



The Court Administrator

OFFICIAL PUBLICATION OF THE INTERNATIONAL ASSOCIATION FOR COURT ADMINISTRATION



Court Administration: The Roles of the Judge and the Court Administrator

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courtadministrator@iaca.ws

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“THE COURT ADMINISTRATOR”

Dear IACA’s members,

It is for me a double pleasure to present to you the second issue of “The Court Administrator”.

The first reason is to show the consolidation of this important publication that transmits experiences around the world about a theme as unknown as Court Administration.

Second, because this issue analyses the different roles of judges and court administrators. There is not a clear line, separating the functions of the former and the latter. Some countries adopt a system where judges deal with all the administrative issues in the Court, including details. In other ones, the court administrator does everything.



*Judge Vladimir Passos de Freitas,
IACA President*

This second issue of The Court Administrator provides an overview about the treatment of the subject. Specialized professionals, from different countries, share with us their studies and experiences.

Apart from that, I would like to invite all of you to our 9th. International Conference, in Iguaçu Falls, Brazil, 2018, September 16-19. We, Brazilians, are waiting for you to discuss the most important themes in

the area, surrounded by the largest waterfall system in the world.

Finally, I would like to present you my best wishes of a great New Year.

Vladimir Passos de Freitas
President

EDITOR'S MESSAGE

Welcome to the 2nd edition of *The Court Administrator*. I feel like we have had remarkable success in getting this new publication off the ground. From an editor’s point of view, the biggest publishing challenge is having a sufficient number of quality articles to justify publication. Thanks to the responsiveness of IACA’s international membership we have received several well written and thoughtful articles, in addition to interviews of chief/administrative judges and court executives. This publication is focused on the topic, “Court Administration: The Roles of the Judge and the Court Administrator.”

Early on in my court administration career I had trouble explaining my job to people who were unfamiliar with the courts generally and the United States Federal Courts in particular. The term **clerk of**



*Ralph L. DeLoach
Clerk/Court Administrator
Kansas District Court (retired)*

court to the average person in the United States denoted someone who wore a green eyeshade and sat behind a desk collecting and filing court documents. In fact, 100 years ago the filing and maintenance of documents comprised at least 80 percent of what a clerk was responsible for doing. 20 percent or less of her/his time was devoted to administrative issues. Today it is the reverse. At least 80 percent of a clerk’s time is devoted to administrative duties and 20 percent or less is devoted to the collection and maintenance of court

documents. The reasons for the change are many and could be the subject of another article. Suffice it to say that automation, the growth of the court’s workload and, consequently, the number of judges and court staff and the availability of a more qualified workforce,

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were all enormous factors facilitating the change. Many court administrators now have law degrees or advanced degrees in judicial administration. With these and other changes the common clerk of court reference experienced a metamorphosis. Many jurisdictions have started appropriately referring to the clerk of court as the court administrator or court executive.

In order for those who were unfamiliar with the federal court to understand the responsibilities of a clerk/court administrator, I needed a brief and descriptive explanation. Understanding that most folks were more familiar with the business world than they were with the courts, I would explain my role in the following way:

I advised that the judges on a court are in fact the board of directors. The head judge or chief judge, determined in some cases by seniority and in others through election by a majority vote of the judges on a court is the chairman of the board. The clerk in many jurisdictions is also selected by a majority vote of the court's judges. He/she reports directly to the chief judge (chairman of the board) and is designated either the chief executive or chief administrative/operating officer. I would explain that the judges or board of directors develop court policy, hopefully, with the input of the court administrator. It is then the responsibility of the court administrator

in consultation with the chief judge to carry out that policy. In addition to carrying out court policy, the chief executive has a myriad of other duties, including the maintenance of court records, budget formulation and management, financial accounting, automation, and the collection and compilation of statistics among many others. The chief executive reports to and maintains close contact with the chairman of the board regarding the management of the court.

In my view, effective communication between the chairman of the board, the board of directors, the court administrator and court staff is key to administrative success. There are many examples of effective communication contained in the articles submitted for this edition.

I hope that everyone has a great holiday season. I also want to convey my wish for peace and goodwill wherever you are located around the world.

Note: Our current editorial guidelines limit articles to a particular topic and length. For the next edition we have decided to provide authors with the flexibility to determine their own court administration topic and a reasonable length for their article. We will relax our normal guidelines periodically so that we insure the publication of a diversity of ideas regarding court administration best practices.



The DIFC Courts: The Roles of the Judge and Court Administrator in Case Management

By: Mahika Roy Hart, Postgraduate Law Fellow, DIFC Courts



Postgraduate Law Fellow, Mahika Roy Hart, has acted as a Small Claims Tribunal mediator, case progression officer and judicial clerk. She is also responsible for academic projects concerning the development of the DIFC Courts, including analysis and development of the Court's Rules and regulations, especially as regarding third party funding.

As legal costs rise worldwide, the roles of Judge and Court Administrator as active case managers have become increasingly important. This article explores one international example of how the DIFC Courts ensure that Judges and Court Administrators include case management as a priority amongst their responsibilities to minimize delay and optimize case progress for parties in dispute.

Ms. Hart may be reached at Mahika.Hart@dificourts.ae

Introduction

Courts and legal practitioners around the world are seeking improved case management techniques and tools for progressing cases from one stage to the next, including mechanisms for setting deadlines and relevant “checkpoints” throughout the case. Until the introduction of the Civil Procedure Rules in the UK, parties or solicitors were historically responsible to regulate the pace of litigation. Now, many courts actively participate in case management and endeavor to administrate cases more efficiently. Case management tools can often be more effective when explicitly provided for in court rules and regulations, but often they must be tailored to each case with active attention from the Judge and Court Administrators.

Thus, in a world of rising legal costs, the roles of the Judge and Court Administrator must shift to include a deeper focus on active case management. The DIFC Courts are no exception to this quest for increased emphasis on case management. The Rules of the DIFC Courts (RDC) are designed to provide case by case solutions to manage progress efficiently by drawing on the intertwined roles of the Judge and the Court Administrators (formally referred to in the DIFC Courts as the “Registrar” and “Registry” team) and by requiring certain case checkpoints where the Judge and

Court Administrators liaise with the parties to ensure sufficient progress. This article will briefly detail a few of the ways the roles of Judges and Court Administrators in the DIFC Courts are carefully tailored to maximize efficient and effective case management.

Brief Background on the DIFC Courts

The Dubai International Financial Centre (DIFC) is a free zone located within the Emirate of Dubai, in the United Arab Emirates and is subject to its own commercial laws based on a common law tradition. Thus, the DIFC is exempt from Dubai and UAE civil commercial law, although other types of law are still applicable. The DIFC has its own judicial system, the DIFC Courts, which adjudicate cases relevant to the DIFC or disputes between parties who have agreed to the DIFC Courts’ jurisdiction. The creation of the DIFC, a common law island in a civil law country, encourages international best practices in Dubai and gives international parties the option to choose an English language, common law Court to administer their disputes. Additionally, the common law judgments of the DIFC Courts are enforceable around the world, an important factor for many parties. For these and numerous other factors, the DIFC Courts are a model

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for judicial systems of the future, combining business-friendly structures with active case management and technology to provide parties with flexible, efficient and swift justice.

Intertwined Case Management Responsibilities of the Judge and Court Administrator

The case management roles of Judge and Court Administrator in the DIFC Courts cannot be completely separated; both must prioritize the principles of case management if either is to succeed. This is due to the complementary responsibilities assigned to the Judge and the Court Administrator according to the Rules of the DIFC Courts (RDC), which are designed to provide case by case solutions to manage progress. First and foremost, the RDC provide an overriding objective applicable to both Judges and Court Administrators who are tasked to enable the courts to deal with cases justly, with an eye towards expedient, fair and cost-effective resolution of disputes, with the RDC articulating a further duty to actively manage cases.

The RDC gives Judges and Court Administrators commensurate and appropriate powers to implement the principles of case management while still ensuring that parties are treated fairly. Notably, the RDC sets out an extensive and non-exhaustive list of case management powers including the powers to change timetables, require attendance of various stakeholders, receive evidence remotely, stay part or whole proceedings, consolidate or separate proceedings, determine the order or exclude issues and order filings as to estimated costs. Of particular note is the additional power to take any other step or make any other order for the purpose of managing the case and furthering the overriding objective, even orders of the Courts' own initiative. Failure to comply with the Rules or a Court Order can also result in adverse costs consequences, giving parties further incentive to move the case along. Both Judges and Court Administrators are thus equipped with appropriate flexibility to fulfil their role of case manager in a transparent manner.

Further tools for case management are sprinkled throughout the remaining Rules, including the setting of mandatory deadlines and the allowance of sanctions for failure to meet those deadlines without following

specific procedures. These case management tools are spread between the Judge, tasked to make more substantive decisions about how the case will progress, and the Court Administrators, tasked with setting and following-up on deadlines, accurate filings and administrative cooperation between the parties. These complementary and dual roles, in combination with the general case checkpoints described below, ensure that cases stay on track and cannot be unduly delayed due to mismanagement or bad faith.

Life of a Case: Checkpoints with both Judge and Court Administrator

Upon filing a case, the Court Administrators provide parties with a Case Plan listing estimates for the timeline moving forward including dates relevant to important case "checkpoints" such as the filings of pleadings, a Case Management Conference, production of documents, witness statements, expert reports, pre-trial review, trial bundles, reading lists, skeleton arguments, opening statements, chronologies and trial. While these checkpoints are often subject to change as the case progresses, this initial Case Plan gives parties general insight into the timetable moving forward and expected interaction with both the Judge and Court Administrators. This Case Plan also defines the Court Administrator's role as the first point of contact before a Judge gets involved with case management issues.

Most requests to adjust the case timeline or procedure are filtered through the Court Administrators, and collated such that Judges can deal with all necessary issues together. One of the most useful checkpoints is the Case Management Conference (CMC), an opportunity for parties to adjust the case timeline in collaboration with both the Judge and Court Administrators. In advance of a CMC, parties are required to comply with certain disclosure mandates, proving information regarding anticipated document production, document requests, admissions, witnesses, experts, alternative dispute resolution, pre-trial timetables, rights of audience and notably, the use of third party funding in the case.

At the CMC the Judge and Court Administrator will endeavor to issue a Case Management Order including a manageable timetable incorporating the information

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provided by the parties in advance of and during the hearing. The Judge will also address appropriate legal issues, interim or urgent measures and applications. After the CMC, if appropriate, the parties will likely be required to participate in progress monitoring and/or attend a Pre-Trial Review so the Judge and Court Administrators can assess whether the parties are on track. These further checkpoints allow proper adjustments considering any pending or new issues. Both the Judge and the Court Administrators may impose various sanctions for failure to comply with case management directives including costs and refusal to adjust dates should parties seek to create delay. Throughout, the Judge will generally act as a guide, seeking to settle contentious issues, while the Court Administrator will coordinate the timetable with the parties and Judge where there are no legal issues in conflict.

The above checkpoints relate primarily to the DIFC Courts' Court of First Instance and the Court of Appeal. In the DIFC Courts' Small Claims Tribunal (SCT), cases are concluded in an average of four weeks from valid service largely due to active case management provided by the Court Administrators in the SCT Registry in conjunction with the informal and flexible rules relevant to the SCT. These rules include the ability for the SCT Registry and Judges to set deadlines and conduct proceedings in the manner most suitable to the case at hand, especially considering most parties before the SCT are not represented. This flexibility and focus on proactive communication from the SCT Court Administrators contributes significantly to the overall speedy resolution of cases in the SCT.

In addition, the DIFC Courts also provide other tools to ensure that the Judge and Court Administrator can fulfill their roles as active case managers. One such suite of tools is the advanced technology available in the DIFC Courts' facilities which allow smoother access to information and communication with Court Administrators and between parties. This includes video and teleconferencing for parties, legal representatives and Judges as necessary, online filing and rapid communication with parties, legal representatives and the DIFC Courts' Registry via email and phone. A technologically advanced case management database allows parties easy access to case

related documents, schedules and updates from any device or location. Ultimately, these tools contribute to the Court Administrators success in active case management and interaction, in conjunction with the other mechanism mentioned.

Conclusion

Many of the above-mentioned case management tools implemented in the DIFC Courts have been adopted by the UAE Ministry of Justice in the Civil Procedure Code, further proof that adjusting the roles of both Judges and Court Administrators towards more active case management is a continuing trend. The administration of active case management is undergoing development in many courts around the world, including adjustments in how both Judges and Court Administrators interact with parties to ensure sufficient progress. Legal proceedings in court have the international reputation of being both slow and expensive, riddled with increasing delays and uncertainty. This reputation is evidenced by the general increase in parties choosing arbitration and the growing number of Arbitration Centres worldwide. However, key adjustments in the understanding of the important responsibilities of both Judges and Court Administrators in ensuring the efficient and effective administration of justice through case management can serve to repair some of the negative assumptions about litigation in national courts. The DIFC Courts are working to combat this negative reputation through the assumption of active case management responsibilities by both Judges and Court Administrators combined with key structural and procedural features that allow parties assurance that their case will be handled efficiently and consistently to reach justice via the quickest path possible. This effort will certainly serve to improve the speedy administration of justice and will continue to act as an example as this trend continues around the globe. ⚖️



Developing Fundamentals of Partnership between the Court Administrator and the Chief Judge: Ukrainian Experience

By: Nataliia Chumak



Nataliia Chumak is currently the Deputy Head of State Judicial Administration Office in the city of Kyiv (Ukraine), Board Chairwoman of the "Court Management Institute" NGO, a participant of the faculty team for the Michigan State University (MSU) Judicial Administration Certificate Program in Ukraine and she is the Founder and Editor-in-Chief of the Journal of Judicial Administrators of Ukraine "NewsLetter of Court Management Institute". In this capacity she is promoting best practices and innovations in court administration throughout Ukraine. Nataliia is located in Kyiv, Ukraine.

Nataliia Chumak may be reached at chumak.icmi@gmail.com

In this article, the author analyzes various models on which the interaction between a Chief Judge and a court administrator is based. The author also gives the overview of the judicial administrator profession history in Ukraine and discusses the conditions under which it becomes possible to achieve the optimal and effective model of cooperation between the two key leaders in the court.

Needless to say, proper administration of court operations secures necessary conditions for high-quality adjudication of justice, thus, affecting the court performance and the level of public trust to the judicial system. There are two key figures in the judicial administration: the chief judge and court administrator (chief of staff, court clerk, registrar).

It is no wonder that a lot of attention is paid in court administration today to ensuring efficient interaction between these two figures. This is evidenced by numerous publications, training programs, and training courses. The partnership between the chief judge and court administrator is singled out in a separate module in many basic training courses on court administration. The importance of this issue was also highlighted by a number of course selections which were offered as part of the International Conference on Court Administration in Washington, DC, in July 2017. The conference attracted a large audience of those willing to investigate the problem.

In this first example, during the session "The Judiciary and Delivery of Justice Evidence-Based Practices", speakers Jeff Apperson and Mary McQueen presented two models of developing the successful partnership between the chief judge and court administrator: "Loosely Coupled Organization (LCO)" and "Productive Pairs".

Another session was entitled "Leading and Managing; When Status, Power, and Control Collide: The Story of Chief/President Judges and Court Administrators" featuring speakers Dr. Maureen Conner and Dr. Luis María Palma. This class was intended to analyze the roles and responsibilities of the chief judge and court administrator in the fast-changing environment and define further steps to develop such cooperation.

Therefore, the theory and practice of modern court governance pays serious attention to problems of governance. An analysis of existing models of cooperation between the chief judge and court administrators allows us to identify three major categories:

- Complete removal of the chief judge from supervision over the court administrator;
- Minimal participation of the court administrator in the organization of court operations because of an insignificant scope of his/her powers and the chief judge's leading role in resolving administrative issues; and

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- Close collaboration of the chief judge and court administrator aiming at partnership where the former defines the court policy and strategy and the latter ensures implementation thereof.

Surely, the third model may be deemed optimal should it be based on trust and mutual respect. Support from all individuals working at the court makes such a model viable. In this case, both judges and staff members are aware that their joint efforts are supposed to ensure high-quality and efficient adjudication of justice. The judges focus on the major task of the court: they adjudicate justice based on the principles of rule of law, respect of rights and liberties, and everyone's right to a fair trial. In doing so, the staff performs support functions. For this example, the chief of staff's mission is to relieve the judges of the administrative burden associated with resolution of a large number of organizational issues. His/her task consists in operational leadership and governance based on partnership with the judiciary as usually represented by the chief judge as well as judicial self-governance bodies.

As far as the Ukraine is concerned, development of the Court Administrator profession is still in its initial phase. The professional judicial community is just becoming aware of the importance of the chief of staff as a key administrative position at a court.

Prior to 2006, when the chief of staff position was introduced at Ukrainian courts, the chief judge was the main administrator at a court of any level. All staff members were subordinated to the chief judge. The tradition of such hierarchy turned out to be so strong that when the chief of staff position was introduced at our courts, it was not perceived as a professional manager position right away. Quite often, chief judges saw the position as nothing more than a senior office clerk. At the same time, it was getting clear that the knowledge gained during law school was not sufficient for the chief of staff position. Indeed, professional court administration requires knowledge of management and managerial skills. In 2010, the changes of the Ukrainian legislation to the judiciary became the next momentous stage of developing professional court administration. The new laws greatly expanded powers of the chief of court staff and entitled the chief of staff to hire staff members and to perform managerial and supervisory functions regarding

staff members. For the first time ever, legislators defined the key role of the court administrator in organizing the case flow and operation of the automated document flow system, thereby securing that the court has the necessary financial, material-and-technical resources etc. The new law made the chief of staff responsible for successful completion of these tasks by the court.

From now on, the chief judge is cast in the role of monitoring the performance of the chief of staff. In addition, the chief of staff has become subject to reporting to the judicial self-governance body: the chief of staff may be dismissed should the meeting of judges impeach his/her credibility. At the same time, the chief judge continues representing the court as a government authority in external affairs and managing government funds according to budgetary laws.

Later, there were other amendments to the Ukrainian legislation on the judiciary. However, they did not greatly affect the above described status of the court chief of staff. Some aspects of segregation of powers of the chief judge and chief of staff remain ungoverned. Unfortunately, existing gaps in the legislation preclude partnership of these key figures in the court from consolidation and strengthening.

In view of the above, one can identify the following areas where interaction and partnership between the chief judge and court administrator could be improved:

Regulation: Indeed, the Ukrainian judiciary lacks statutory provisions which would clearly define and segregate powers of the chief judge and chief of staff. Only legislators can eliminate this shortcoming.

Organizational-and-methodological framework: The chief judge will not be able to monitor the court administrator's performance unless there are clear criteria of such performance. There is also a need for up-to-date information on the actual situation in the court and progress with completion of regular and irregular tasks. Here, international practices can come in handy as there exists many efficient systems for managing court operations quality and evaluating judicial excellence. And, we could successfully apply in our actual conditions, those modules which were developed for the purpose of evaluating the quality of court administration.

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However, mental changes will be the most complicated stage of building the efficient “chief judge – court administrator” dyad. An authoritative and inflexible chief judge can hardly appreciate the very idea of such cooperation and partnership and repudiate the means of influence on court operations which he/she got used to. On the other hand, an incompetent chief of staff without leadership qualities cannot act as an equal partner in communications with the judiciary and chief judge.

A key to successful interaction of the court’s two main officials vested with powers of authority and administrative powers, consist in mutual respect and awareness by both of their responsibilities and their ability to hold a dialog and to reach a consensus.

To improve their managerial competences, gain knowledge of, and master skills of practical management at a court, the chief judge and court administrator need to undergo relevant training. A possibility of joint participation in a specially designed program of training in leadership, interaction, and partnership would be extremely valuable.

Today, those Ukrainian courts where the chief judge and chief of staff managed to create an effective and reliable dyad demonstrate initial results of their efficient cooperation, such as improved quality of court services, proper organization of court operations, positive psychological climate, motivated staff members, increased public trust, and growing reputation of the court.

We are just at the beginning of a long way towards judicial excellence and excellence in relationships. But we have already made initial steps; there is no way back. I fully agree with Dr. Maureen Conner who believes that if the advancements continue, the Ukraine court administrators will have much to share with the rest of the world as their efforts represent a case study of how to develop and sustain a profession.

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The Judge Management in Brazil: pillar of de democracy

By: Antônio César Bochenek and Luciana Ortiz Tavares Costa Zanoni



Judge Luciana Ortiz T. C. Zanoni is currently the Deputy Judge Administration Chief of the Judiciary Federal Section of the state of São Paulo/ Brazil. She presides in São Paulo Special Federal Courts. Judge Zanoni holds two master degrees: in Criminal Law from Pontifícia Universidade Católica of São Paulo and in Public Management from Fundação Getúlio Vargas of São Paulo. Judge Zanoni is located in São Paulo, São Paulo, Brazil and she may be reached at luortizzanoni@gmail.com.



Judge A. Cesar Bochenek is currently a Federal Judge of the Federal Judiciary Section of the state of Paraná / Brazil. He is also the President of the Brazilian Institute of Administration of the Judicial System (IBRAJUS). Presided the Federal Judges Brazil Association (AJUFE). Judge Bochenek has a Doctorate

from the University of Coimbra and he is a Professor of the Federal School of Judges of Paraná. Judge Bochenek is located in Ponta Grossa, Paraná, Brazil. He may be reached at cesarbochenek@gmail.com.

In their article, Judge Bochenek and Judge Zanoni emphasize that for an indispensable democratic system to exist, the judge should be independent and have full responsibility to manage the Trial Courts independently. Training to enable judges to manage the Trial Courts is of absolute importance.

Introduction:

This article intends to demonstrate the indispensability of the investiture of the functions of judicial administrator to the judge, who is accountable for jurisdictional services. The authors will initially demonstrate the Brazilian legislation that delegates to the judge, the function of manager of the trial courts, and then the grounds for this function not to be assigned to an independent Court Administrator.

The Management Leadership By The Judge In The Brazilian Law

The Structural Law of the Magistracy in Brazil attributes to the judge, the responsibility for conducting the proceedings, which implies leadership in the organization of the work, stating that, it is the duty of the judge to comply and enforce the legal provisions and ex officio acts independently, to determine the necessary measures, so that the procedural acts are carried out within the legal deadlines and to exercise supervision over the subordinates.

The Law no. 5,010 of May 30, 1966, which regulates the Federal Court, strongly recommends that the judge be entrusted with the administration of the Federal Court, with the collaboration of the auxiliary bodies, being responsible for regulating progress of operations and the operation of auxiliary services.

The management of the administrative structure of the trial courts is also exercised in the first instance by a designated judge, here called “Director of the Forum” in the courts; the executive positions of President, Vice President and Magistrate, by senior judges are elected by their peers. The management led by members of the Judiciary is repeated in the higher courts, and in the National Council of Justice, which controls and plans the Judiciary.

In Brazil, the consolidation of the administration of the Judiciary to the judges is evident in several other administrative positions, such as, the management of judges and civil servants schools, coordination of Federal and Small Claims Courts, coordination of Conciliation Centers and Writs, among others. The National Council of Justice, through the issuance of Ordinance 138 of 08/23/2013, ensures a broad participation and leadership of judges in the formulation of public policies, giving them the coordination of strategic planning committees in all segments of justice (Federal, State, Labor, Electoral and Military Courts), and recently reinforced their participation (Resolution n. 221 of 05/10/2016). The National Council of Justice itself, in Resolution n. 240 of 09/09/2016, also qualifies the judge as a manager.

Although the management of trial courts by judges

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is consolidated in laws and judicial practices, the belief that management generates slowness and bureaucracy supports and encourages the necessity of a Court Administrator management. On the other hand, we firmly believe that slowness and bureaucracy are caused by the procedural system itself. In this scenario, the judge's accountability is fundamental. Their performance is transparent allowing the government and the citizens to track their actions and omissions enabling democracy to take place.

Since 1998, the efficiency of public service in Brazil has become the center of a public management reform. The management reform emphasized the need for data transparency, control of the service provided and focus on results. Thus, in addition to the technical knowledge and compliance with legal requirements, the judge is required to improve managerial skills taking responsibility for decisions in the course of the procedure and for the legality of the proceedings autonomously and in reasonable time. In the case of acts of omissions in the exercise of power, Judges respond to the internal control organs for the inefficiency of the service rendered and externally by the critical judgment of the citizens, who can legitimately question their performance. We can, thus, say that the judges fall to horizontal accountability, insofar as managerial choices can be questioned in internal and external control bodies, and vertical accountability, by the attentive look of the citizens and the media (ZANONI, 2017: 108). The democratic accountability of the provision of the jurisdictional activity rests with the judge, because it is their responsibility to conduct the proceedings and the result in the accomplishment of the Judiciary activities which presupposes, therefore, the leadership of the work of the trial court by the judge.

J.J. Gomes Canotilho advocates that the judge's autonomy should have a broad dimension. The prohibition of transfers, suspensions, retirements or dismissals and interim appointments are the judge's sole responsibility. He discusses this principle regarding autonomy in the exercise of jurisdiction, in the sense that *"any hierarchical relationship in judicial organization can not have an effect on the exercise of the judicial function"* (2000: 647).

Underlying this principle is that the judge can not be below a manager who directs the flow of processes in order to impose objectives and goals that do not consider the judicial analysis inherent to the function of judging. The prioritization in case judgment, for example, depends on the judges analysis of legal and factual requirements. It would be unimaginable to impose a process that considers priority for judgment, even if briefly removing the independence of the judge to do this analysis .

Leadership in management does not mean that the judge will be involved in implementing administrative decisions. In Brazil, every judicial unit has a director, who is a public servant, responsible for the implementation of the management decisions and compliance with the norms. There is also a large central administrative structure in each branch of justice that provides management support for the functioning of trial courts, and the leadership is in charge of the judge. So that the leadership in the management by the judge safeguards functional independence and democracy.

The judge as a management leader is responsible for the fulfillment of goals established by the Judiciary and regularity of the equity of the trial courts to which it is linked. Therefore, they should actively participate in the decision-making process of the Judiciary strategies and in the definition of the allocation of resources. The participation of judges in decision-making, largely contributes to the judiciary workflow. José Renato Nalini points out that "excluded of the great debate the largest part of the young judges and of a functionalism that would have much to contribute to the optimization of judicial structures "(2005: 161).

The main goals of the Judiciary, for which the institution's economic resources and efforts will be allocated, must be built from a diagnosis of the problems with the judges who are, in the various instances, providing the judicial service. The judges demand for results presupposes that they are part not only of the management of their trial courts, but also of the decisions of the Judiciary itself. This participation of the judges in the planning cycle of Strategic Planning has been encouraged throughout the structure of the Judiciary.

continued

The Key To The Understanding The Rule Of Judge/Management Relies On A New Vision


The Article 93 of the Federal Constitution of Brazil establishes that in the process of selection of judges, by means of a competition of tests and titles, the candidate must be required to hold a bachelor's degree in law and three years of legal activity. Within the spectrum of technical knowledge necessary for the performance of the judiciary, it is also possible to demand from the candidates, and it is salutary, so to speak, the knowledge of the administration of justice.

Both Court Management and case management are relevant for the administration. Therefore, it vital for the candidates to deepen their knowledge.

Judges as leaders of the Trial Courts should be able to plan their activities, as well as manage people, aimed at assigning tasks taking the employees skills into consideration and motivating them to perform accordingly. It is also the judge's responsibility to measure effective accomplishment of tasks fairly, promoting a healthy work environment and also an efficient civil service.

In Brazil, the Federal Constitution of 1988 presupposes official courses for the preparation and improvement of judges as requirements for admission and career promotion (article 93, IV). The Constitutional Amendment 45/2004, within the context of the reform of the Judiciary, established the creation of the National School for the Training and Improvement of Judges (ENFAM), which has among its attributions the goal of promoting research, studies and debates on issues relevant to the improvement of judicial services and judicial performance (Resolution no. 3/2006 and 05/2008, of the Presidency of the Superior Court of Justice). The National Council of Justice regulated the law to implement the requirement of knowledge and continuous training of judges as the basis of the right of the courts and of society in general to obtain a quality service in the administration of Justice, which underlies the need for preparation of the judge for the management of the judicial service.

Conclusion

The independence of the judge and their responsibility for judicial activities are pillars of the Brazilian democracy, constituting the cornerstone management function to ensure the judiciary's wealth against manipulation and external pressures. In the current Brazilian scenario, the figure of an Independent Court Administrator is supposed to safeguard our democratic identity. On the contrary, we believe that manager and the judge functions should be concentrated on the judge, who must be able to exercise the judicial service with autonomy, efficiency and effectiveness. Only the judge who holds the legal and administrative technical knowledge can perform their constitutional duty to judge and manage the Judiciary accordingly. 

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An Active Court Administration For Actively Changing Judiciary

By: Jānis Dreimanis



As a court administrator in Latvia, Mr. Dreimanis is currently an Operational Risk Manager in Court Administration of Latvia in Riga, Latvia.

He can be reached at janis.dreimanis@ta.gov.lv.

In his article, Mr. Dreimanis would like to emphasize that a good court administrator should work proactively and oversee processes that it is better equipped to manage and forecast. Without knowledge and advice of those employed in the judiciary this task would be nigh impossible.

Today, it is easy and contemporary to say that a court needs a court administrator. There has been a long history for such authorities; persons to be entrusted with administrative organization of judicial work. This work has been carried out by both judges and specifically designated persons, as well as the state authorities.

But – it always has been necessary to distinguish – how far such an administrator should venture, what role should it play, and how far of an outreach should its mandate be.

Court Administration of Latvia has been designated by law as a body that organizes and provides administrative work for both courts and Land Registry Offices.

For example, while performing this task, Court Administration manages HR and everyday budget and finances of courts, judges and court employees. To make it possible to perform this function effectively in a system which employs 550 judges and 1700 court employees, Court Administration has introduced a special electronic resource management system. This system provides fast and efficient work with HR and finance; including different types of application processing, salary payouts, sick leave calculations, holidays etc. As a result, currently, only ten Court administration employees can manage HR and finances of over 2350 people in our court system in over 70 different locations.

This is a prime example of how proactive an entity entasked with court administration can perceive its role in judicial administration. It is possible to carry out their assigned functions as prescribed, but one can also play an important role and even act as a visionary, to constantly search and develop scenarios to perform processes faster and more efficiently while consistently consuming fewer resources for the benefit of all.

Here a major role will always be played by judges and court employees, because they always will be the ones from whom recommendations and criticism relating to the administrative organization of work will be awaited. And, it is important not only to passively wait for recommendations or to respond *post factum*, but rather to actively act and to be able to forecast a necessity to establish one process, streamline another or eradicate a third as necessary.

Fully fledged court administrators, also an institution, should be ready to provide proposals and recommendations for problems that do not exist yet, without waiting for them to already start affecting its key clients, the judges and court employees.

In accordance with the Latvian law “On Judicial Power”¹, the Latvian Court Administration is a holder of two of the state information systems; the Court

¹ <https://likumi.lv/doc.php?id=62847>

continued

information system and the holder of the State Unified Computerized Land Register.

As stated in the Court Administration regulations², Court Administration also has a responsibility to support and continue to develop these information systems, as well as to ensure the availability of their data to the public.

Both tasks can be fulfilled in two ways; a court administrator can play a passive bystander, technically supporting such systems and respond in cases where there is a problem or a situation actively demands a solution. Latvian Court Administration has chosen to be an active and modern public authority, who uses its privileged position to actively seek and implement innovative solutions in conjunction with the functionality of information systems that are entrusted to it.

In this regard, during the last few years Court Administration has actively worked to introduce audio protocols in courts and has fitted all Latvian courts with videoconferencing equipment. Fruitful work has been done to improve and add to judicial e-services according to the needs of society. Vast transformations in land registry processes have enabled us to implement electronic archives, enable electronic submission of corroboration requests and generally ensure full electronic process in land registries.

These achievements are inconceivable without the active involvement of judges and court employees, because although the Court Administration employs people who are skilled in information technology and legal matters, it is people employed in the justice system whose experience and knowledge are vital for these processes to be adapted not only to the needs of society, but also to contribute to an effective functioning of the judicial system to provide the greatest benefit.

Invaluable contributions are provided by different working groups that gather the most expert judges to directly, from their vantage point, formulate the nuances of an emerging process, which then would make a significant impact on the work of courts.

This efficient, gentle and constant cooperation between judges, court employees and Court Administration allows to achieve synergies, in which both sides, from the organizational and administrative perspectives, can work and create added value of which only one of them could not provide.

While working with information systems that incorporate both technical means for court work and information about its HR, it inevitably accumulates huge amounts of data.

This is exactly where the Court Administration now sees an opportunity to advance the judicial administration to the next level. Working with “big data”, it is possible to estimate the judicial capacity, gauge on individual judges’ work habits, different quality indicators in a manner that is readily and easily accessible to all interested parties in Court Administration and court judges, and thus ensuring that all courts always have the necessary information available directly at the time needed.

The processing of such data at its disposal is a way how Court Administration, using existing resources, can be directly helping to optimize the functioning of justice for its part, and to allow judges to receive the necessary data to them about their judicial work activities.

Also, here the cooperation on both sides will be a key for the judicial system in Latvia to be in possession of the most extensive and customizable information about the work of courts, where the judicial system and those employed in it will drive the demand and Court Administration will keep up to offer and provide such information.

In conclusion, the author reiterates his wish to emphasize the need for court administrator (authorities) constant active involvement and an active desire to engage in judicial administrative work. Constantly being ahead of the existing needs and learning about potential future challenges, the Court Administration cannot be limited as an aide in their daily work, but it should act as an active partner in improving the work and processes of judicial system to guide within its competence.

2 <https://likumi.lv/doc.php?id=269261>

Therefore, the Latvian Court Administration bases its activities in a quote of a familiar American physicist William G. Pollard that “Without change there is no innovation, creativity, or incentive for improvement. Those who initiate change will have a better opportunity to manage the change that is inevitable.” Court Administration indeed firmly believes that only

an active cooperation between administrative manager who genuinely wants to act before change has been happening and flexible judge or court employee who can always give the most valuable insight in such changes will help to never stop improving judiciary not only in Latvia, but also worldwide. ⚖️



Judicial Management – Scope and Limits

By: Alexandre Vidigal de Oliveira, Federal District Judge and S.J.D. (Universidad Carlos III – Madrid/Spain)



Alexandre Vidigal de Oliveira, S.J.D. is a Federal District Judge in Brasília, DF, Brazil. He rules on and hears all types of civil and criminal cases that fall into Federal Jurisdiction. Located in Brasília, Federal District, Brazil, the Judge may be reached at either axn.oliveira@gmail.com or alexandre.oliveira@trf1.jus.br.

In his article, Judge Alexandre Vidigal de Oliveira emphasizes that Judicial Management is essential to the efficient functioning of the Judiciary Power. The commitment to an efficient Administration translates into a better judicial efficiency.

Dealing with Management, in every path of life, is dealing with Efficiency. Objectively defining, efficiency is doing the most with the available resources; it is making more and better, at least! Even with severe scarcity concerning the means available to achieve the results, management must always focus on efficiency.

This is the greatest challenge for the Manager. Though may be dreadfully challenging, he will face the earlier and very important task which is to precisely identify what is the possible best. Either in Public or Private Management it is fundamental to sharply define which choices to make.

In the private management, the choices focus on satisfactory results to the business, even if it is not in the best interests of the entire society; while the public management, on the other hand, must focus on the interests of the collectivity. It is to really know what are the citizens' expectations, their needs, and what it is possible for them effectively gain vis-à-vis the available public services.

Differently from business administration, public administration it is all about doing what is needed, not what one might want; summing up: doing not the manager's wishes, but what he must do. It is to discern precisely the other's expectation, not the manager's. It is the right perception and following separation between the public from the private interest.

With these two challenges in mind – best choice and best possible result – certainly the public manager will find the safe path to achieve his mission.

In Brazil, efficiency is a constitutional principle for the Public Administration, thus an imperative legal commandment. This requires even more commitment from the public manager, which implies great legal liability (from torts to criminal law viewpoints).

And the Judicial Administration in Brazil belongs to this broader picture in which the public services are multiple and its tasks must meet the societal needs in order to satisfy the citizenship, therefore demanding a high degree of efficiency.

The main task of the Judiciary Power does not end in ruling cases, but also ruling efficiently and in a reasonable time frame, which is also a legal principle in Brazilian Constitutional Law (reasonable length of judicial procedural path).

We should not despise the judge's important role in the judicial administration through his commitment to the work in the specific cases till the details which lie around his Court's proceedings and are directly dependent upon him and might translate into better judicial practices.

Some examples might put this responsibility in evidence: the definition of criteria to render faster judgments, concentrating similar cases and legal subjects in a way to bolster his own intellectual work; optimization of legal proceedings, avoiding irrelevant or unnecessary arguments; respect for the precedents; keeping a nice work environment with his clerks; unflinching commitment to his own study and constant qualification.

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Of course, there are factors which do not depend upon the judge in his commitment to judicial efficiency. These are judicial externalities, i.e., the Court's structure and the legal aspects of the Judgeship concerning his career and so forth.

In order to facilitate the judge's work, it is necessary specialized professionals to support the Judge's specific tasks, providing the material conditions to the accomplishment of the Judicial Department main goal: ruling cases efficiently.

Concerning this specific topic, it is important the existence of a judicial manager career with professionals trained by the Judiciary and pertaining to its legal structure in view to maximize the understanding of the specifics of this important state function.

This professional, with strong and wide management responsibilities, will be entrusted with comprehensive tasks, which must be very well executed both to answer the internal and the external demands, which might well differ. For instance: the public who attends the Courthouse demands in general good conditions of physical access to the judicial facilities, while the judges and other judiciary's employees need adequate spatial and structural facilities to safeguard and ease their own daily work routine.


The judicial environment is permeated by conflict, and harmony is not predominant among lawyers, parties

to the conflict and witnesses. Specially for the latter it is not rare a hostile environment. The sole fact to go the Courthouse, to be in front of a judicial authority, is enough to generate high degree of anxiety. Thus, worrying about the Courthouse's facilities – its comfort and safeness – is essential to making a good manager and a successful management.

Simple attitudes concerning the flow of information available to the parties to the conflict – in the specific context of the Brazilian judicial structure – through an educated and well-trained team might be a nice first step in this challenge to best serve the citizen.

Nowadays the IT resources available to the Judiciary are plentiful and to keep them running in good conditions and updated are an important commitment that a judicial manager must permanently have in mind.

Even the need for legislative change aimed at developing the judicial service standards should be a step taken by the judicial manager in order to avoid the deterioration of the public service (for instance, discussing bills to create new Courts and to strengthen the human and material resources needed to provide the best judicial service and so forth).

The bottom line is: the better the judicial manager delivers his work the more time is available to judges to concentrate in what is their main task: interpret the law and make the Constitution a living document! 



Interview with H. E. Justice Ali Shamis Al Madhani, DIFC Courts; Chair of IACA's Middle East Board



His Excellency may be reached at Ali.AlMadhani@difccourts.ae

and South Asia, providing a world-class platform connecting the region's markets with the economies of Europe, Asia and the Americas.

Tell us about DIFC Courts

The UAE's DIFC Courts administer a unique English-language common law system – offering swift, independent justice to settle local and international commercial or civil disputes. The Courts, based in Dubai, provide certainty through transparent, enforceable judgments from internationally-recognised judges, who adhere to the highest global legal standards. The DIFC Courts are independent from, but complementary to, the UAE's Arabic-language civil law system – offering a choice that strengthens both processes while ensuring public access to world-class justice.

In October 2011, a decree of His Highness Sheikh Mohammed bin Rashid Al Maktoum, Prime Minister of the UAE and Ruler of Dubai, opened the DIFC Courts' jurisdiction to businesses from all across the GCC region and beyond to provide the international business community with access to one of the most advanced commercial courts in the world.

The DIFC Courts were established under laws enacted by the late HH Sheikh Maktoum bin Rashid Al Maktoum, Ruler of Dubai in September 2004. The laws establishing the DIFC Courts are designed to ensure that the DIFC Courts provide the certainty, flexibility and efficiency expected by Court users. The Courts' community-focused approach encourages early

continued

What is your position at DIFC Courts?

I was sworn in as a Judge of the Dubai International Financial Centre (DIFC) Courts in 2008; I was also appointed and sworn in as a Judge of the DIFC Courts Court of Appeal in 2008. Lastly, I am a member of the Joint Committee of the Dubai Courts.

My role is to handle cases relating to the Court of Appeal and to provide expertise on DIFC English language common law. I am also the Current Chairman of the Middle East Board for Courts Administration under the International Association for Court Administration (IACA). This involves meeting other regional judiciaries, fostering good relations and coordinating with regional counterparts in mutual areas of relevance.

Where is DIFC Courts located?

Dubai International Financial Centre (DIFC) Courts is located within the DIFC freezone in Dubai, UAE. DIFC is the financial hub for the Middle East, Africa

settlement, while their successful track record supports Dubai's growing status as an international business hub.

In line with HH Sheikh Mohammed's vision, the DIFC Courts serve to develop the UAE national workforce and enhance the competitiveness of Emirati advocates. The DIFC Courts are spearheading training programmes predominantly aimed at local Emirati lawyers, which offer knowledge of, and qualifications in, the English-language common law system.

How many Judges and Court Administrators are working within DIFC Courts?

The Chief Justice for the DIFC Courts is Justice Michael Hwang, SC (Singapore), and the Deputy Chief Justice is Justice Sir David Steel (UK). In addition to myself, the other judges of the DIFC Courts are H.E. Justice Omar Al Muhairi (UAE); H.E. Justice Shamlan Al Sawalehi (UAE); Justice Roger Giles (Australia); Justice The Hon Sir Jeremy Cooke (UK); Justice Sir Richard Alan Field (UK); Justice Tun Zaki Azmi (Malaysia); and Justice Judith Prakash (Singapore).

DIFC Courts also has over a dozen court administrators supporting the judiciary, including Mark Beer, Co-Chief Executive & Registrar General; Amna Sultan Al Owais, Co-Chief Executive and Registrar; Reem Al Shehhi, Chief Operating Officer; and Natasha Bakirci, Assistant Registrar.

What are the key tools employed at DIFC Courts for effective communication between court administrators and the judiciary?

At the DIFC Courts there are several methods adopted to ensure an effective Courts system. Internally, as part of the Dispute Resolution Authority, DIFC Courts has implemented the 'Three Cs' – Collaboration, Communication and Commitment – as the cornerstones of improved operations.

Weekly meetings are held between judges and court administrators, wherein case management is discussed, in addition to other organisational issues that help support the DIFC Courts. These weekly meetings are complimented by an Annual Judges' Meeting (AJM) held in November of each year – this platform allows for the year's plans to be discussed and evaluated internally, as well as outlining the strategic plan for the year ahead.

To complement the effectiveness of internal collaboration through effective communication, the Courts also adopt technological innovation to drive legal excellence. The DIFC Courts has just introduced a new web-based Case Management System (CMS). Building on existing e-registry capabilities, the new system enables users, court administrators and judges to access case management information from their mobile phones, tablets and other electronic devices in real time.

Specific features include the ability to upload heavy bundles of documents; an entirely electronic, easy-to-use Small Claims Tribunal (SCT) section; faster and easier searchability of PDF case documents; integration with Emirates Identity Authority enabling verification of court users through their Emirates ID; and an interactive case plan that is automatically updated when documents are filed.

The DIFC Courts are among the world's leading courts for technological innovation. In 2016, they launched the Smart SCT, enabling parties to resolve disputes from any location by participating via smartphone. In July, this was named among the world's Top 10 Court Technology Solutions by the US-based National Association for Court Management.

In a move designed to help people and businesses resolve disputes more quickly, the DIFC Courts Small Claims Tribunal (SCT) has just announced that it is giving claimants the option to use direct and instant messaging to give defendants notice as part of an expanded range of e-services.

What new initiatives has DIFC Courts introduced in 2017 to help judicial and legal excellence?

DIFC Courts announced its partnership with Microsoft to drive the digital transformation of the commercial courts systems in the region and beyond. Building on successful digital courts projects such as the DIFC Courts' Smart Small Claims Tribunal (SCT), the DIFC Dispute Resolution Authority (DRA) signed a Memorandum of Understanding (MoU) with Microsoft during the NACM-IACA conference in Washington, DC, in July.


In September this year, the DIFC Courts established a new Technology and Construction Division (TCD)

continued

that draws on specialist judges and a new set of industry-specific rules to fast-track dispute resolution, providing greater certainty to businesses in court. The Division will only hear technically complex cases.

DIFC Courts and Dubai Future Foundation have also created the Courts of the Future Forum, which will consider new ways to oversee disruptive technology such as driverless cars, drones, blockchain and cyber security within DIFC's jurisdiction. The forum will consist of global experts in law, technology, IT and business is being assembled to help lawmakers and legal systems

accommodate the accelerating growth of technology.

The Forum's brief is to design guidelines and prototype a commercial court that can operate anywhere worldwide, with the Part 40,000 Founding Principles newly launched across open-source for global consultation. The initiative will help create certainty for businesses, investors and entrepreneurs currently unsure of the legal implications of rapid technological change. 



Interview with Court Administrator Mrs. Rolanda Van Wyk, Permanent Secretary of the Office of the Judiciary, the Government of Namibia



Advocate Rolanda Van Wyk, is the Permanent Secretary, Office of the Judiciary, the Government of Namibia which is in Windhoek, Namibia.

Mrs. Rolanda Van Wyk can be reached at ps@jud.gov.na/ pa.ps@jud.gov.na

Please tell us about your court and share your court's history with our readers. How many judges does your court have? Approximately how many court administrators in your court? Do your court administrators have regular meetings with the court president/chief judge?

The "Office of the Judiciary" (the Office) can be likened to the Administrative Office of the Courts in the U.S. model.

When introducing the Office, we like to paint a picturesque story for one to fully appreciate the significant milestone that this has been for Namibia. Therefore, subsequent to the enactment of the Judiciary Act (Act No.11 of 15) on 31 December 2015, when the clock struck midnight, judicial officers and staff members were transferred from the Ministry of Justice to the newly established Office of the Judiciary. This milestone not only signifies the unification of the courts under the Office of the Judiciary, but it also proclaims the stature of the Judiciary as a fully-fledged independent branch of the state.

In order to serve the nation, accessibility to justice remains a core priority but this also remains one of the biggest challenges for our jurisdiction. Known as the second most sparsely populated country in the world,

the Judiciary's challenges are exasperated far reaching communities.

The staff compliment nationwide amounts to over 900 judicial officers and staff serving 37 Periodical Courts, 34 Magistrates Courts, 2 division High Courts and 1 Supreme Court.

As you can imagine, with a ratio of roughly 25,000:9, this highlights the challenges of we have with regards to judicial officers and staff members serving the nation.

The structure of Namibian courts is made up of the Supreme Court which serves as the apex court of the land, and below this is the High Court of Namibia, which comprises of two Divisions, namely, the Main Division (Windhoek) and the Northern Local Division (Oshakati). The Magistrates Courts deal with a wide spectrum of criminal, civil, maintenance and domestic violence cases to mention just a few. Also, all appeals from Community Courts are heard by the Magistrates Courts.

Regional courts preside over all offences, except high treason and the sentencing jurisdiction is limited to a fine of N\$100,000 (US\$13,000) or 20 years imprisonment.

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The Districts courts preside over similar cases as in the Regional Courts except for treason, murder and rape with a sentencing jurisdiction limited to N\$20,000 or 5 years imprisonment.

The head of each court station, court administrators meet on a regular with the magistrates to ensure efficient running of each courts. The monthly meetings serve as a clearing house for accumulating and disseminating lessons learned from going experiences within the courts.

Please let us know what you think the keys are to effective communication with the court president/chief judge.

George Bernard Shaw shared a powerful lesson when he said that the “the single biggest problem in communication is the illusion that it has taken place.”

With the tremendous amount of work going in the Office of the Judiciary, from budget projections to personnel issues, pensions plans, -you name it. There are many facets to the job as Permanent Secretary and certainly relationships and communication with judges, the courts and more specifically with the Chief Justice consumes the bulk of the time.

Despite the overabundance of the different challenges every day, there remains one constant: judicial excellence and service to the courts remain our core undertaking.

Further to this, the African value systems play a big role in building the effective communication systems that have an intuitive ability to establish and maintain trust. Taking risks in being vulnerable, asking questions has in many ways eliminated the communication illusion and I have learned that it is a great way to build trust and connect with the Chief Judge.

Embracing the African value systems have further amplified our strong communication by maintaining oral communication as the key method. Given the vast administrative technicalities of the Administrative Office, ones that the Chief Justice does not often come into contact with, I meet with the Chief Justice 1:1 with a goal to impart information and share the knowledge on the administrative processes and methods of the Office. The Chief Justice sincerely appreciates this approach and puts him at an advantage to better communicate and articulate the needs of the Judiciary to the Executive and further provides insight into a new realm information in the world of Judicial Administration.



Keys to Effective Communication in the United States Federal District Court

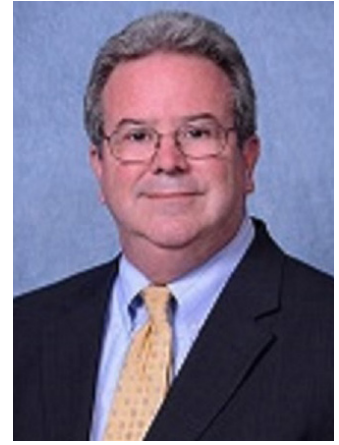
by Hon. Julie A. Robinson, Chief Judge, and Timothy M. O'Brien, Clerk of Court



Hon. Julie A. Robinson is the Chief Judge of the United States District Court for the District of Kansas. As chief judge, along with deciding cases, she has the primary responsibility for the administration of the U.S. District Court in the District of Kansas and Probation & Pretrial Services. Located in Kansas City, Kansas, Judge Robinson may be reached at ksd_robinson_chambers@ksd.uscourts.gov.

Timothy M. O'Brien is currently the Clerk of Court for the United States District Court for the District of Kansas. As an executive officer of the U.S. District Court, District of Kansas, his responsibilities include all aspects of court operations, staffing and infrastructure to support the work of the federal judges and magistrate judges in the district. Located in Kansas City, Kansas, Mr. O'Brien may be reached at tim_o'brien@ksd.uscourts.gov.

This article focuses on measures to establish and improve communications between the chief judge and clerk of court.



Effective communication between the chief judge and the clerk of the court is key to smooth operations within the court. The concept of effective communication is simple enough – a process for sharing information that can be easily understood. Yet, in practice, it is harder than one might suspect. The key is for the chief judge and the clerk to establish a working rapport that anticipates the need, the type of communication and the right amount of information. Doing so is an art and not a science. The longer the chief judge and the clerk work together, the easier it becomes. In the beginning, though, hard work is required to facilitate effective communication.

By way of background, we work in the United States District Court for the District of Kansas. It is the trial court for the federal system in Kansas. Each state has at least one district court location. Some states have more than one division. There are 94 districts within the United States. The district court has limited jurisdiction over civil matters. It hears criminal cases for alleged violations of federal criminal statutes. The district court also hears civil cases involving either federal law or diversity jurisdiction. Diversity jurisdiction is based upon disputes between two parties not from the same state or country, and where the claim meets a set dollar threshold for damages. The court has two types of judges – district judges appointed by the President and confirmed by the Senate pursuant to Article III of the Constitution who serve for life and magistrate judges selected by the

district judges who serve an 8-year term.

In the District of Kansas, the Chief Judge occupies the role of what would be described in the corporate environment as the chief executive officer (CEO). In the federal district court, the clerk of court is the highest ranking administrative officer in the court. The position is often described as the chief operating officer (COO) of the court. In our court, similar to the operation of a corporation, the COO/clerk reports to the CEO/chief judge.

Communication between the clerk of court and the chief judge is no different than many other types of communication. The exchanges must be open, honest and as complete as possible. Good news is often delivered quickly and with enthusiasm. Bad news must be delivered as forthrightly and openly as good news. Normally, however, the majority of communication is neither good nor bad news. Rather, effective communication efficiently and routinely provides important and relevant facts needed to fully inform decision-making. This information sharing is crucial to a smooth operation.

One area that requires close attention and cooperation between the chief judge and clerk is constructing agendas for judges' meetings. The District of Kansas holds an annual meeting to conduct the majority of the court's business. Throughout the year, items that do

continued

not require immediate attention are placed on a list for discussion at the annual meeting. As the meeting draws near, frequent communication between chief judge and the clerk of court is essential to ensure that the agenda will guide the court through an effective meeting. Too much discussion on a topic weighs down all involved. Too little discussion can lead to misunderstandings and issues. The key, of course, is a proper balance.

Another area where communication is critical is in our court's development of a spending plan. We solicit input from everyone in the court about things that are desired and work with our finance group to assess the requests and make recommendations. We then work together to come up with priorities for the spending plan and circulate that back to the judges. Constant communication is employed as we work through the process and communicate with the court family about the plan. Ultimately, all of the judges vote on the spending plan. When communication works well, the process is smooth.

Trust between the communicating parties helps facilitate effective communication. Although we only recently starting working together as chief judge and clerk, we have the unique advantage of having known each other for a long time. We each represented a different client in a litigated matter together many years ago when both of us were practicing lawyers. As co-council, we developed a good working relationship and have known and respected each other since. We both believe that a lawyer's word is his or her bond and we have developed a high level of familiarity and trust based on that concept. Without that background, it would be imperative to spend time and effort earning one another's trust.

The method of communication often plays a role in its effectiveness. When we graduated from law school, using the telephone and writing letters were the primarily means of communicating. Faxes were available but less common. In the 35 + years since, faxes are nearing extinction and have been replaced by email, texts, instant messaging programs and social media outlets. For modern communications, it is often incumbent upon the sender and receiver to be cognizant of the inherent limitations of each method. We do not

always put the same amount of explanation in a text as we might in a phone conversation or written letter. The communicators need to think through whether they have sufficient information to decipher the meaning intended. Thus, the ease of quick communication should be tempered with concern that the communication may not be complete.

Good communication is also needed for others beyond the chief judge and clerk. The judges of the court act like a corporate board of directors – they act as a sounding board for and approve the actions of the chief and court staff. The District of Kansas is a very collaborative and collegial court. Decisions generally are made on a consensus basis. Thus, it is important that communication to work towards building a consensus among the entire court. All communications should work towards building a firm understanding and agreement as to what is to come.

The United States Court system has resources available to improve communication strategies. For example, the Federal Judicial Center (FJC) in Washington, D.C. provides a training session that is primarily used to encourage communication between the chief judge and the court unit executive. The FJC recently brought together the new chief judges along with their clerks of court and probation/pretrial unit heads. Several exercises were undertaken to facilitate the exchange of ideas and potential projects for the upcoming year. These helped the participants learn to appreciate the communication styles for those involved.


The FJC has also advocated the use of the Myers-Briggs Personality Test. Both of us believe this test is useful in looking at how various people react to different situations and environments. The Myers-Briggs type indicators were developed many years ago by Katharine Cook Briggs and Isabel Briggs Meyers. They developed four types of cognitive learning styles: extraversion/introversion; sensing/intuition; thinking/feeling and judging/perceiving. Each participant is given an evaluation where they choose one of two different responses to each of the 93 questions. While the word choices are not opposites, they tend to reflect different spots on the continuum of the particular personality

continued

types. Once these responses are tabulated, the participant will have a score and be given a type based upon those answers. As a result, there are 16 possible combinations that a participant might fall into. One of us is an INTP (Introversion, Intuition, Thinking, Perceiving) personality type. The other is an ESTJ (Extraversion, Sensing, Thinking, Judgment) personality type. ESTJs make up approximately 8% to 12% of those who have scored on the test. INTPs make up only 3% to 5% of the same group. Here are some general characteristics of the two groups that give insight into how communication can be effective: The INTP and ESTJ temperaments both exhibit “thinking” as the dominant function across the four scales. This means both are good at organization, good at analysis, find flaws in advance, hold consistently to a policy, weigh the law and the evidence and stand firm against opposition. Both are not as strong in people skills. While the INTP may come across as closed or distant, the ESTJ may come across as impatient, indelicate and not attuned to people’s feelings. INTP’s communication style focuses on exchanging opinions, ideas, concepts and methodological approaches. ESTJ’s communication style is open, direct, demanding, and focuses on exchanging opinions, management issues and practical solutions. The ESTJ favors discussing facts, consequences, concrete and tangible subject matter; the INTP favors discussing ideas and concepts. The INTP

loves complex systems (like computers) and is obsessed with logical correctness; while the ESTJ likes to have a plan, have people stick to the plan, and work in a systematic fashion towards completion. INTP is usually reserved, respectful and renders well-thought out advice and in depth expert opinions and can be outspoken and inflexible when he feels his principles are violated. ESTJ engages in open and direct proclamations of her principles and intentions, which may hurt the feelings of “feeling types” or promote strong resistance in other leaders with different opinions.

Knowing our communication styles helps us to understand the traits of each other and where we might direct further inquiry. We believe that Myers-Briggs helps us better communicate. There are other similar tests that might also bring the partners closer together and facilitate better communications. Developing a good working relationship, whether through past experience, a personality test, communication exercises or just plain experience will help the chief judge and clerk. This works to the benefit of all involved in the court.

However a court chooses to ensure effective communications – whether it happens naturally through longstanding relationships or if it must be more carefully cultivated through intentional interactions – the result is worth the effort! 



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