

REPORT TO THE
UTAH LEGISLATURE

Number 2005-05

A Performance Audit
of the
Timeliness of Civil Cases in District Court

April 2005

Audit Performed by:

Audit Manager Rick Coleman

Auditor Supervisor Leslie Marks

Audit Staff Aaron Eliason

Table of Contents

	Page
Digest	i
Chapter I	
Introduction	1
Case Timeliness Is an Issue of National Concern	2
Audit Scope and Objectives	4
Chapter II	
Case Management Tools Can Improve	7
Importance of Case Management Recognized by Utah’s Judiciary ..	8
Process Improvements Are Needed	11
Recommendations	19
Chapter III	
Timeliness Monitoring and Management Information Can Be Improved	21
Utah’s Recent Disposition Data Are Close to ABA Standards	22
Age of Pending Caseload Raises Some Concerns	24
Case Clearance Rates Indicate a Civil Backlog Is Building	26
Action Needed to Improve Monitoring of Civil Case Timeliness ..	29
Recommendations	33
Appendices	35
Agency Response	43

Digest of A Performance Audit of the Timeliness of Civil Cases in District Court

We were asked to review the overall timeliness of the handling of civil cases in District Court because of legislators' interest in two long-running cases in District Court. Our review found that improvements are needed at the local level in the case management tools used by judges and clerks; at the statewide level, overall timeliness goals or standards are needed and monitoring of case timeliness can improve.

Chapter I: Introduction

Case Timeliness Is an Issue of National Concern. At the national level, there has been significant discussion and research regarding delay and case timeliness. In the 1970s and 1980s, courts developed a body of research commonly referred to as caseflow management. Prior to the inception of the case management concept, the traditional view of civil case progress was that the court was a passive arbiter, relying on the parties (and attorneys) to move cases along. Caseflow management research we reviewed clearly emphasizes the need for courts to take early and sustained control over the time involved in all phases of a case. One reason for the focus on case management in recent years is that delay is reduced as the courts assume a more assertive case management approach. This audit report agrees with the conclusions of case management research and accepts the need for assertive case management as valid.

Chapter II: Case Management Tools Can Improve

Our review of how civil cases are managed found that improvements are needed in the case management tools used by court staff to process pending (open) cases and that cases are not being reviewed frequently enough.

Importance of Case Management Recognized by Utah's Judiciary. District Court has instituted some case management tools designed to help judges manage their cases in a timely fashion. In addition to case management reports and processing programs, the Judiciary has instituted some rules with deadlines for specific case events. However, increased compliance with these rules is needed and current use of two major case management tools needs to improve.

Process Improvements Are Needed. The case pending report contains large numbers of cases abandoned by the parties still classified as active cases even though no action has occurred for a year or more. Some clerks report that they don't use another processing tool, the Order to Show Cause (OSC) screen, or use it in a limited way because it is inaccurate. The tools themselves can be improved, and some underlying case data are inaccurate. As a result, rules on case event deadlines are not being complied with because required actions are not always taken when a deadline has passed.

Administrative Office of the Court's (AOC) staff in the Court Services area responded to identified concerns by seeking feedback from Clerks of Courts and then researching the problems. AOC Information Technology staff also took steps during the audit to correct identified errors in the OSC programming. In addition, prior to the audit beginning, the AOC had brought together a user group to rewrite and improve reference material for clerks.

**Chapter II
Recommendations**

1. We recommend that procedures for the use of the case pending report and OSC screen be developed to include guidelines for how often the two tools should be used.
2. We recommend that procedures be implemented to ensure compliance with requirements to mail written notice to parties to attend a hearing when case event deadlines have been passed.
3. We recommend that an effort be made to identify and dismiss the abandoned cases on case pending reports.
4. We recommend that a reporting or tracking method be developed to readily identify the active cases that are currently excluded from the case pending report.
5. We recommend that the OSC screen programming be reviewed for errors and corrected so that the tool correctly identifies cases in specified categories.
6. We recommend that training be provided for all clerks on proper use of both the case pending report and the OSC screen.

Monitoring whether District Court is achieving timely dispositions should be an ongoing process. We looked at the Court's timeliness in processing major civil cases using three indicators and applying standards developed by the American Bar Association (ABA). Case data concerns discussed in Chapter II likely resulted in the Court's performance (as measured by the timeliness indicators) looking worse than it actually is; correction of the data is needed, primarily through the elimination of large numbers of abandoned cases in pending case data.

Utah's Recent Disposition Data Are Close to ABA Standards.

According to available data, the time to disposition for major civil cases is close to but does not meet national standards. District Court disposes of (completes) 87 percent of major civil cases within one year while national civil case timeliness standards call for a 90 percent disposition in a year.

Age of Pending Caseload Raises Some Concerns. Besides the time to disposition, the age of pending caseload is a major indicator of case timeliness. Current data show that 24 percent of open civil cases are older than two years, and about 300 cases are older than five years. We believe many older cases are the abandoned cases discussed in Chapter II that distort the pending case data. While there are active cases more than two years old, these open but abandoned cases make District Court's pending case aging data look worse than it is.

Case Clearance Rates Indicate a Civil Backlog Is Building.

Another major timeliness indicator is the case clearance rate for a court, which compares the number of cases disposed to the number of cases filed in a year. If cases filed exceed cases disposed, the difference represents a backlog. Over the last four years, an apparent backlog of civil cases has been building because the clearance rates for District Court's major civil cases for those years are almost all less than 1.00, the desired rate. However, the low clearance rates may be at least partly caused by weaknesses in District Court's case data.

Action Needed to Improve Monitoring of Civil Case Timeliness.

District Court should adopt overall goals or standards, then assess performance on the timeliness indicators compared to those goals. However, before efforts are made to measure District Court performance against whatever indicators or standards are adopted, problems with case data should be corrected so that performance can be measured accurately.

**Chapter III
Recommendations**

1. We recommend that District Court develop and adopt a set of overall goals or standards for civil case timeliness, then develop procedures to regularly compare actual performance against those goals.
2. We recommend that District Court take steps to identify and correct identified case data problems and inaccuracies.

Chapter I

Introduction

Improvements are needed in the case management tools used by District Court; overall timeliness goals are needed, and monitoring of case timeliness can also improve.

Legislators' interest in two civil court cases of long duration led to a request for our office to review the overall timeliness of civil case completion in District Court. First, our review of how civil cases are managed found that improvements are needed in the case management tools used by court staff to process pending (open) cases and that cases are not being reviewed for needed action frequently enough. Second, we compared District Court performance to three well-known timeliness indicators and found the following:

- Available fiscal year 2004 data show that District Court disposes of (completes) 87 percent of major civil cases within one year, close to national civil case timeliness standards
- Available statewide data on the age of pending caseload show that 24 percent of open civil cases are older than two years and about 300 cases are older than five years
- Case clearance rates, which measure how well the Court keeps up with incoming cases, indicate that an apparent backlog of civil cases is building because clearance rates in several major civil case areas are less than the level standards call for

These analyses used the best available civil case data, but we identified concerns with the accuracy of the current data and reports, particularly with pending case data, that likely make the performance measures above look worse than they truly are. The presence of large numbers of old abandoned cases and other inaccuracies affects the reliability of the data for performance measurement, reduces the efficiency with which cases are processed, obscures the actual size of judges' caseloads, and affects the accuracy of pending case reports. Finally, we believe that consideration should be given to adopting overall timeliness goals and that monitoring of civil case timeliness can improve.

The Judiciary's mission states that the courts will "...provide the people with an open, fair, efficient, and independent system for the advancement of justice under the law." Improving some of the processes

used to manage case flow will increase the efficiency of the Court in advancing justice. At present, clerks are using manual processes when electronic tools are available; the tools, however, need refining to increase their usefulness. In addition, improving the monitoring of timeliness would provide information for accountability to the public as well as for internal use by court administration.

Case Timeliness Is an Issue Of National Concern

Research shows that a shift from passive arbiter to assertive case manager has been taking place in the nation's courts.

At the national level, there has been significant discussion and research regarding delay and case timeliness. According to the National Center for State Courts' (NCSC) online resource *CourTopics*' "Executive Summary on Caseflow Management," "Delay reduction has been a focus of major court reform since the early 1970s. In the 1970s and 1980s, U.S. courts developed a body of research commonly referred to as caseflow management." Prior to the inception of the case management concept, the traditional view of civil case progress was that the court was a passive arbiter, relying on the parties (and attorneys) to move cases along. Responsibility rested with the parties, not the court, for timeliness of case resolution. Even during our audit, in fact, AOC staff and some judges indicated that District Court civil case timeliness is largely driven by attorneys for the parties.

The literature emphasizes the need for courts to take early and sustained control over the pace of litigation.

Caseflow management research we reviewed clearly emphasizes the need for courts to take early and sustained control over the time involved in all phases of a case. As part of the interest in delay reduction and caseflow management, as many as 38 states have adopted some form of case processing time standards, whether for trial, limited jurisdiction, or appeals courts. One research source indicates that "...standards and measures represent a shift in thinking about the work of the court – from structures and processes to performance and outcomes." Measuring the court's performance and comparing that performance to goals or standards can help to determine where improvements in case management or delay reduction efforts are needed.

One reason for the focus on case management in recent years is that delay is reduced as the courts assume a more assertive case management approach. British statesman William Gladstone's statement that "justice delayed is justice denied" appears repeatedly in the literature on caseflow

management; the quote drives home the point that courts have a responsibility to fulfill their mission of advancing justice with a minimum of delay.

This audit report agrees with the conclusions of the above research on case management and accepts the need for assertive case management as valid. We also note that the NCSC is in the process of releasing a new set of performance measures called *CourTools*, similar to but deemed simpler than previously issued *Trial Court Performance Standards*. These new measures are described in an NCSC article as “...a balanced and realistic set of performance measures that are cost effective and practical to implement.” *CourTools* may offer a resource for Utah’s Judiciary should it develop its own performance measures. The ten *CourTools* measures cover a broader spectrum of court performance than the topics included in this report, but do include time to disposition, age of active pending caseload, and case clearance rates, measures to be discussed in the following chapters.

Utah’s Judiciary Has Taken Some Steps Regarding Case Timeliness

Though District Court has not put overall case disposition standards in place, steps have been taken over time to address timeliness and delay issues. These include developing rules requiring timely court action on active civil cases and cases abandoned by the parties. Other steps include a 1991 research report on the pace of litigation in District Court and the conduct of delay reduction workshops in 2000 and 2001 as the result of a Byrne Law Enforcement Grant award. Though District Court has taken positive steps in the area of case management, more needs to be done; the remaining chapters of this report present areas where improvements are possible.

The expectation in Utah’s District Court is that judges will manage their civil caseloads at the local level to ensure timely completion. Court rules have been implemented that place deadlines on case events and require judges (and their clerks) to take certain actions when deadlines are passed. For example, action is required to notify parties of the court’s intent to dismiss their case after a certain amount of time passes without activity other than filing a complaint. Another deadline applies to the parties’ requirement to file a certificate of readiness for trial in a case that

District Court has put in place some rules for case event deadlines that require action to be taken after the deadlines have been passed.

Concerns about compliance with case management rules will be covered in Chapter II.

is being actively pursued. These rules and our concerns about their implementation will be discussed in some detail in Chapter II.

In 1991, the Judiciary issued a report titled “The Pace of Litigation in Utah’s State District Courts” which indicated the need to look at three nationally recognized yardsticks for measuring delay. The report noted that 1987 civil case processing times for two of Utah’s large urban regions were lower than the national median, though both regions’ cases exceeded standards for disposition (case completion) timeliness. The report also noted that the Board of District Court Judges had determined that the American Bar Association’s (ABA) time standards were unreasonable. Its conclusion, however, stated that “...not until performance is measured against a set of acceptable standards and a comprehensive reporting system is put in place will a complete picture of the pace of litigation in Utah be available.” In our opinion, this conclusion has yet to be put in practice.

Administrative Office of the Courts (AOC) staff indicated that a 1999 Byrne grant funded a statewide study of timeliness. In the grant application, the issue to be addressed was described as a “growing delay problem.” The application cited an increase in average filing to disposition time for a civil case from 450 to over 600 days. The program to be funded would be an effort “...to both speed up and routinize judicial case management in order to reduce delay.” Case management workshops were held in the districts, best practices were shared, one district piloted a practice of limiting continuances (not implemented statewide), and another district hired a domestic case manager which helped disposition times for domestic cases in that district. While commendable, these efforts fall short of a statewide, coordinated approach to case management and timeliness.

Audit Scope and Objectives

We were asked to review civil case timeliness in District Court because of legislators’ concerns about long-running cases that had been brought to their attention by constituents. Rather than focus on specific cases that were still in court, this audit reviewed the overall timeliness of civil case completion. We looked at District Court’s civil case management process and assessed whether adequate monitoring of timeliness occurs. In addition, we tried to ascertain how many long-running civil cases (similar

to those mentioned in the audit request) are still in the courts, but we found that these data have not been previously tracked. With the assistance of the AOC's Court Services staff, we developed an estimate of these cases.

We worked with AOC staff for access to disposed and pending case data for all eight districts in the state. We reviewed the timeliness of completion, the age of pending cases, and case clearance rates for major civil case types, including the General Civil category composed of a number of specific case types including contract cases. This category also includes debt collection cases where a large volume of cases are of short duration. Also included were Torts and Property Rights case categories; torts involve personal injury claims, such as medical malpractice and wrongful death, while property rights cases include possibly quite contentious cases (e.g., water rights) and a large number of eviction cases that frequently involve little court time. Eviction (landlord-tenant) cases were excluded from the analyses according to the exclusion requirements of the case timeliness assessment methodology developed by the *Trial Court Performance Standards* (TCPS) found on the website of the NCSC. Also excluded were small claims, probate, and domestic cases as well as cases of a non-litigious nature such as name changes or filing an abstract of a judgment.

As mentioned, we worked with AOC Courts Services and Information Technology staff to collect data for analysis and review. We interviewed clerks, Clerks of Court, trial court executives (TCEs), and judges in several districts; gathered criteria from national judicial organizations such as the American Bar Association (ABA) and NCSC, and conducted other research on the topic of case completion timeliness. We also gathered and reviewed timeliness information from other states.

This report addresses the following objectives:

- to review the efficiency and effectiveness of District Court's civil case management process
- to review the overall timeliness of major civil cases in the District Courts and to determine how District Court monitors the timeliness of civil cases

This Page Left Blank Intentionally

Chapter II

Case Management Tools Can Improve

District Court's current case management tools can be improved to increase both efficiency and compliance with court rules.

District Court has instituted some case management tools designed to help judges manage their cases in a timely fashion. In addition to case management reports and processing programs, the Judiciary has instituted some rules with deadlines for specific case events. However, increased compliance with these rules is needed to improve efficiency and timeliness. Thus, current use of two major case management tools needs to improve. The case pending report contains large numbers of abandoned cases still classified as active cases even though no action has occurred for a year or more. Some clerks report they don't use another processing tool (the Order to Show Cause screen) or use it in a limited way because it is inaccurate. The tools themselves can be improved, and some underlying case data are inaccurate. As a result, rules on case event deadlines are not being complied with because required actions are not always taken when a deadline has passed.

According to AOC staff, District Court's philosophy is to rely on the judges to manage their caseload independently. Improving the tools and how they are used in case management will enable judges and their clerks to manage cases more efficiently. Efficient case management is important; according to the commentary on the *Trial Court Performance Standards and Measurement System* (TCPS) developed by the National Center for State Courts (NCSC),

A trial court should meet its responsibilities to everyone affected by its actions and activities in a timely and expeditious manner—one that does not cause delay. Unnecessary delay causes injustice and hardship. It is a primary cause of diminished public trust and confidence in the court.

A primary purpose of case management is to minimize delay in the progress and resolution of cases.

As noted above, responsibility for monitoring the timeliness of civil cases lies with the judges themselves. The AOC stated that a number of case event deadlines set in court rules provides sufficient basis for case management by judges. However, as we found, if cases pass the deadlines

without required actions being taken or if major case management tools contain inaccuracies or if the tools aren't used, then case management isn't functioning as intended. Before presenting our concerns, the following section describes some steps the Judiciary has taken to improve civil case processing.

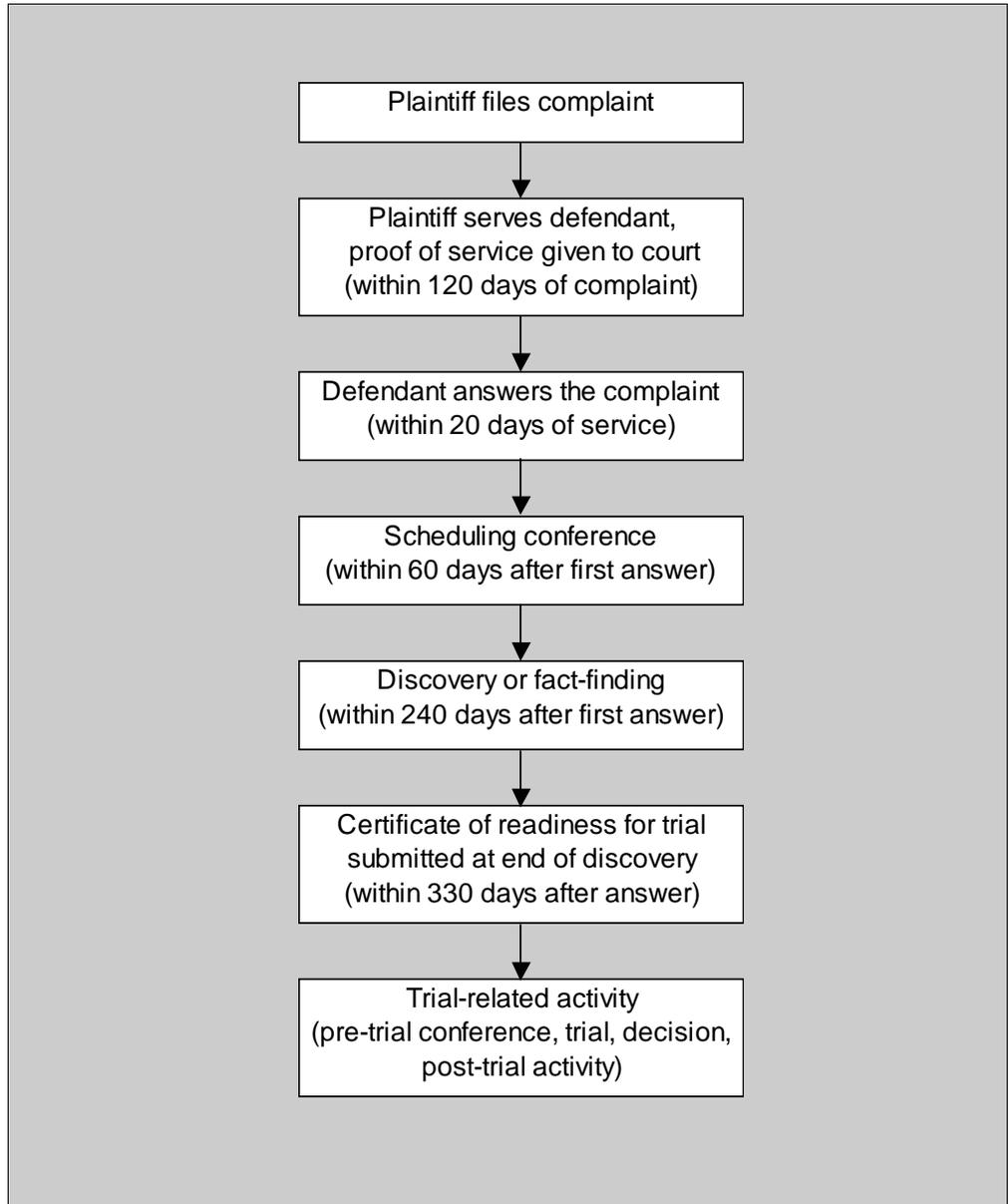
Importance of Case Management Recognized by Utah's Judiciary

The Rules of Judicial Administration and the Rules of Civil Procedure lay out case management requirements for judges and staff.

Utah's Judiciary has recognized that managing civil caseload is an important activity for the courts. For example, the **Utah Code of Judicial Administration (CJA 3-104)** assigns case management oversight to presiding judges, giving them responsibility to manage dockets and case and judge assignments "...to provide for an equitable distribution of the workload and the prompt disposition of cases...[T]he presiding judge shall discuss problems of delay with other judges and offer necessary assistance to expedite the disposition of cases." For civil cases specifically, the **Utah Rules of Civil Procedure (URCP)** contain a number of case event deadlines or time frames to be followed to promote timely processing of cases. In addition to Judiciary requirements, the **Utah Code Annotated (UCA)** requires the development of a case management system for accountability and timeliness, stating that each district court shall develop systems of case management to "ensure judicial accountability for the just and timely disposition of cases." (78-3-14)

As noted, the **URCP** provides deadlines that include requirements for courts to take action if certain time frames have been exceeded by the parties. Before discussing these, an overview of the flow of a hypothetical civil case is given in the figure below to provide the reader with a sense of a typical civil case's progress.

Figure 1. A Typical Civil Case’s Progress Involves a Number of Steps. Time frames for several events are specified in judicial rules. Not all cases involve all the listed events while some may include specific events not listed below. Cases are often settled or dropped prior to a trial.



As shown, a plaintiff has 120 days after filing a complaint to serve the defendant with a copy of the complaint and file evidence of service with the court. The defendant has 20 days to file an answer with the court (30

Rules require that if cases pass set deadlines without specified actions occurring, the court shall notify the parties of its intent to dismiss the case for lack of prosecution.

days if the defendant is outside Utah). At a scheduling conference, the parties are required to meet to discuss their claims and defenses and to develop a discovery plan and agree to a time frame within which to complete it.

For some of the steps listed above, the court is required to take action upon a stated deadline being exceeded. As will be discussed, we found evidence that the rules are not being followed. The intent of **CJA 4-103** (the rule on civil calendar management) is “to establish a procedure which allows the trial courts to manage civil case processing” and “to reduce the time between case filing and disposition.” The rule goes on to require District Court to take specific steps when two deadlines have been passed. These steps are the following:

- If a default judgment has not been entered within 60 days of the availability of default, the clerk shall mail written notification to the plaintiff that absent a showing of good cause by a date specified in the notification, the court shall dismiss the case without prejudice for lack of prosecution.
- If a certificate of readiness for trial has not been served and filed within 330 days of the first answer, the clerk shall mail written notification to the parties stating that absent a showing of good cause by a date specified in the notification, the court shall dismiss the case without prejudice for lack of prosecution.

Additionally, **URCP 4(b)** deals with another deadline requiring action by the court; after a plaintiff files a complaint, he is required to serve a summons and copy of the complaint on the defendant within 120 days. If the 120 days passes without service, the rule requires the court to take action as follows:

- If the summons and complaint are not timely served, the action shall be dismissed, without prejudice on application of any party or upon the court’s own initiative.

To meet these requirements above, regular use of case management tools is needed to identify those cases which pass the deadlines. Unfortunately, many clerks do not use the available tools optimally; consequently, the rules are not being followed. As will be discussed next, improvements in the current case management process are needed to

Requirements in rules are not being met and case management needs to improve.

improve efficiency and increase the number of these cases being identified and cleared from judges' assigned workload.

Process Improvements Are Needed

District Court has put in place a number of case management processes designed to assist the timely completion of cases; however, the implementation of major case management tools can improve. Infrequent use of these tools results in noncompliance with the deadlines found in court rules and reduces the efficiency with which clerks process cases. First, it appears that the case pending report is not reviewed frequently. We found some reports with hundreds of cases going without review for a year or more. In addition, the case pending report is inaccurate because some disposed cases are erroneously included and some cases in process are not listed. Second, the Order to Show Cause (OSC) case processing screen is underutilized because many clerks do not trust its accuracy. Third, both tools lack sufficient and up-to-date procedural direction for their use. Once problems with these tools have been resolved, additional training should be provided to reassure clerks of the usefulness of these case management tools.

Case Pending Report Not Used Effectively

One of the primary case management tools available to clerks, the case pending report, is designed to assist clerks in managing their judges' caseload by identifying cases needing attention. However, the tool is not used to its full potential. We found that there is no expected frequency for reviewing the report, and the report contains inaccuracies and omissions. Some reports list hundreds of cases that apparently have not been reviewed by a clerk in a year or more; many of these cases show little to no activity beyond filing and should have been identified and dismissed long ago in accordance with requirements in rules. In addition, working with the report is a low priority for many clerks. There are also some data entry errors that allow cases to be included on the report even though they have been disposed. For this report to function effectively as a good case management tool, improvements are needed to address the concerns discussed below.

Typically, clerks run the case pending report to generate a list of active cases assigned to their judge. Clerks then select cases for review that have no recent action date listed on the report; for example, some go back a

Two case management tools, the case pending report and the Order to Show Cause software tool, can be improved.

Clerks do not use the case pending report to its potential; regular review is not required. The report lists many abandoned cases.

year prior to the report’s date. In our review, we also looked at cases without action in the last year. It’s important to understand, however, that using a full year as a guideline is generous. Court rules contain some deadlines for action that are well within a year of the filing date, so active case management would include reviews before a year has passed.

We reviewed the case pending reports for the judges with civil caseloads in the Salt Lake court location of Third District and found that some reports listed many civil cases that showed no action for a year or more. These data are presented in the following figure.

Figure 2. Some Civil Cases Go Long Periods of Time Without Review. Nearly 1,200 civil cases (13%) assigned to judges in the Salt Lake Court of Third District went without action for more than one year but still appeared on case pending reports as active civil cases.

Number of Judges	Range of Cases with No Action in Prior Year	Total Cases No Action in Prior Year	Total Civil Cases Assigned
5	99 - 257 cases	981	4,196
5	20 - 40 cases	137	1,542
<u>13</u>	0 - 10 cases	<u>43</u>	<u>2,908</u>
23		1,162 (13%)	8,646

Note: Cases included are General Civil, Property Rights, and Torts as previously described.

At the Salt Lake court, about 13% of the major civil cases assigned to judges have gone without action for more than a year.

While it appears that only a few clerks allow a large number of cases to go without review for long periods of time, at this location the case pending reports list almost 1,200 of 8,600 major civil cases (13 percent) that are in need of review. These cases have sat without action for more than a year. If clerks were conducting regular reviews, those cases that had been filed and abandoned by the parties or had passed the other deadlines should have been identified and dismissed or else scheduled for hearings during which the parties would be called upon to show why a case should not be dismissed.

Abandoned Cases Make It Difficult to Quickly Identify Cases Needing Attention. If the case pending report were kept current, clerks’

time would be used more efficiently reviewing active cases. We asked some clerks to show us how they work with the case pending report. The clerks accessed the computer case record for each case reviewed, whether abandoned or active, to determine what action to take. They found numerous cases that apparently had been abandoned by the plaintiffs. Depending on how many such abandoned cases were found, a lot of a clerk's review time was taken up with clearing these cases rather than working with active cases.

In one observation, the clerk reviewed 38 cases of 99 with last action dates more than a year old. The clerk found 17 cases (45 percent of those reviewed) that had virtually no activity recorded. Plaintiffs in some of these cases had filed a complaint but never pursued further action. In other cases, a served defendant had not filed an answer to the complaint. Had these cases and others like them been identified in a timely manner and dismissed, fewer abandoned cases would appear on the report, and clerks could more efficiently identify active cases needing action by the court.

Because of data entry error, case pending reports contain cases listed as open that were previously disposed.

Some Case Pending Reports Contain Data Errors. Cases without activity that stay on the case pending report long past the point at which they should be dismissed inflate the data on that report. In addition to cases that should have been previously dismissed, we found some cases that had been disposed but were still listed on the case pending report because of data entry error. One clerk cited above found 15 cases of 38 that had been completed but did not have a disposition entered in the record because of data entry errors.

Two other clerks found cases in their reviews that should have had a disposition recorded but did not. Two of the four omissions found by one clerk had been disposed in the mid-1990's but had no disposition data entered. These omissions may have resulted when case data were converted to a new management information system in the late 1990's. However, regular review of the case pending report should have identified such cases as well as any clerk data entry errors for appropriate action. Ongoing reviews would ensure that the report provides an accurate reflection of active cases assigned to a judge.

One additional observation related to data entry concerns is that disposed cases still in pending data are handled differently by different clerks. Although we were told some clerks enter as a disposition date the

date on which they found the old case, we also observed a clerk who entered the actual (past) disposition date into one such case record, so inconsistencies do occur. It seems to us that the clerk who entered the actual disposition information acted to ensure accurate data was recorded.

Case Pending Report Reviews Are a Low Priority for Clerks.

We expected to find that the case pending report is a frequently used case management tool. However, while some clerks try to review the report every month or two, others stated they review it as little as twice a year. Nearly all clerks with whom we spoke stated that working with the case pending report is a low priority, something they get to when their other work is done. In fact, we found that clerks are not expected to review this report at any established frequency. While we don't expect review of this report to supplant work on active cases currently in court, it appears that insufficient attention is being given to this case management tool.

It also appears that reviewing the case pending report is a time-consuming process for clerks. For example, one clerk we watched reviewed just a dozen cases in over two hours. Two other clerks reviewed 25 cases and 38 cases during observations lasting approximately two hours. Our questions likely lengthened the time taken for the reviews; however, to illustrate, if clerks review on average 25 cases every month or two, some clerks wouldn't ever reach the end of a lengthy case pending report. In fact, one clerk was surprised when we asked about cases from the 1990's listed at the end of her report. She was unaware of these old cases because she never got that far in her periodic reviews. Some of these cases had gone years without a clerk checking on their status.

Report's Programming Excludes Some Active Cases. In addition to data entry errors, some cases in active litigation are not included on the case pending report because the report is designed to exclude cases with judgments or dispositions. However, cases can have judgments or dispositions and still be active. While we were not able to quantify how many civil cases fall into these categories, we believe a full listing of judges' assigned cases should be readily available. Currently excluded active cases should be included on the case pending report or available on a supplemental report.

The following illustrates the kinds of cases that would be excluded. One case we asked about could not be found on the assigned judge's case pending report even though it was actively in litigation at the time. The

Though described to us as a major case management tool, working with the case pending report is a low priority for clerks.

Some open cases from the 1990's have gone years without clerks checking on them.

The case pending report's design results in some active cases being excluded from the report.

case had been disposed, appealed, then sent back to District Court for reconsideration; the computer program which generates the case pending report automatically excluded this case from the report because of the prior disposition. In addition, cases with a judgment on file that are still in litigation, for example, if a party had been ordered to pay attorney fees part way through a case, would also not be included on the pending report. Because of these two categories of cases, AOC IT staff stated they could not provide a complete inventory of pending cases.

To summarize, the lack of frequent processing allows a volume of cases with no activity to accumulate on the case pending report. It seems likely to us that its length may become discouraging to clerks and contribute to the reluctance to work with it regularly. As discussed below, use of another tool available to clerks should greatly reduce the volume of abandoned cases and make the case pending report shorter and easier to use. A number of clerks, however, distrust the Order to Show Cause computer tool's accuracy and won't use it or use it in a limited way.

Order to Show Cause Online Tool Not Used Effectively

The OSC tool has great potential but is underutilized by clerks who do not trust it to accurately identify cases for processing.

The Order to Show Cause screen (OSC), a computer case management program in the courts' information system (CORIS), is not used by some clerks or not used for its intended purpose of batch processing. Clerks don't trust the accuracy of the program in identifying cases needing specific court action and we also identified inaccuracies on reviewed OSC reports. As a result, cases continue as pending cases when they have passed established deadlines requiring dismissal for lack of prosecution. In addition, clerks work less efficiently because instead of electronically processing batches of cases for dismissal, they individually identify and manually process cases. Efficiency is also reduced when cases remain on the case pending report instead of being cleared by being dismissed. We also identified some programming errors that contribute to inaccurate results. Whether caused by user or programming errors, the problems need to be resolved to increase compliance with court rules and clerk efficiency.

The OSC screen is so called because identified cases are often scheduled for an Order to Show Cause hearing during which one and/or both parties must show good cause why the case should not be dismissed.

The OSC screen is intended to help the court comply with rules for dismissing cases and to let clerks process cases in batches.

The OSC Screen Is Designed to Find and Process Cases Which Meet Requirements in Court Rules. As shown earlier in this chapter, some case event deadlines have been established that require the court to take action once the deadlines have been passed. The OSC screen tool processes three groups of cases:

- **No Default Judgement:** failure of the plaintiff to request a default judgment within 60 days of availability of default (defendant failed to file an answer to the complaint) (CJA 4-103)
- **No Trial Ready:** failure by the parties to file a certificate of readiness for trial within 330 days of the first answer to the filed complaint (CJA 4-103)
- **No Return of Service:** (URCP 4(b)) the summons and complaint are not served on a defendant in 120 days after plaintiff files a complaint

For cases that meet the criteria for each of these situations, clerks are required by rule to notify the plaintiff or both parties (depending on the situation) that unless they provide good reason by a specified date why a case should not be dismissed, the court is required to dismiss the case without prejudice for lack of prosecution.

Clerks can choose to search for cases meeting the criteria for one of these three situations, then process them as a group to generate appropriate notices to the involved parties or to dismiss the case if appropriate. The program also makes an entry in the case record regarding the action taken. Using this tool allows for compliance with court rules that require specific action when a deadline has passed. Use of the OSC screen can also help clerks manage their judges' caseload more efficiently by selecting and processing multiple cases at once and reducing or preventing the accumulation of abandoned cases on the judges' case pending reports.

Some Clerks Express Reluctance to Use the Order to Show Cause Screen for Its Intended Purpose. A number of clerks from two districts told us they do not use the OSC screen; a few did not even mention it as a case management tool. These clerks' experiences were that the program returned incorrect results, giving them cases that shouldn't have been included. One clerk also related that she tried to use the OSC screen

Distrust of the OSC tool reduces the efficiency of case processing.

simply to generate a notice for a case already identified as needing a specific action only to be told by the program that the case was not eligible for the chosen processing. Some clerks felt compelled to double check each case listed by the program. Thus, some of these clerks don't use the full capabilities of the program for batch processing but instead review cases individually, either from the list generated by the OSC program or from the case pending report. The OSC program is then used like a word processing program to print notices individually for manually reviewed cases.

Some clerks who use the OSC screen regularly also said they check listed cases individually.

We did find that clerks in another district use the OSC screen on a fairly regular basis. These clerks found value in the program though most of them stated they also checked each listed case individually before generating notices.

The perception of unreliability of the OSC program greatly reduces its value as an efficient case management tool. With the volume of cases assigned to some judges (one judge's case pending report for just three civil case categories totaled 986 cases), electronically identifying and processing groups of cases provides an obvious increase in efficiency over following a manual process for individual case reviews. Getting clerks comfortable with the OSC screen, however, requires correcting some programming errors discussed in the next section and informing clerks of the improvements.

Court Services staff had not been informed recently that clerks were having problems with the program.

AOC Court Services Staff Were Unaware of Recent Concerns with the OSC Screen. Staff said they had not been getting complaints or hearing about problems with the OSC screen even though a CORIS users' group meets regularly. The staff stated that problems they had been aware of in the past had been rectified, but some clerks told us they no longer reported problems because they felt their feedback had been ineffectual. In any case, after our questions, in November the AOC asked Clerks of Court for their input and began researching the problems.

The AOC Court Services staff suggested that a number of issues could affect the accuracy of the OSC program's results. These include the possibility that the tool needs programming revisions, the occurrence of user errors, and the presence of errors in the underlying data. Court Services staff assigned to research the clerks' concerns with the OSC screen indicated they would be looking at these possible reasons for the problems clerks were encountering.

We found two errors in programming that could affect the accuracy of the OSC screen results; the AOC has corrected these errors.

Some Errors Were Found in the OSC Screen's Program. We brought two programming issues to the attention of the AOC during our review; AOC staff indicated both errors have been corrected. First, after clerks asserted that the OSC screen didn't work correctly, we reviewed it and found that cases were being incorrectly identified under the No Trial Ready option. These should be cases that have proceeded through discovery (fact-finding), but the parties have not informed the court that the case is ready for trial. AOC staff confirmed that the software should identify only cases with an answer from a defendant on file; however, this criterion was missing from the programming, allowing cases that had not proceeded to the discovery phase to be listed as eligible. The presence of this error verifies some clerks' assertion that the program identified cases incorrectly.

Second, in the programming to identify cases qualifying for No Default Judgment processing, evidence that the defendant was served with the complaint is required to have been on file over 60 days prior to the chosen end date. However, the time frame should also allow for the 20 (or 30) days allowed for a defendant to file an answer after being served. As with the programming issue above, this error in the software results in ineligible cases being listed for processing.

Resource Materials and Training Issues Need to Be Addressed

Training and resource material concerns need to be addressed for both the case pending report and the OSC screen. Clerks pointed out shortcomings in these areas, and AOC staff acknowledged that more needs to be done. In fact, a clerks' training resource committee was formed in late 2004 and is developing a comprehensive resource manual.

During our work with the case pending report, one clerk reported that along with there being no procedures for how frequently they are supposed to review the case pending report, she was unaware of any training specific to that tool and felt some was needed. The AOC Court Services staff reported that when such training had been offered in the past, attendance was low and it was discontinued. This clerk also reported that notices about updates to CORIS, including updates to the case management tools, are disseminated but some clerks did not have time to review the lengthy emails received. As far as assistance with the OSC tool goes, AOC Court Services staff stated that while the CORIS manual does

Updated procedures and training specific to both case management tools are needed.

not include information about the OSC screen, clerks can access “help” screens while they are in the program. Court Services staff acknowledged that the help screens haven’t been updated to reflect revisions to the program but asserted the help screens can still be of assistance to clerks.

The AOC should continue with its recent efforts to identify and rectify problems with the OSC screen. In the end, use of a tool like the OSC screen would increase case management efficiency. Such assistance to clerks is valuable and needs to be put to regular use.

Recommendations

1. We recommend that procedures for the use of the case pending report and OSC screen be developed, to include guidelines for how often the two tools should be used.
2. We recommend that procedures be implemented to ensure compliance with court rules regarding case event deadlines. For example, in certain situations, clerks are required to notify parties when case event deadlines have passed.
3. We recommend that an effort be made to identify and dismiss the abandoned cases on case pending reports in accordance with court rules.
4. We recommend that a reporting or tracking method be developed to readily identify the active cases currently excluded from the case pending report.
5. We recommend that the OSC screen programming be reviewed for errors and corrected so that the tool correctly identifies cases in specified categories.
6. We recommend that training be provided for all clerks on proper use of both the case pending report and the OSC screen.

This Page Left Blank Intentionally

Chapter III

Timeliness Monitoring and Management Information Can Be Improved

District Court can enhance its monitoring of civil case timeliness by adopting and monitoring timeliness goals and improving data used in timeliness reporting.

Because completing civil cases in a timely fashion is an important goal for District Court, monitoring whether the Court is achieving timely dispositions should be an ongoing process. The monitoring of case timeliness in District Court can improve. We looked at District Court's timeliness in processing major civil cases using three timeliness indicators and applying timeliness standards developed by the American Bar Association (ABA). Available District Court data show the following:

- The indicator for the time to disposition for major civil cases is close to but does not meet national standards
- The second indicator, age of pending caseload, shows that a concerning percentage of open cases are older than two years
- The third timeliness indicator, case clearance rates, shows that over the last four years an apparent backlog of civil cases has been building

District Court should adopt overall goals or standards, then assess performance on the timeliness indicators compared to its goals. However, we're concerned about the reliability of the case data available to us to measure these indicators. Though the data were the best available, we believe our analyses have been affected by the data concerns discussed in Chapter II. It seems likely that the abandoned cases in the data make the Court's timeliness performance look worse than it really is. To make measuring performance indicators more meaningful, problems with case data should be corrected first so that performance can be measured accurately.

The three timeliness measures or indicators used to assess District Court's timeliness are discussed throughout the literature on case management and court timeliness. Both the *Trial Court Performance Standards and Measurement System* (TCPS) and the new *CourTools*, a measurement system that grew out of the TCPS, recommend monitoring the following three indicators:

- time to disposition
- the age of pending (open) caseload
- case clearance rates

The time to disposition is a calculation of the number of days that elapse from initial filing of a complaint by a plaintiff to the resolution or disposition of the case. The age of pending caseload looks at cases awaiting disposition and ranks them by age; cases exceeding a predetermined time standard are considered to be backlogged. Case clearance rates assess how well a court is keeping up with incoming cases. The number of cases disposed is compared to the number filed in a year; examination of the resulting ratios by case type can identify areas where backlogs are building.

The timeliness measurements become helpful as indicators when each is compared to a goal or standard. Because District Court has not adopted overall timeliness standards, we used timeliness standards developed by the ABA. In addition to measuring the timeliness of case completion (disposition), the standards can be used to assess whether the age of pending caseload is a concern. The case clearance rate uses a ratio to assess whether a backlog is building, with the desired ratio being a 1.00 or higher.

Utah's Recent Disposition Data Are Close to ABA Standards

Fiscal year 2004 disposition time frames for District Court major civil case categories are close to but below the ABA's timeliness standards. Available data show that 87 percent of major civil cases are disposed within one year while the standards call for 90 percent of such cases to be disposed within a year. Figure 3 presents the fiscal year 2004 data for General Civil, Property Rights, and Torts cases.

District Court's recent completion of civil cases is close to the one-year standard set by the ABA.

Figure 3. Civil Case Disposition Data for Fiscal Year 2004 Show Most Cases Are Disposed Within A Year. The case types include General Civil, Torts, and Property Rights.

Time to Disposition	Disposed Cases	District Court	ABA Standard
Within 365 days (1 year)	68,027	87%	90%
Within 546 days (18 mo)	71,314	91	98
Within 730 days (2 yrs)	73,842	95	100
Total Dispositions	<u>77,965</u>		
More than 2 years*	4,123*	5	

* Disposed cases column is cumulative, except for the 4,123 cases.

The 5% of cases that took more than two years to dispose represents 4,123 cases.

We compared District Court civil case dispositions to ABA standards because the Court has not adopted standards of its own. Further, these or similar standards have been adopted by the majority of states. (We note, however, that in the early 1990's, the Utah Board of District Court Judges rejected the ABA standards as unreasonable.) Though last year's District Court disposition data compare relatively well with the ABA standards, the five percent of cases that took more than two years to disposition represents 4,123 cases, 418 of which took five years or longer to disposition.

As noted in the case management discussions in Chapter II, we have concerns about the disposition data. There are an unknown number of disposed cases still counted within the pending case data, including some that were abandoned and therefore eligible for dismissal and some that lack disposition data because of data entry errors. The figure above provides an assessment of time to completion using the current disposition data, but the results should be viewed with the understanding that dispositions may not be completely accurate. If timely dispositions for abandoned cases had been entered in case records, the data above would show more cases disposed within two years.

Other recommended measures of timeliness, computed with the available data, indicate that a significant number of open cases are over two years old and that a backlog of pending civil cases is building. The next two sections discuss these other indicators of timeliness.

Age of Pending Caseload Raises Some Concerns

The age of pending caseload for major civil cases suggests that improvements in timeliness are needed.

We found that the age of pending caseload data are compiled at a local, not statewide, level.

Besides the time to disposition, the age of pending caseload is a major indicator of case timeliness. The age of pending caseload looks at the length of time that has passed since open (or pending) cases were filed. Our review of this timeliness indicator suggests that District Court should increase the monitoring of pending cases to identify and address potential timeliness problems at the earliest possible time. Better monitoring would also identify abandoned cases which are still in pending data as discussed in Chapter II; we remind the reader that the accuracy of the pending case data affects our analysis of the age of the cases.

District Court generates an age of pending caseload report at a local level for a single judge or court location. Although this report provides valuable information, it has limited use as a systemwide timeliness indicator because the data are not accumulated for review. Yet, case management literature states that data on pending caseload, including the age of pending caseload, may be the most critical data for caseload management. Research shows a strong correlation between a larger number of pending cases per judge and longer case processing times.

For our review, we gathered data on pending cases for all court locations in District Court to assess aging data as a timeliness indicator. As of July 2004, 24 percent of pending cases, a fairly large proportion, exceeded the timeliness standard that calls for all cases to be resolved within two years. The figure below shows the age of pending caseload data as of July 2004.

Figure 4. Statewide Age of Pending Civil Cases Data (as of July 2004) Show a Significant Number of Cases Older Than Two Years. The aging reports show that 10,880 civil cases (24%) are over two years old. According to the literature, these cases represent a backlog.

Age	Number of Cases	Percent	ABA Standards
0-2 years	33,985	76%	100%
2+ years	<u>10,880</u>	<u>24%</u>	<u>0%</u>
Total	44,865	100%	

* Cases included are active pending cases in General Civil, Property Rights, and Torts categories.

Though just 5% of disposed cases took more than two years, 24% of open cases are more than two years old.

While the previously discussed statewide dispositions (completed cases) showed that five percent of cases took over two years to close, these data indicate that a much higher percentage of the open cases are older than two years. According to literature on national timeliness standards, open cases over two years old are of concern and can be considered to be delayed or backlogged.

The proportion of lengthy pending cases we found suggests that more active monitoring of case timeliness is needed. However, the abandoned cases and disposed cases present in the pending data affect analyses, making it difficult to determine accurately the actual state of pending data. In order to provide an accurate assessment of timeliness via the age of pending cases indicator, District Court needs to identify and dispose of the abandoned cases and cases lacking needed dispositions that are present in the data. Once the abandoned cases have been cleared from pending data, it's likely that the age of pending caseload analysis would then show a lower percentage of cases older than two years. After bad pending data are cleared out, regular assessment of this timeliness indicator should help ensure that active cases are moved along as expeditiously as possible.

Best Estimate Shows 300 Pending Cases Are Over 5 Years Old

Because of the interest that was expressed by the audit requestors in two quite lengthy civil cases, we wanted to determine how many other lengthy cases were still active in District Court but found this information was not available. In response to our request, the AOC produced data

About 300 pending civil cases (showing recent activity) are at least 5 years old.

estimating about 300 civil cases in District Court at least five years old showed activity in the prior year. There may be more such cases, however, because the data do not include either cases that have been disposed, appealed, and remanded for further action or any open cases within one specific discontinued type.

According to AOC staff, the discontinued “CV” case type in the General Civil category was used in the old computer system as a catch-all case type that includes cases relevant to our review as well as domestic and other cases outside the areas we reviewed. Because of the mix of cases classified as CV, we agreed to exclude these cases from our civil case analyses. We note, however, that the 1,460 CV cases in pending case data average seven years old. Excluding these cases reduces the average age of pending General Civil cases in the analysis above. Although they provided no CV case analysis, AOC staff believe many of the CV cases were disposed even though they are still in pending data. We don’t know how many of the CV cases are major civil case types, nor do we know whether or how many are disposed even though remaining in the pending case data.

Regularly monitoring the aggregate age of pending caseload would assist District Court in identifying whether it is completing its civil cases in a timely way. We did find that some presiding judges and administrative staff in three large districts review locally generated pending case data either quarterly or intermittently. However, the volume of long-running cases on the case pending reports that were overdue for review (as discussed in Chapter II) suggests that more effective monitoring is needed.

Case Clearance Rates Indicate a Civil Backlog Is Building

Another major timeliness indicator is the case clearance rate for a court. A case clearance rate compares the number of cases disposed to the number of cases filed in a year; if cases filed exceed cases closed, the difference represents a backlog. District Court’s case clearance data for major civil cases indicate that the Court is building an apparent backlog of cases. Again, data problems likely affect the disposition data and, thus, the computed clearance rates.

Case clearance rates for major civil cases indicate that a backlog of civil cases is building.

According to the research, annual case clearance rates that are less than 1.00 indicate that a backlog of civil cases is building.

Case clearance rates are expressed as a ratio that is expected to be at or close to 1.00, meaning the Court clears as many cases as were filed in a year. A ratio less than 1.00 indicates that more cases are coming into the system than are being disposed while a ratio greater than 1.00 indicates that the Court cleared as many cases as were filed plus some cases filed in a prior year. The clearance rates for District Court’s major civil cases over the last four years are almost all less than the recommended 1.00. Figure 5 shows case clearance rates for three major civil case categories as well as a combined civil case rate for those categories.

Figure 5. Civil Case Clearance Rates Show More Cases Are Being Filed Than Disposed. Rates below 1.00 reflect more filings than dispositions in a year, indicating a backlog of cases occurred in those case types for that year.

Case Type	FY01	FY02	FY03	FY04
General Civil	0.92	0.98	0.96	0.98
Torts	1.00	0.93	0.80	0.84
Property Rights	<u>0.85</u>	<u>0.95</u>	<u>0.95</u>	<u>0.89</u>
Total of 3 Case Types Above	0.92	0.98	0.96	0.97

** Note: Clearance rates for **all** cases filed with District Court (civil, criminal, domestic, etc.) were 1.01, 0.98, 1.03, and 1.09 for the listed years.*

The value of monitoring case clearance rates is that it allows the Court to determine if a backlog of cases is building. In District Court’s case, however, the apparent backlog is likely a combination of cases in process and abandoned cases that have remained in the case data. The status of abandoned cases needs to be resolved to provide a more accurate assessment of the size of case backlog.

In addition, review of both summary and more detailed data is helpful; while the total civil case clearance rates are not far below a 1.00, several specific clearance rates within the data are of more concern. Further, the case clearance rates for all types of cases filed in District Court (civil, criminal, domestic, traffic, etc.) were greater than a 1.00 for three of the years while the fourth year’s was very close (0.98), even though specific civil case clearance rates were lower. Review of the

detailed data helps to identify whether performance is less than desired in certain areas.

Even though the clearance rates are not far below a 1.00, District Court has an apparent cumulative backlog of 20,900 cases in the three civil case categories for the five-year span of fiscal years 2000 to 2004. According to TCPS commentary on this measure, “knowledge of clearance ratios for various case categories over a period of 3 to 5 years can help pinpoint emerging problems and where improvements must be made.” Researchers also commented that monitoring clearance rates is important because significant court delay can occur in just a few years as the result of cumulative annual backlogs. The 20,900 cases backlogged at the end of fiscal year 2004 are concerning when compared to the total pending caseload of 45,000 shown in Figure 4. If accurate, the cumulative backlog represents nearly half of all pending cases in the three civil categories.

It is likely, however, that the data should show less backlog if abandoned cases were cleared out. Filings and dispositions by case type are available on the Judiciary’s website, providing the data needed to compute case clearance rates for review. Annual disposition data might well be higher if the data entry errors and abandoned cases still in pending data had been taken care of. The case clearance rates above might then have reflected a higher completion rate. Unfortunately, we do not know to what extent the rates would change.

If actual backlogs build up, then District Court timeliness will be adversely affected. These three civil case categories accounted for 37 percent of all District Court filings in fiscal year 2004. In our opinion, monitoring case clearance rates for the various types of cases in addition to reviewing overall clearance rates is needed, particularly since the data in the figure above are of more concern at the civil case type level than at the overall summary level. Summary case clearance rates were presented to the Judicial Council as a small part of a presentation during two recent annual budget planning meetings. In addition, regular review of detailed data, perhaps by the Board of District Court Judges, would help to identify areas where improvements are needed.

Given the evidence that improvements are needed in monitoring the civil case timeliness in District Court, it follows that there must be something to measure the monitored performance against. The next

The five-year backlog of pending cases totals 20,900, a significant number when compared against the total pending caseload of nearly 45,000.

Monitoring both summary and specific case clearance rates is needed to prevent a backlog of cases.

section presents information on the use of timeliness standards in other states and recommends that civil case timeliness goals or standards be implemented in District Court. A recap of the data concerns is also provided; the case data inaccuracies need to be resolved before performance comparisons against timeliness indicators or overall goals will be truly useful.

Action Needed to Improve Monitoring Of Civil Case Timeliness

District Court can improve timeliness monitoring by adopting civil case timeliness goals or standards and correcting data problems.

District Court should take steps to improve timeliness monitoring of civil cases. First, to provide a reference point when measuring civil case timeliness, the Court should develop and implement overall standards or goals for each of the major timeliness indicators discussed in this chapter and regularly monitor aggregate performance as shown by these indicators. As previously noted, timeliness standards have been developed which can serve as guidelines for developing District Court's own goals. Second, concerns with data need to be addressed so that comparing performance to adopted goals provides a meaningful assessment of performance. Chapter II discussed a number of issues with inaccuracies within case records, in case management reports, and in computer processing tools. These problems reduce the accuracy of timeliness monitoring activity.

Case timeliness goals are needed in order to identify where current performance needs to improve. Unlike case event deadlines (discussed in Chapter II) which may be used to assess how efficiently judges manage their own cases, overall timeliness goals allow assessment of the effectiveness of the Court as a whole in completing cases in a timely manner. Setting goals – adopting standards – is an integral part of good management for any organization.

For District Court, setting goals for timely case completion and then monitoring overall timeliness indicators would provide more complete information on its processing of cases, allowing the Court to identify, as we have done in the preceding discussions, if there are areas of concern where improvements are needed. Such internal assessment, in turn, facilitates accountability reporting to the Legislature and public.

ABA standards call for 90% of civil cases to be disposed in 1 year, 98% in 18 months, and 100% in 2 years.

Standards Have Been Developed by the ABA; Most States Have Similar Standards

The ABA has published recommended standards for timely case dispositions for trial courts, most recently in the 1992 edition of its *Standards of Judicial Administration, Standards Relating to Trial Courts*. In addition, we found that the majority of states have adopted some form of timeliness standards, most of which are applicable to trial courts.

For time to disposition, the ABA standards for general civil cases call for 90 percent of all cases to be settled, tried, or otherwise concluded within 12 months of case filing. In addition, standards were also developed to acknowledge the complexity of some cases: ABA standards call for 98 percent of cases to be completed within 18 months and 100 percent within 24 months of filing “...except for individual cases in which the court determines exceptional circumstances exist and for which a continuing review should occur.” Thus, although calling for 100 percent of cases to be disposed in two years, the standards acknowledge that specific cases may take longer.

Regarding the age of pending caseload, timeliness research indicates that “if the court has not adopted time standards, nationally recognized disposition time standards can be used to determine the maximum allowable time for processing cases...” Thus, according to national standards, pending cases should be completed within two years. The same source also describes the standard for case clearance rates as follows: “Courts should aspire to dispose at least as many cases as are filed each year (i.e., it should have a clearance rate ratio of 1.00 or higher).” These are the standards used in our discussions on disposed and pending cases.

Although we primarily used the ABA’s timeliness standards to evaluate case timeliness, we are not necessarily advocating that District Court must adopt these specific standards. In fact, the AOC authored a 1991 study of the pace of litigation in Utah’s District Court which pointed out that the Board of District Court Judges at that time determined that the ABA’s time standards were unreasonable. Nonetheless, we believe the need is clear for goals against which to measure performance and assess timeliness. District Court should develop and implement civil case timeliness goals or standards it deems reasonable. The following discussion provides information on other states’ standards.

The ABA standards are one option for goals, but District Court should adopt goals or standards it deems reasonable.

38 states and D.C. have adopted some case timeliness standards in one or more of their courts.

Standards Have Been Adopted in Most States. From the time the ABA issued its standards to 2002, 38 states and the District of Columbia had implemented case timeliness standards for civil, criminal, and/or appellate courts. Three neighboring states (Arizona, Colorado, and Idaho) have implemented civil case timeliness standards as have the three west coast states (California, Oregon, Washington). Figure 6 provides these states' general civil case timeliness standards.

Figure 6. Most Nearby States Have Implemented Case Timeliness Standards. States listed below have trial court civil case standards in place. Some states' time frames differ from the ABA's standards. The reported performance was taken from reports supplied by the states but has not been audited for verification.

State*	Timeliness Standard	Reported Performance	Monitored Statewide
States Measuring Dispositions:			
California	75 & 90% in 12 mo.** 85 & 98% – 18 mo.** 100% – 24 mo.	65 & 90%** 84 & 95%** 92 & 97%**	yes
Oregon	90% – 12 mo. 98% – 18 mo. 100% – 24 mo.	87% 95% 97%	yes
Washington	90% – 12 mo. 98% – 18 mo. 100% – 24 mo.	90% 95% 97%	yes
States Measuring Age of Pending:			
Colorado	90% – 12 mo. 100% – 15 mo.	80% --	yes
Idaho	100% – 540 days (abt. 18 mo.)	87%	yes
Oregon	– 12 mo. – 24 mo.	80% 93%	yes
Arizona	90% – 9 mo. 95% – 18 mo. 99% – 24 mo.		no

* Note: Montana, Nevada, and Wyoming have no trial court civil case standards.

** Note: We show California's two civil case standards, for unlimited cases first (over \$25,000) and then for limited (up to \$25,000).

Of the 38 states with standards, at least 33 had standards in place for civil cases. Though many states' standards differ somewhat from the ABA's, it appears these standards were used as a guide in developing specific state standards. The information from the states shown in Figure 6 generally includes the same categories of civil cases that we reviewed in Utah and these states also measure the time from filing to disposition. Complete comparability with Utah's District Court performance is uncertain, but we were mainly interested in determining whether other Western states have adopted timeliness goals and whether they compared actual performance to their standards.

Five of the six states listed above measure on a statewide basis how well their actual performance compares to the adopted standards. California and Washington measure disposition data, Colorado and Idaho measure pending case data, and Oregon measures both. The states produce systemwide reports on actual timeliness in relation to the set goals. Our review of these reports shows that only Washington and California each met one of the goals (disposing of 90 percent of cases at 12 months). California has separate goals for unlimited (75-85-100%) and limited (90-98-100%) civil cases; limited cases have a \$25,000 upper limit.

The fact that many of these states aren't meeting the timeliness standards they've put in place does not negate the value of adopting standards. An organization should be able to assess its current performance in relation to a goal to determine where improvement efforts are needed and what level of resources need to be devoted to those efforts.

Data Concerns Need to Be Addressed

For timeliness monitoring and reporting to be meaningful, concerns with District Court civil case data need to be addressed. Accurate performance assessment requires reliable data. As noted within the report thus far, we encountered a number of problems with both pending and disposition data during our review of the timeliness of major civil cases. To recap, our concerns include the following areas:

- Inaccuracies caused by data entry errors and/or omissions (user errors) including disposed cases remaining in pending data
- Certain types of active cases not listed on case pending reports

Addressing data problems is needed so that monitoring civil case timeliness is meaningful.

- Cases abandoned by the parties but remaining in pending data
- Errors in software programming, particularly with the Order to Show cause case management tool

The data problems reduce the efficiency with which clerks process cases and the availability of reliable data for monitoring purposes. Steps should be taken to implement procedures, improve resource materials for clerks, and provide specific training on case management tools and relevant reports in addition to correcting programming issues within the tools themselves.

At a broader level, bad data distort timeliness measures and reduce District Court's ability to assess how well it is processing civil cases. Data concerns need to be resolved to measure performance accurately. AOC administrators report that the Judiciary is reviewing the possibility of adopting some performance measures being issued by the National Center for State Courts; for these or other measures to be meaningful, District Court needs to have accurate case data.

Finally, reviewing performance via the timeliness indicators or other measures should result in reports that are easily accessible at both local and statewide levels. Assuming that individual judges and district presiding judges monitor the efficiency of performance at the local level, there should also be accurate systemwide information that shows how effectively the Court as a whole is meeting its responsibilities in providing an expeditious judicial process to the public.

Recommendations

1. We recommend that District Court develop and adopt a set of overall goals or standards for civil case timeliness, then develop procedures to regularly compare actual performance against those goals.
2. We recommend that District Court take steps to identify and correct identified case data problems and inaccuracies.

This Page Left Blank Intentionally

Appendices

Appendix I

General Process of Civil Cases

The flow of civil court cases through its various phases is described in both the Judiciary’s **Utah Rules of Civil Procedure (URCP)** and the **Utah Code of Judicial Administration (CJA)**, which set requirements for the conduct of civil cases. According to AOC staff, in Utah, civil cases are driven largely by the parties (plaintiff and defendant). “Conceptually, the process has the court as a passive arbiter, that does not intervene until the parties request a decision (motion, trial).” Research shows that traditionally, in Utah and elsewhere, it’s been the parties’ responsibility to move a case along. As discussed in Chapter I, changes to the traditional approach have been recommended to increase active case management by the court throughout a case’s life.

Typical Civil Case Follows a General Path

The following outline, provided by the AOC, gives a summary of a typical civil process. Some civil processes, including landlord-tenant disputes, estate cases, and domestic cases, must follow provisions of relevant state statutes in addition to judicial rules.

A case begins when a plaintiff (or plaintiffs) files a complaint, which may entail one or multiple causes of action. The plaintiff has 120 days from the filing date to serve the defendant(s) with complaint and file notice of service with the court. Defendants are given 20 days to answer the complaint (30 days if outside Utah).

A scheduling conference is held to agree upon the time given for discovery (taking depositions, fact-finding, exchange of information between parties); the default time frame is 240 days from the date of the answer, but the parties can agree to a different time frame. According to the AOC staff, in most cases, discovery accounts for most of the total elapsed time of a case. After the scheduling conference itself, the court is involved in the discovery process only if there are disputes.

Frequently one party makes a motion for summary judgment; the judge addresses two questions: Is there a material issue of fact in dispute? If there is no issue of fact in dispute, is one side entitled to judgment as a

matter of law? If the case continues, a pre-trial conference is scheduled at the end of discovery, giving the parties a last chance to narrow the issues or settle the case before a trial; a trial date is set at this point.

A trial can be a jury or bench trial; the AOC staff stated that most trials last only a few days, and most cases settle without a trial. Trials may involve a few or many motions and counter-motions by the parties as the proceeding progresses. At the end of the trial, typically the judge makes a ruling and the judgment is then entered into the court record before proceeding to an enforcement phase. Judgments may be monetary or involve some ordered action (e.g., remove a nuisance); the court is involved if writs of garnishment or attachment are needed, but in many cases, the court's involvement ends at this point. However, there may be post-trial motions for a new trial, to amend the judgment, or for a stay of judgment because of an appeal.

If an appeal occurs, District Court would become involved again if the case is remanded from the Court of Appeals to the trial court. Also, the court sometimes has continuing jurisdiction to ensure that its judgment is given effect; this activity could involve collection writs or visitation or support issues in domestic cases. The AOC stated that some cases have ongoing litigation for years (for example, water rights cases).

This Page Left Blank Intentionally

Appendix II Time of Disposition, Age of Pending Caseload and Case Clearance Rates

The following pages present tables showing time to disposition, age of pending caseload, and case clearance rates for fiscal year 2004 with district level detail. See also the report's Figures 3,4, and 5.

Agency Response

March 23, 2005

Mr. John M. Schaff
Legislative Auditor General
W315, Capitol Complex
Salt Lake City, Utah 84114

Dear Mr. Schaff:

Thank you for the opportunity to respond to the recently completed audit entitled *A Performance Audit of the Timeliness of Civil Cases in District Court*. The audit has been reviewed in detail with Judge Thomas Willmore , Chair of the Board of District Court Judges, and Dan Becker, State Court Administrator. In that the findings and recommendations contained in this audit are principally addressed to the District Court, I am providing this response on behalf of the Board of District Court Judges as District Court Administrator and staff to the Board.

The audit addresses a subject which is central to the administration of justice, the management of individual cases to a fair and timely resolution. This audit cites the body of information and methods which have long been considered as our court system and our individual judges attempt to strike the right balance in individual cases; ensuring timely completion of cases with the need of litigants to adequately prepare and present their case. While there is no doubt the outlying or particularly involved case, we believe the District Court has a very good record of getting cases to trial in a consistently timely manner. We are pleased to see that the time to disposition figures reported in the audit confirm that good performance.

While the audit reports very favorable time to disposition performance, it also appropriately reports on issues concerning the age of pending cases. The audit accurately characterizes many of the pending cases as abandoned cases. These include those involving cases which are filed but never served or prosecuted by the plaintiff, or cases reported to the court as dismissed without counsel filing the appropriate paperwork necessary for a formal closure. While it is certainly desirable to clear out these types of abandoned cases, admittedly, some courts have not considered this clean up type of work to be the highest and best use of limited clerical and judicial resources. Their attention has understandably been directed at moving the "active" workload they have been assigned. The arguments made in the audit for addressing this clean up work in a routinized and standard way are sound.

All of the recommendations presented in the report will be addressed. In fact, the recommendations set out in Chapter II have either already been addressed or are currently in the process of being worked on by Clerks of Court, with assistance from the Administrative Office of the Courts. With respect to the recommendations contained in Chapter III, I can report the Judicial Council initiated an effort this past November to arrive at a standard set of measures, including case management measures, that will provide a means for monitoring and assessing performance on an ongoing basis. The objective is to provide measures which can be easily understood and applied by the Council, boards of judges, court executives, and presiding and individual judges. This work is relying on a national model for core performance measures for courts being prepared by the National Center for State Courts. The Council's work on these performance measures will be completed and implemented this summer.

In summary, we find the recommendations contained in this audit to be consistent with the goals and objectives we have for case management. The District Court appreciates the effort which has gone into this report and would like to acknowledge the professional manner in which the staff of your office conducted themselves throughout this review. Judge Thomas Willmore and I will be available to respond to any questions when this audit is presented to the Legislative Audit Committee.

Sincerely,

Mark Jones
District Court Administrator

cc: Judge Thomas Willmore
Chief Justice Christine M. Durham
Daniel J. Becker