

Lawyers Weekly

By Ariana L. Johnson

Reforms to Land Court a mixed bag

Lawyers say the Land Court's 2004 efforts to improve efficiency and consistency have been a mixed bag: While the new individual-calendar system has allowed for swift motions, attorneys feel pressured by the court's rigid time standards.

In July 2004 the court began using an individual calendar system. Two months later, in September 2004, the court also began to utilize time standards.

Attorney Donald R. Pinto Jr. of Boston stated that the changes incorporate some of the best elements of the federal system into the state system.

"The Land Court is the only place where you have the three elements [from the federal system] that make for a more efficient system: the individual calendar system, the management conferences, and firm trial dates," he explained.

When the individual judge system was first implemented, some lawyers expressed wariness at the ability to have motions heard in a prompt manner. These lawyers later admitted to being surprised by the lack of delays.

However, the new time standards have garnered less positive reactions from attorneys, who complain that they can be too aggressive, or are applied more stringently than necessary.

Just one judge

Under the individual calendar system, a single judge hears a case from the moment it is filed to the case's conclusion. Case assignment is random and parties are not allowed to request a specific judge.

Land Court Chief Justice Karyn F. Scheier said that, from the judge's point of view, the transition to the new system has been fairly seamless.

She pointed out that the court's time is better spent because a judge does not have to get up to speed every time she picks up a file. Scheier also said that a judge's knowledge about and involvement in a case has increased.

Boston attorney Lawrence P. Heffernan admitted that he was concerned that he might have difficulty scheduling motions and having them heard promptly. In particular, he was worried that he might encounter the same kind of delays that he

experiences in Superior Court under Rule 9A.

However, Heffernan said that the court has done a good job of keeping motion sessions for particular judges available on a fairly regular basis.

Attorney J. Gavin Cockfield of Boston agreed that the individual calendar system eases case progression because judges do not have to be re-educated each time a case appears in front of him.

Bringing parties together

Another vital change for the Land Court was the establishment of mandatory case management conferences, which Scheier stated was the most important change made.

She explained that the goal of the conferences is to have the lawyers meet early in the case, and to discuss discovery issues, timing issues, and whether there are opportunities to narrow issues or to dispose of cases alternatively from trial.

"[As a result of] getting the lawyers in the same room, and sometimes the clients too, we are finding that an extraordinary number of cases are settling in the early stages of the case," commented Scheier.

Heffernan explained that while he has not had this experience, he believes that the court is exercising more oversight of the discovery process, which he felt is beneficial to the parties.

Other lawyers agreed that the conferences are a positive change.

Cockfield found that the conferences are excellent opportunities for the parties to get issues out in the air.

Hingham lawyer Peter L. Puciloski added that he likes the informal atmosphere of the conferences and has found that it facilitates discussion.

Pinto said that he was skeptical of the conference's benefits when he first learned of them, especially the joint memorandum requirement. However, he found in practice that the conferences can be very helpful, sometimes in unexpected ways.

"I have had the experience at a conference where a comment

from a judge causes both parties to see the case differently [because] the judge refers to something he has seen firsthand in another case,” Pinto said.

Another benefit of the new system is that the parties cannot leave a case event without putting the next event on the calendar he continued.

“This reinforces the notion that the court cares about the case, and keeps it moving towards the schedule,” Pinto added.

Timing is everything

Under the new time standards, when a plaintiff files a case, the assigned judge must send a letter to the plaintiff’s counsel within 90 days of filing. This letter, also sent to the defendant’s counsel if possible, sets a date for the case management conference.

Scheier explained that the Land Court was the pilot site for the Trial Court-wide web-based data management system, MassCourts. Judges can use this system to periodically review the current cases and monitor compliance with time standards.

Scheier stated that the court has received feedback from lawyers arguing that the prescribed speed is a little aggressive for certain kinds of cases.

She acknowledged that lawyers in small firms or government lawyers have more of a challenge in meeting the time standards given their limited resources.

“The session clerks would say that they are getting an increase in calls and letters requesting continuances. We used to let the lawyers dictate the speed [of the trial], and now they have to adjust to a system which doesn’t allow much flexibility,” Scheier stated.

Scheier also pointed out that some lawyers may experience trouble meeting the time standards, because under the Massachusetts Rules of Civil Procedure a plaintiff has 90 days to serve the defendant.

In some cases, such as title clearing cases, after filing an action a plaintiff will get a letter from the court to set a date for the case management conference before they have identified the defendants. If this happens, Scheier said that the court usually asks the plaintiff to meet with the judge and discuss steps to determine the other parties.

Pinto agreed that sometimes it is harder for the parties to keep up with the time standards than for the court. Those attorneys who practice in Superior Court will be more comfortable with the time standards, he advised.

Heffernan also recognized the difficulties the standards may present.

“they are a laudable goal, although they could be problematic if applied rigidly, particularly in a complicated case that involves multiple parties or a good amount of discovery,” he said.

He noted that had had a complicated case before the court, but that the judge was attuned to that and that the time standards did not choke off necessary discovery.

However, some lawyers found that judges can apply the time standards strictly.

Puciloski explained that in his experience the judges held lawyers to their word when they say that they can do something within 30 days. The judges often required a written status report, or at the very least, a phone call to confirm that the event has happened as promised, he said.

A Boston attorney who wished to remain anonymous stated that the overall push to increase case efficiency caused some judges to be more stringent than necessary.

He said that he has had judges disregard agreements made between the parties, and decide that cases need to move at a faster rate, even faster than the time standards require.

“The time standards should be a rule, but cases should only move quicker [than the standards] if that’s what the lawyers want,” he argued.

Satisfied and dissatisfied lawyers alike are welcome to share their comments with the court.

Scheier stated that when the court implemented the changes last year they held many forums to notify the public. The court plans to hold more forums to get feedback on the changes’ impact.

“The ultimate goal is the same for the courts and the bar, to have greater efficiency and transparency of the process,” she concluded. **MLW**

