

Handling Case Backlog & Post-Pandemic Docket Management

*A Resource Provided by the Louisiana Supreme Court
with assistance from Louisiana Judicial Partners
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Case Backlog and Docket Management

With the possibility of an unprecedented backlog of pending cases in all jurisdictions, courts must begin now to engage judicial partners in unique ways to ensure effective and efficient administration of justice. The Louisiana Supreme Court understands the importance of preserving the court process in dispensing justice equitably but recognizes that judges now have many tools to help them do so. To aid in identifying tools and strategies, the Supreme Court gathered a committee of judges, lawyers, and representatives from every conceivable entity that partners with the judiciary.¹

Responding to our request for suggested practices that will minimize delays and address the case backlog, each judicial partner provided input we have summarized in this document. A common thread offered by all participants is the importance of collaboration. Thus, the most vital piece of advice we can give in these uncertain times is that you first consult with leaders from judicial partners in your own jurisdiction. Primarily we recommend that you devise a cooperative plan of action with input from the DA, the Public Defender, local bar, clerk of court, and other necessary parties.

Prior to soliciting input from your judicial partners, you should gather all data that demonstrates the true nature of the backlog in your court. When gathering this data, courts should also be prepared for a potential surge in case filings in the coming months as the pandemic's interruption begins to lift. While there is recent data to indicate the backlog may not be as extreme as is predicted, such data may not be reflective of what you see in your court.²

Another equally important piece of advice is to exercise collegiality. That is, where possible each of you should offer – and provide – assistance to your colleagues. Accordingly, working harder may not be enough; rather courts must work smarter. This document provides some useful tools and suggestions so you may do just that. We realize how different and unique each judicial district is and each must adapt to do what is best within each district.

Thank you for your continued dedication and diligent service to our system of justice. Each of you has done remarkable work in innovation and creativity during these immensely and ever-changing times.

Chief Justice John L. Weimer, Louisiana Supreme Court

Justice Jefferson D. Hughes III

Justice Scott J. Crichton

Justice James T. Genovese

Justice William J. Crain

Justice Jay B. McCallum

Justice Piper D. Griffin

¹ Committee members included leaders from: LSBA, LDAA, LADC, LAJ, La. Judicial College, La. Clerks Association, La. Sheriff's Association, judges from all levels of the judiciary, and judges from benches of specific jurisdiction.

² Data regarding backlog and cases handled: NCSC Vimeo (15 minutes) <https://vimeo.com/492239142>

PART I – LASC SUGGESTED STRATEGIES

There are many resources available to judges and court personnel. In particular, the National Center for State Courts recently published its [*Twelve Essential Steps to Tackle Backlog and Prepare for a Surge in New Civil Cases*](#).³ We found this resource to be extremely helpful in devising a strategy to handle case backlog. In addition to the “twelve steps” stated therein, it is strongly recommended that courts continue to embrace Technology, exercise collegiality with other members of your bench, and employ purposeful docket management skills as highlighted below.

A. Technology

Over the past year, most judges may have learned things they never would have dreamed possible. Virtual hearings have become commonplace; telephone conferences have replaced in-person meetings; online document sharing is routine with fewer pleadings mailed, faxed, or printed. All of the accommodations you have made have allowed you and your staff to serve the public in remarkable ways. We encourage you to continue to use technology to work smarter and to explore new ways to make the process more efficient. Efficiency and flexibility however does not justify a descent into informality. Thus, we recommend that you remain mindful of the integrity of the court process while continuing to utilize the following suggested technology.

- Maintain a clear and current website presence
- Post court orders online
- Make court forms available for court users
- Install and use online calendaring
- Continue to schedule and hold remote conferences
- Explore the use of *Slack* or *Microsoft Teams* or any other asynchronous communication
- Attend all Technology CLEs offered by the Louisiana Judicial College or seek other technology learning opportunities
- See also, [*Technology Considerations for High-Volume Dockets During the Pandemic*](#), A Pandemic Resource from CCJ/COSCA

³ [*Twelve Essential Steps to Tackle Backlog and Prepare for a Surge in New Civil Cases*](#), National Center for State Courts, July 8, 2021.

B. Court Governance and Collegiality

The need for governance exists anytime a group of people come together to accomplish an end. For judges and courts, governance provides the framework by which courts reach and communicate organizational decisions, establish business activities, and develop short and long-term strategies.⁴ Now more than ever, it is important for judges to work together and to provide collegial support for their colleagues. Where a division of court might find itself with less of a case backlog than that experienced by a judge of the same or neighboring jurisdiction, we recommend that each offer real and genuine support to the other.

Certainly, challenges are unique to each district and are driven by physical and economic limitations. However, one example of court collegiality is demonstrated by a local rule implemented in the 1st JDC regarding “back-up” for other divisions of court within a district. The rule, reproduced in part below, might be considered for adoption in your jurisdiction. In short, this local rule allows a judge whose jury docket washes out to serve as a backup judge for another division, to wit:

First Judicial District Appendix to Rule 14, District Court Rules

In the interests of judicial economy and the efficient administration of justice, when a section of the Criminal Division has more than one case ready to proceed to jury trial during a particular jury term, the judge of that section and any other judge, elected, appointed or pro tempore, of the First Judicial District Court, hereinafter the ‘backup’ judge, may agree that the backup judge may preside over any additional trials during that jury term. If either the District Attorney or defendant objects to the case being heard by the backup judge, the section judge shall determine whether or not to permit the backup judge to hear the case and may conduct a hearing to assist in that determination. The section judge shall base his or her determination on the following factors:

- 1) Whether the assistance of the backup judge would compromise the principle of random allotment of criminal cases in a manner inconsistent with Due Process;
- 2) Whether the interest in a speedy trial is best served by employing the assistance of the backup judge;
- 3) Whether the nature or complexity of the procedural history of the case would hinder the backup judge in making rulings consistent with that procedural history;
- 4) Any other consideration relevant to the interests of justice.

In this regard, judges are cautioned that they should be selective in the cases for which assistance is sought by avoiding transfer of complex cases or cases where substantial evidentiary or pre-trial motion practice has taken place. Our message is that district judges should exercise collegiality in assisting other judges in order to minimize the case backlog.

⁴ <https://nacmcore.org/curriculum/court-governance/>

We recognize the difficulty in this proposition, as judges necessarily must interact for administrative matters yet each division exerts its own independence in setting dockets and controlling calendars. As one commentator has remarked, district judges are like “a group of robed attorneys who office-share.”⁵ In order to successfully manage the backlog however, we must dispel that notion by working together.

One suggestion for a unified effort is to engage your judicial administrator or chief judge to manage multiple court calendars.⁶ Obviously, each division will have different procedures and policies and we are not suggesting complete standardization. However, some uniformity will go a long way in promoting efficiency. For example, standardizing the manner in which video conferences are held with jail inmates will not compromise a judge’s autonomy in decision-making. It is clear that when judges don’t agree to share duties it affects not only the judges’ relationships among their bench but also the relationships of their staff.

C. Docket Management & Case Resolution Skills

Docket Management

As suggested recently by a Florida jurist, “we can’t judge our way out of this backlog.”⁷ Rather, the best approach to the cases that have accumulated on your docket (and for new filings) is to implement thoughtful case management. In this regard, planning and preparation are paramount. Many resources offer ways in which you might reform your court process to secure fair, speedy, and inexpensive resolution of civil cases.⁸ Yet, a comprehensive overhaul of your docket management system may seem impractical considering the changes you have already instituted. Still, there are many suggestions that can at least guide you towards a more efficient process.

A key element to delay reduction and good case management is an *inflexible* scheduling order. By inflexible, we don’t mean unyielding, but only the most complex civil cases require an individualized case scheduling order. By adhering to scheduling orders, and enforcing deadlines, cases will move more efficiently towards resolution.⁹

⁵ Barbara Mundell & Wallace Jefferson, *Herding Lions: Shared Leadership of State Trial Courts* (2012)

⁶ For more information on State Court Leadership, see NCSC Publication, *Governance: The Final Frontier*, Mary Campbell McQueen and *Managing Organizational Change; Integrating the Purpose, the People, and the Process*, Dale Lefever, The Court Manager, Volume 23, Issue 2,

⁷ Judge Jennifer Bailey, Administrative Judge, 11th Judicial Circuit of Florida, Circuit Civil Division. (See video at 1:05:30 – 1:11:04 <https://vimeo.com/483134457>)

⁸ See, e.g., *Redefining Case Management*, IAALS, 2018; *Achieving Civil Justice for All*, CCJ NCSC 2016.

⁹ NCSC “Twelve Steps” *supra*, note 3.

A novel approach towards more efficient case resolution is offered in the 24th JDC by Judge Scott Schlegel: <https://www.onlinejudge.us/judgeschlegel-asynchronous>. The Online Judge Pilot Program seeks to improve access to justice and create a more efficient and effective justice system by handling any preliminary matter exclusively online. With this pilot program, Judge Schlegel encourages all counsel to join him and his staff on a “shared channel.” The shared channel uses an asynchronous communication platform that allows access between the lawyers on the case and the Court on their own time. Additionally, the process allows the judge to hold status and pre-trial conferences throughout the duration of the case to expedite the litigation. This novel approach to practicing law provides an opportunity for lawyers to resolve cases more quickly, limit filing fees, and ultimately save costs passed on to the litigants. Lawyers must consent to the process in writing.¹⁰

Some additional general docket management tips include the following.

- Establish a standard case scheduling order
- Adhere to the deadlines but understand some flexibility will be necessary
- Schedule frequent status conferences by telephone or remote process
- Streamline discovery timeline and discovery disputes
 - e.g. Is an expert really needed? (Consider suggesting a single neutral expert for both sides)
 - Encourage parties to allow pretrial motions decided on the memoranda only
 - Decide *Motions in Limine* prior to trial
- Avoid total dependency on the “trial date” as a catalyst for settlement. Other deadlines can be just as effective, such as witness and document exchange (hold a status at that juncture); motion practice on evidentiary issues; deadline to submit jury instructions; and pre-trial conferences held in advance of trial.
- Reject the myth that “lawyers control the pace of the litigation.” This is certainly true to some extent, but judges can be purposeful in controlling the litigation by limiting continuances and adhering to all established deadlines.

See these additional resources for docket management post-pandemic:

- NCSC Conference of Chief Judges, Case Management Considerations: Judge Jennifer Bailey at 1:05:30 – 1:11:04 <https://vimeo.com/483134457>
- Family Court tips: https://www.ncsc.org/_data/assets/pdf_file/0018/59202/Battling-Backlog-Library-Demand-Videos.pdf

¹⁰ See [Order to Participate in The Online Judge Civil Practice Pilot Program](#)

Case Resolution Tips

Many mediation skills can be useful tools for resolving cases. As Justice McCallum remarked, “the best resolution is the one the parties devise between themselves.” Some tips you might be able to apply in your case management for lawyers and litigants include:

- **Think about how you frame questions.** Open-ended questions produce the most information.
- **Avoid the word “why.”** “Why” questions place the responder on the defensive and cause them to construct an answer they think you want to hear. Instead of “why” consider, “What factors led to your decision to...?”
- **Improve your listening skills.** The National Judicial College teaches a course that includes the “Seven Fatal Listening Filters.” One filter you might avoid using is the “Familiarity Filter.” *You’ve heard it before, so you don’t listen.* Be cognizant of giving the impression that you are not listening.
- **Lean forward.** Keeping both (or one) hand on the bench forces you to lean forward ever so slightly. This gives the impression that you are interested in what is being said and instills trust in lawyers and litigants.
- **Encourage negotiation.** Use the attorneys during settlement conferences. For example, ask the attorneys, “what have other clients done in similar fact situations?” This might open the door for other options.¹¹

Incorporating more status and settlement conferences into your calendars may seem like more effort than simply providing a trial date but with the increased availability of remote conferencing, judges and lawyers will have more flexibility in working towards a resolution. The added benefit of clearing your docket is that you will reduce the amount of traffic in and out of the courthouse.

¹¹ See [Five Mediation Skills You Can Use On Your Bench Today](#), National Judicial College, March 20, 2018.

PART II – JUDICIAL PARTNER SUGGESED STRATEGIES

A. Joint Recommendations of the Louisiana Association of Defense Counsel & Louisiana Association for Justice

Pursuant to the request of Chief Justice John L. Weimer, representatives of the Louisiana Association for Justice (LAJ) and the Louisiana Association of Defense Counsel (LADC) conferred and agree on the measures below that may be helpful in addressing case backlogs caused or exacerbated by the COVID-19 pandemic. Both organizations express gratitude to the Chief Justice and the Louisiana Supreme Court for consulting with us and giving us the opportunity to work together again to try to help ameliorate the hardships in the legal system caused by a crisis, as the LAJ and the LADC did after Hurricanes Katrina and Rita in 2005.

1. Preferential Fixing: Courts should grant to cases which have been continued due to Covid-19 a preferential fixing for jury trials moving forward in accordance with the standards set forth in Louisiana Code of Civil Procedure (CCP) Article 1573. That provision permits preferential fixings for cases involving plaintiffs age seventy or older, as well as individuals who have a life expectancy of six months or less. The LAJ and the LADC suggest that similarly, if a case has been continued due to the pandemic, that particular case be given a preferential right to a trial fixing over any other case. Further, in the event of multiple pandemic-impacted cases, then the case which has the older "bumped" trial date would rank first, the next would be second, and so on. This will enable claimants whose cases are truly delayed due to the pandemic to get to court first. This preferential fixing could be utilized both in jury and non-jury cases.
2. Utilization of alternative jury selection sites: In order for prospective jurors to have a feeling of safety, courts could utilize off-site facilities with greater room for social distancing to select the juries. The final jurors could be transported to the courtroom for trial. For example, in the Tenth Judicial District Court in Natchitoches Parish, jury selection is conducted in the Natchitoches Events Center, where there is ample room for distancing, and after selection, those individuals are taken to the courtroom for trial.
3. Cooperation regarding access to federal court spaces: State courts should work with the federal courts to obtain both alternative jury venues and access to the federal courtrooms where such space is available.

4. Utilization of jury questionnaires: Jury questionnaires should be sent to all prospective jurors so that preliminary data could be obtained, thereby reducing the amount of time necessary for voir dire and/or the requirement for the entire venire to be present for an extended period of time in areas that could otherwise not be safe from a Covid perspective.
5. Use of technology: Encourage judges to handle by virtual means all matters that can appropriately be handled that way.
6. Ad hoc judge appointments and assignments: We understand that most cases that are part of the backlog will be handled by sharing and allocation arrangements among the active judges in each district. There may be situations at times in some districts, however, for which appointment of ad hoc judges is appropriate and would assist with docket management. Where possible and appropriate in such situations, assign ad hoc judges to matters that would be most disruptive of judges' docket management. For example, an ad hoc judge may be assigned to handle many small matters when a judge has a long trial. On the other hand, a long trial that would draw the regular judge away from regular docket management may be assigned, where appropriate, to an ad hoc judge. However, it is worth considering that assignment of an ad hoc or shifting cases from one judge to another is not always efficient, such as when one judge has handled all discovery and pre-trial matters and another judge is assigned to conduct the trial.
7. Active docket management: Encourage judges to engage in active docket management, including but not limited to encouraging mediation, appointing special masters where appropriate and needed, and, in cases that will be tried to a jury, setting and participating in settlement conferences.
8. Setting multiple cases: Set multiple cases for trial in a week, provided that parties are given adequate notice of their trial's cancellation in order to avoid incurring additional costs, such as expert witness fees.
9. Six-person juries: Encourage use of six-person juries in civil cases with consent of the parties in accordance with CCP Art. 1761. The article is clear that a six-person jury is permissible only when the parties stipulate. The court may encourage, and the parties may consider, use of a six-person jury, for example, when there is not a sufficient pool available for a twelve-person jury.

10. Sunset: Any recommendations made have a "sunset" provision so that once the backlog of cases is filtered out and those cases are disposed of, continued use of the recommendations herein would not necessarily be needed.

Participants for the LAJ: *Edwin Dunahoe, Robert Kleinpeter, Darrel Papillion, Blake David, Mike Palmintier, J. Cullens, and Connie Koury*

Participants for the LADC: *Dean Sutherland, Tommy Hayes, Ralph Kraft, Phelps Gay, Bobby Gilliam, Skip Philips, and Bill Corbett*

Reviewed and Input Provided: *Chief Judge Wilson E. Fields, 19th JDC, and Judge Scott Schlegel, 24th JDC*

B. Louisiana District Attorney's Association

- Continue expedited screening measures designed to resolve in-custody cases.
- Prioritize in-custody defendants for resolution.
- Provide discovery and plea offers as early as possible.
- Work with Judges and defense bar to resolve as many "time served" and "concurrent sentence" cases as practicable.
- Increase number of cases docketed for trial dates.
- Work with Sheriffs to make sure that transport orders are accurate and inmates are not unnecessarily transported or necessary inmates are not transported.

C. Louisiana Office of the Public Defender

- Recognize that six person jury is acceptable in civil cases but only in relative felony criminal cases.
- Court personnel and judges should follow recognized pandemic mitigation practices, such as mask mandates and social distancing, including inmate population.
- Prioritize in-custody clients and enhance efforts to consult with clients in advance of court dates.
- Work with local sheriffs to develop client visitation protocols that provide for one-on-one confidential consultation with inmate clients.

D. Louisiana Sheriff's Association

- Make reasonable accommodations to allow for defense counsel to consult confidentially with clients, both remotely and in person.
- Coordinate transportation of inmates in advance with District Attorney and Defense Counsel.

E. Louisiana State Bar Association

- Continue the use of remote hearings and conferences
- Conduct small civil bench trials remotely
- Allow for email delivery of courtesy copies to chambers
- Consider the use of a Commissioner to help prepare trials
- Use multiple courtrooms and hybrid video conferencing to have more people involved simultaneously
- Separate civil docket matters based on complexity (e.g. motions to compel set separate from complex summary judgment motions)
- Consider automatic deadlines once an issue has been joined
- Consider a fast-track procedure for non-jury cases of limited value
- Allow motions that don't require testimony submitted for decision on written memoranda only
- Set multiple jury trials on the same date
- Review *Instanta subpoenas* provisions in the event there is a shortfall in juror reporting

F. Louisiana Clerks of Court Association

- Continue to coordinate with the local clerks' office for all filings and online hearings
- Keep in mind that the record must always be preserved, whether it is in paper or electronic format
- Rural parishes may not be equipped for sufficient social distancing and may look to hold jury trials in other municipal facilities but those may require technology upgrades

Case Management and Backlog Committee Members

The Hon. John L. Weimer, Chief Justice, Louisiana Supreme Court, **CHAIR**
The Hon. Jefferson D. Hughes III, Associate Justice Louisiana Supreme Court
The Hon. Scott J. Crichton, Associate Justice, Louisiana Supreme Court
The Hon. James T. Genovese, Associate Justice Louisiana Supreme Court
The Hon. William J. Crain, Associate Justice Louisiana Supreme Court
The Hon. Jay B. McCallum, Associate Justice Louisiana Supreme Court
The Hon. Piper D. Griffin, Associate Justice Louisiana Supreme Court

The Hon. Susan M. Chehardy, Judge Louisiana 5th Circuit Court of Appeal
President, Louisiana Judicial College
The Hon. Brady O'Callaghan, Judge 1st Judicial District Court
President, Louisiana District Judges Association
The Hon. Scott U. Schlegel, Judge 24th Judicial District Court
The Hon. Danny Ellender, Judge 4th Judicial District Court
The Hon. Patricia Koch, Judge 9th Judicial District Court
The Hon. Timothy Marcel, Judge 29th Judicial District Court
The Hon. Wilson Fields, Judge 19th Judicial District Court
The Hon. Karen Herman, Judge Orleans Criminal District Court
The Hon. Nakisha Ervin-Knott, Judge Orleans Civil District Court

Loren Lampert, Executive Director, Louisiana District Attorney's Association
Remy Starns, Louisiana Chief Public Defender
Shannon Dirmann, Louisiana Sheriff's Association
Prof. William Corbett, Executive Director, Louisiana Association of Defense Counsel
Connie Koury, Executive Director, Louisiana Association for Justice
Alainna Mire, President, Louisiana State Bar Association
Debbie Hudnall, Executive Director, Louisiana Clerks of Court Association
Michael Schachtman, Executive Director, Louisiana Judicial College
Sandra Vujnovich, LASC Judicial Administrator

Jennifer Eagan, LASC Senior Research Attorney and Liaison to District Judges