support at the courthouses. The Massachusetts Bar Association, the statewide co-sponsor, receives special recognition for significant outreach and coordination.

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OPEN DIALOGUE ON COURT PRACTICES

A STATEWIDE OPPORTUNITY FOR DIALOGUE
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ON COURT PRACTICES AND PROCEDURES

Thursday, May 29 | 4:30–6:30 p.m.
George N. Covett Courthouse (Brockton Trial Court)
215 Main St., Brockton

*The first in a series of forums taking place
around the Commonwealth*

Your thoughts and ideas on court management changes are important. Trial Court leaders and members of the Court Management Advisory Board seek your participation to inform them on how these court practices affect your lives and how the courts and the bar can work together to continue management improvements.

Chief Justice for Administration and Management Robert A. Mulligan, Trial Court Chief Justices, local Judges, CMAB members and bar leaders will participate. Breakout sessions co-moderated by local Judges and attorneys will be held for each court department.

To register, call (617) 338-0530.

Co-sponsored by the

MASSACHUSETTS TRIAL COURT, COURT MANAGEMENT ADVISORY BOARD, MASSACHUSETTS BAR ASSOCIATION AND THE BARNSTABLE, BRISTOL AND PLYMOUTH COUNTY BAR ASSOCIATIONS.

UPCOMING
"OPEN DIALOGUES ON COURT PRACTICES"

Tuesday, June 17 | Fenton Judicial Center, Lawrence
Wednesday, Sept. 17 | Edward W. Brooke Courthouse, Boston
Thursday, Oct. 2 | Hall of Justice, Springfield
Thursday, Oct. 16 | Worcester Trial Court



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