

Conference of Circuit Judges
Maryland Business and Technology Case
Management Program
Implementation Committee

FINAL REPORT

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CONFERENCE OF CIRCUIT JUDGES
MARYLAND BUSINESS AND TECHNOLOGY CASE MANAGEMENT
PROGRAM IMPLEMENTATION COMMITTEE FINAL REPORT

I. EXECUTIVE SUMMARY

This is the Final Report of the Conference of Circuit Judges Business and Technology Case Management Program Implementation Committee appointed by Conference Chairman, Judge Paul H. Weinstein. On December 1, 2000, the Report of the Business and Technology Division Task Force created by the General Assembly of Maryland during its 2000 session was transmitted to and received by Chief Judge Robert M. Bell. Upon acceptance of the Report, Chief Judge Bell assigned the responsibility for implementing the recommendations of the Maryland Business and Technology Division Task Force to the Conference of Circuit Judges.

Conference Chairman, Judge Paul H. Weinstein, appointed a Committee made up of one judge representing each Judicial Circuit in the State of Maryland. The Committee in turn established "Working Groups" in each area where the legislatively created Task Force had recommended action. Over 150 individuals from the legal community (*i.e.*, Maryland State Bar Association and local bar associations) the business community, and academia (*i.e.*, faculty from both of the Maryland law schools and business schools, as well as individual legal practitioners and ADR Professionals) volunteered to assist the Committee with its work through participation in one or more of these "Working Groups." The names of those individuals who actually did assist the Committee are set forth in Appendix I (attached).

The Working Groups established were in the areas of: (1) Judicial Education; (2) ADR Standards, Education, Training and Compensation; (3) The Use of Technology in the Program; (4) Uniform Statistical Data and Performance Standards; and (5) Training for Clerks and Administrators. The Committee in the Report that follows has made comprehensive and detailed recommendations in each of these areas which are designed to implement the recommendations of the legislatively created Task Force.

The Committee, like the Task Force, has recommended all of this be implemented under the authority of a new Maryland Rule of Procedure, proposed New Rule 16-205, which has been considered and approved by the Court of Appeals Standing Committee on Rules of Practice and Procedure. This proposed New Rule will be presented to the Court of Appeals by the Rules Committee in its next Report.

The Committee also has recommended that **uniform** language under the authority and mandate of New Rule 16-205 be added to each Civil (Non-Family) Differentiated Case Management (DCM) Plan in every circuit court in the State which will establish a Business and Technology Case Management Program to provide uniform operational procedures and practices in each of those courts and circuits.

A recommendation is also made to include a specialized multi-year, multi-day, and most significantly multi-disciplinary judicial education component to the Program, including training in law, economics, case and docket management skills, as well as the use of technology in the management of both cases and the docket of cases presenting complex business and technology issues. This Program would be open to all judges who might want to participate, but priority would be given to those judges initially designated to be “Program Judges.”

Another recommendation is to substantively amend the Rules governing the Standards, Education, Training and Compensation of Mediators and other ADR Professionals in order to insure that they are of the highest quality and have both the requisite ADR skills, as well as knowledge and understanding of the subject matter and issues in the case to make the use of ADR in the Program a meaningful and successful event. This includes the innovative use, where appropriate, of a “Neutral Expert” to provide the ADR Professional and/or the parties with technical background information or an opinion on specific issues related to their dispute.

The Committee also recommends the establishment of Uniform Statistical Data and Performance Standards to accurately measure the efficiency of the Program, as well as a comprehensive training protocol and plan for training the Clerks and Administrators who will staff and administer the Business and Technology Case Management Program.

Finally, the Committee has in the Report that follows recommended a progressive “plan” to introduce various technologies into the management of the Business and Technology Case Management Program in phases. The following Report lays out a blueprint for this phased approach, which is strengthened by the allowance for fiscal restraint and realities while at the same time providing for the implementation of the clear will of the Legislature, as well as the Executive branches of government as expressed in House Bill 15 and articulated in the Report of the Task Force created by that Legislature that a Business and Technology Case Management Program be established in Maryland sooner rather than later. The phased approach to the incorporation of existing and emerging technologies into the management of the Program allows the Maryland General Assembly, as well as the local legislative bodies and executive officers upon which the circuit courts of this State still partially depend for budgetary support, to control the priority given to the enhancement of the use of technology to make this Program more efficient and recognized nationally. It allows the judiciary to embrace the initiative of the General Assembly as it should in the language of Proposed New Rule 16-205 “subject to the availability of fiscal and human resources.”

The Committee in conclusion recommends that the Conference of Circuit Judges establish either a Standing Committee or at least a continuing Committee made up of those judges who are designated by their Administrative Judges as Business and Technology Cases Management Program Judges, and including interested representatives of the Bar, the Business Community, and academia to advise and assist upon request the Circuit and County Administrative Judges, as well as the initially designated Program Judges in setting up and making operational and efficient uniform Business and Technology Case Management Programs in each circuit court in the State of Maryland.

II. ACKNOWLEDGEMENTS

In addition to the volunteers who participated in the Working Groups whose names are set forth in Appendix I, the Committee wishes to specifically acknowledge the hours of work and the incomparable knowledge of James I. Keane who Chaired the Use of Technology Working Group and advised, drafted and presented to the Committee on the current use of technologies available, and more importantly, the use of emerging technologies in the Business and Technology Case Management Program, which the Committee has been able to recognize, explore, and plan for with his assistance. To the extent that our Plan is able to articulate a vision for the use of technology in the Business and Technology Case Management Program, which hopefully will be compelling in time, it is largely the result of his assistance, and specifically his drafting skills and support, that we were able to do so.

The Committee also wishes to acknowledge the other members of the designated Drafting Committees who actually worked to draft and thereby articulate and present each Working Groups ideas to the Committee in Draft Reports. They are: Roger Wolf, Esquire; Rachel Wohl, Esquire, L. Toyo Obayashi, Esquire; Patricia A. Miller, Esquire and Eugene Yannon, Esquire for the ADR Standards, Education, Training and Compensation Drafting Committee; Steven E. Tiller, Esquire; Professor Richard Booth; Professor Lisa Fairfax; Professor Eric B. Easton; and Eric Orlinsky, Esquire for the Judicial Education Drafting Committee; and Honorable Arthur M. Ahalt, Wesley Blakeslee, Esquire and Alan R. Duncan for the Use of Technology Drafting Committee.

The Committee also wishes to acknowledge the invaluable assistance of the Advisory Council to the Circuit Court for Baltimore City, Chaired by Judge Albert J. Matricciani, Jr. This Council is composed of business lawyers, commercial litigators, in-house counsel, as well as business and technology industry leaders. It has during regular meetings in the year 2001 addressed and attempted to reach consensus on many of the critical issues relating to the establishment of a Business and Technology Case Management Plan in the Circuit Court for Baltimore City and a uniform plan in all of

the circuit courts throughout the State. In doing so, it has rendered great assistance and at times insight to this Committee and its Working Groups.

The Committee also wishes to acknowledge the support and assistance and at times insight into the issues we confronted provided by the work of the MSBA Business Law Section Council, the MSBA Litigation Section Council, and the MSBA Technology Committee, as well as the Maryland Business ADR Initiative and the members of each of these organizations who came forward to assist the Committee.

Finally, the Committee wishes to acknowledge the dedicated and competent assistance of Sherie B. Libber, Esquire, Assistant Reporter to the Standing Committee on Rules of Practice and Procedure, who attended all of the Committees meetings and completely staffed the Drafting of Proposed New Rule 16-205. This Report would not have been possible without her support.

III. THE RULE

The Committee recommends that the Court of Appeals adopt Proposed New Rule 16-205. The current status of the Rule is that it has been approved and styled by the Rules Committee and will be presented to the Court of Appeals by the Rules Committee in its next Report. It reads as follows:

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 200 - THE CALENDAR - ASSIGNMENT AND DISPOSITION

OF MOTIONS AND CASES

ADD new Rule 16-205, as follows:

Rule 16-205. BUSINESS AND TECHNOLOGY CASE MANAGEMENT PROGRAM

(a) Definitions

The following definitions apply in this Rule:

(1) ADR

"ADR" means "alternative dispute resolution" as defined in Rule 17-102.

(2) Program

"Program" means the business and technology case management program established pursuant to this Rule.

(3) Program Judge

"Program Judge" means a judge of a circuit court who is assigned to the Program.

(b) Program Established

Subject to the availability of fiscal and human resources, a Program approved by the Chief Judge of the Court of Appeals shall be established to enable each circuit court to handle business and technology matters in a coordinated, efficient, and responsive manner and to afford convenient access to lawyers and litigants in business and technology matters.

The program shall include:

(1) a Program track within the differentiated case management system established under Rule 16-202;

(2) the procedure by which an action is assigned to the Program;

(3) Program Judges who are specially trained in business and technology; and

(4) ADR proceedings conducted by persons qualified under Title 17 of these Rules, and specially trained in business and technology.

Cross reference: See Rules 16-101 a and 16-103 a concerning the assignment of a judge of the circuit court for a county to sit as a Program Judge in the circuit court for another county.

(c) Assignment of Actions to the Program

Upon the request of a party or on the court's own initiative, the County Administrative Judge of the circuit court for the county in which an action is filed or the Administrative Judge's designee may assign the action to the Program if the judge determines that the action presents commercial or technological issues of such a complex or novel nature that specialized treatment is likely to improve the administration of justice. Factors that the judge may consider in making the determination include: (1) the nature of the relief sought, (2) the number and diverse interests of the parties, (3) the anticipated nature and extent of pretrial discovery and motions, (4) whether the parties agree to waive venue for the hearing of motions and other pretrial matters, (5) the degree of novelty and complexity of the factual and legal issues presented, (6) whether business or technology issues predominate over other issues presented in the action, and (7) the willingness of the parties to participate in ADR procedures.

(d) Assignment to Program Judge

Each action assigned to the Program shall be assigned to a specific Program Judge. The Program Judge to whom the action is assigned shall hear all proceedings until the matter is concluded, except that, if necessary to prevent undue delay, prejudice, or injustice, the Circuit Administrative Judge or the Circuit Administrative Judge's designee may designate another judge to hear a particular pretrial matter. That judge shall be a Program Judge, if practicable.

(e) Scheduling Conference; Order

Promptly after an action is assigned, the Program Judge shall (1) hold a scheduling conference under Rule 2-504.1 at which the Program Judge and the parties discuss the scheduling of discovery, ADR, and a trial date and (2) enter a scheduling order under Rule 2-504 that includes case management decisions made by the court at or as a result of the scheduling conference.

Source: This Rule is new.

REPORTER'S NOTE

Proposed new Rule 16-205 implements a recommendation of the Business and Technology Task Force, created by the Maryland legislature to further technology business in the State. In its Report, the Task Force concluded that the benefits of the specialization of judges to hear business and technology cases and a fair and equitable allocation of judicial resources can best be accomplished by the establishment of a Business and Technology Case Management Program in the circuit courts.

IV. UNIFORM DCM LANGUAGE AND FORMS TO ESTABLISH THE BUSINESS AND TECHNOLOGY CASE MANAGEMENT PROGRAM TO BE ADDED TO EACH CIVIL (NON-FAMILY) DCM PLAN

The Committee recommends that the following uniform language and forms be added to each Civil (Non-Family) Differentiated Case Management Plan in every circuit court.

A. CASE INFORMATION SHEET

As in all civil cases, pursuant to Md. Rule 2-111, the plaintiff must file with the complaint an Information Report. If a party wishes to have the case assigned to the Business and Technology Case Management Program (“BTCMP”), it shall be designated at the bottom of the front of the Civil (Non-Family) Case Information Report in use in the circuit courts throughout Maryland (form attached). A duplicate Complaint must be filed with such designation for review by the Administrative Judge or his/her designee in making a determination as to whether assignment to the BTCMP is appropriate. The information on the Case Information Report will be used by the assigned judge to designate an appropriate track within the BTCMP for the case.

B. TRACK ASSIGNMENTS

When the case is specially assigned to a particular BTCMP judge, he or she will make a determination of the appropriate track at the initial Scheduling Conference. There will be two (2) tracks, which will have the following characteristics:

1. Expedited

Cases on this track will be tried within seven (7) months from the date of the filing of the first defendant’s responsive pleading.

2. Standard

Cases on this track will be tried in not more than twelve (12) months from the date of filing of the first defendant's responsive pleading.

3. Emergency Relief

In cases where emergency relief is requested, the parties must comply with the provisions of Md. Rules 15-501 through 15-505. Consistent with the provisions of these rules, the Court shall schedule a hearing as soon as practicable.

C. ASSIGNMENT DISPUTE

The Administrative Judge or his/her designee shall assign appropriate cases to the BTCMP.

Within ten (10) days of notice of the decision on the assignment of a case to the BTCMP, an objecting party shall file a written motion with the Clerk of the Court setting forth in detail the basis of the objection. Any response shall be filed with the Clerk within five (5) days after being served with the motion.

The Administrative Judge or his/her designee shall determine in each case whether a hearing shall be conducted on the motion.

The Administrative Judge's or his/her designee's ruling on the motion shall be final.

D. SPECIAL ASSIGNMENT TO BTCMP JUDGE

Cases designated for the BTCMP shall be assigned to a judge who shall handle all further proceedings in the case pursuant to Maryland Rule 16-205.

E. SCHEDULING CONFERENCE/ORDER

Consistent with Md. Rules 2-504.1 and 2-504, the judge specially assigned to a BTCMP case shall conduct an initial Scheduling Conference no later than thirty (30) days after an answer or other responsive pleading is filed by any defendant in the case. An appropriate Scheduling Order shall be issued promptly after conclusion of the conference.

The Scheduling Order shall address the deadlines required by Md. Rule 2-504(b) or be in the form of the sample Scheduling Order attached to this plan.

F.. ALTERNATIVE DISPUTE RESOLUTION

Alternative Dispute Resolution (“ADR”) is a vital component of an effective BTCMP. An appropriate mechanism for Alternative Dispute Resolution shall be discussed by the Court and counsel at the initial Scheduling Conference. In cases where ADR is appropriate, the Court shall order the parties and/or counsel to a specific ADR process, to be conducted either by a court assigned or an agreed upon facilitator and shall establish a deadline for its completion. Limited discovery may be ordered to facilitate the ADR process.

Insert Case Information Report

IN THE CIRCUIT COURT FOR _____, MARYLAND

_____ :

Plaintiff :

v. : Case No. _____

_____ :

Defendant :

BUSINESS AND TECHNOLOGY
CASE MANAGEMENT PROGRAM
PRE-TRIAL SCHEDULING ORDER

The Court having conducted a scheduling conference with the parties and counsel on _____, it is this ____ day of _____, by the Circuit Court for _____, Maryland,

ORDERED, that unless later modified by Order of this Court, the following schedule of events shall control the management and proceedings in this case.

1. This case is assigned to _____ track.
2. Trial of this case shall begin on _____ and is estimated to be completed within _____ days/weeks.
3. A pre-trial conference is scheduled on _____ at ____ a.m./p.m.
 - (a) The parties and/or counsel shall prepare in advance and bring to the conference a pre-trial statement comporting with Maryland Rule 2-504.2.
 - (b) Counsel, their clients, and insurance representatives must attend the pre-trial conference in person. Failure to attend without prior approval from the Court may result in sanctions being imposed.
1. All discovery, including full resolution of all discovery disputes shall be completed by _____.
 - (a) Plaintiff(s) shall designate experts expected to be called at trial and all information specified in Md. Rule 2-402(e)(1)(A) by _____.

(b) Defendant(s) shall designate experts expected to be called at trial and all information specified in Md. Rule 2-402(e)(1)(A) by _____.

(c) Plaintiff(s) shall designate rebuttal experts by _____.

1. Motions for summary judgment shall be filed by _____.
2. Motions in limine shall be filed by _____.
3. Additional parties must be joined by _____.
4. The parties and/or counsel shall submit to the following alternative dispute resolution process:
 _____, to be conducted by _____. Limited discovery for purposes of ADR, as ordered by the Court, shall be completed by _____.
5. Counsel and all parties, including *pro se* parties, must attend court hearings.
6. This Order is subject to modification, including the scheduling of the pre-trial conference and trial, upon a written motion for modification filed within fifteen (15) days of the date of this Order. Thereafter, this Order may be modified only upon a written motion for modification setting forth a showing of good cause that the schedule cannot reasonably be met despite the diligence of the party/ies seeking modification.
7. Any request for accommodation under the Americans With Disabilities Act should be directed to the Administrative Office of the Circuit Court for _____, Maryland at _____ or TTY for hearing impaired at _____.

JUDGE SPECIALLY ASSIGNED

cc: All Counsel
Pro Se Parties



I. JUDICIAL EDUCATION

This report addresses the Task Force's finding that specialized judicial education in both substantive business law and technology issues, as well as techniques for efficiently managing specialized business and technology cases and dockets, is critical to an effective Business and Technology Case Management Program. Provided herein are recommendations for judicial education programs in substantive areas of business, intellectual property, and technology law, as well as case management skills, including the use of technology in the management of the Business and Technology Case Management Program cases.

The Committee recommends that the Judicial Institute establish a multi-disciplinary committee made up of judges designated to the Business and Technology Case Management Program, as well as representatives of the Bar, academia, and the business community to develop and present to the Board of the Judicial Institute a plan for a multi-year, multi-day, and most importantly, multi-disciplinary curriculum modeled after the recent Criminal Law Curriculum.

The following list identifies areas of the law and other disciplines which should be considered by the Judicial Institute in developing its proposed curriculum for the education of judges designated to the Business and Technology Case Management Program. It must be stressed, however, that this curriculum must be customized to address real issues confronting businesses in Maryland and elsewhere. It is the Committee's strongly held view that judges assigned to the Program, and attorneys who regularly practice in it, as well as academicians and business people, are best qualified to recommend the substantive issues that should be addressed in the Business and Technology Judicial Education curriculum and that they should be convened at the earliest possible time to begin the process of doing so.

A. Business and Procedural Judicial Education

1. Business organization forms
2. Piercing the corporate veil
3. Funding and capitalization
4. Distributions to shareholders
5. Director and officer liability
6. Derivative suits
7. Shareholder and director inspection rights
8. Special issues arising in closely held corporations
9. Mergers, buyouts, spin-offs and takeovers

10. Economics and financing
11. Non-compete, non-solicitation and confidentiality agreements
12. Business valuations
13. Rights and duties of majority and minority business owners
14. Dividends and other distributions
15. Taxation
16. Antitrust
17. Financial statements in the courtroom
18. Alternative Dispute Resolution in business cases
19. Capitalization, finance and distributions
20. Duties, liabilities and conflicts of directors, officers and other managers
21. Case management procedures
22. Opinion writing

B. Technology and Intellectual Property Judicial Education

1. Information Technology
 - a. Software design and manufacture
 - b. The Internet: origin, structure and functionality
 - c. Economics of computer software and network markets

1. Biotechnology
 - a. Evolution of biotechnology
 - b. Overview of specific technologies
 - (1) Cell culture technology
 - (2) Biosensor technology
 - (3) Genetic modification technology
 - (4) Antisense technology
 - (5) Protein engineering technology
 - a. Economics of biotechnology industries

1. Telecommunications
 - a. Telephony
 - 1 (1) Wireline
 - 2 (2) Wireless
 - a. Mass Media
 - (1) Broadcasting
 - (2) Cable
 - a. Converging technologies

- b. The Telecommunications Act
1. Electric Power
 - a. Generation technologies
 - 1 (1) Coal
 - 2 (2) Natural gas
 - (1) Oil
 - (2) Nuclear
 - (3) Renewables
 - b. Transmission and distribution
 - c. Deregulation
1. Federal Intellectual Property Law
 - a. Patents
 - (1) General
 - (a) Requirements for protection
 - (b) Federal administrative procedures
 - (c) Rights and remedies
 - (d) Infringement
 - (2) Special cases
 - (a) Business method patents
 - (b) Bioscience patents
 - a. Copyrights
 - (1) General
 - (a) Requirements for protection
 - (b) Federal administrative procedures
 - (c) Rights and remedies
 - (d) Infringement
 - (1) Special cases
 - (a) Digital Millennium Copyright Act
 - (b) Database protection proposals
 - a. Trademarks
 - (1) General
 - (a) Requirements for protection

- (b) Federal administrative procedures
 - (c) Rights and remedies
 - (d) Infringement, dilution
- (2) Special case + domain names
 - (a) Infringement
 - (b) Dilution
 - (c) Cybersquatting
- 3. Related State-Law Doctrine
 - a. Rights in Undeveloped Ideas
 - b. Unfair Competition and Common Law Trademark
 - (1) Passing off
 - (2) Zone of expansion
 - (3) Dilution
 - (4) Misappropriation
 - c. Trade Secrets
 - d. Right of Publicity
- 3. Commercial Law
 - a. Maryland Computer Information Transactions Act
 - b. Maryland Electronic Transactions Act
 - c. Maryland Commercial Code, Article 9 (perfecting and assigning interest in intellectual property)
- 3. Jurisdiction

Finally, the Committee also strongly recommends that Program Judges, in addition to mandatory judicial education at the Judicial Institute as proscribed above, should also be given the opportunity and incentives to attend national seminars on relevant issues. These programs may include those presented at the National Judicial College or ABA Business Law and Intellectual Property Sections meetings. Seminars sponsored by the Practicing Law Institute and the American Law Institute are also recommended.

Finally, the Committee recommends that Program Judges should be encouraged to meet on a regular basis to share experiences in much the same way that hospital-based physicians meet to discuss significant cases in regular “morbidity and mortality” meetings. Such exchanges could become an important supplement to the more structured judicial education program outlined above and produce, as the Delaware experience has demonstrated, more timely rational, legally correct, and perhaps most importantly, predictable rulings from judges who are better trained, educated, and comfortable in their handling of these cases.

III. ADR STANDARDS, EDUCATION, TRAINING AND COMPENSATION

The Business and Technology Court Task Force Report proposes the establishment of a Business and Technology Case Management Program to adjudicate business and technology disputes and “strongly recommends” that ADR be an integral part of the program.” (p. 15 of the Report) This recommendation is based on the Task Force’s recognition of the great benefit the expanded use of ADR has had in the circuit courts of Maryland in reducing costs and case backlogs and on the reports from other states that the types of cases that the Task Force suggests be referred to the Business and Technology Case Management Program are particularly appropriate for resolution through ADR techniques.

In order to implement the Task Force’s recommendations relating to the qualifications, training, appointment and reimbursement of mediators, arbitrators, and neutral case evaluators assigned to the designated business and technology cases the following implementing actions are proposed:

First Proposal. Rule 17-104. **Qualification and selection of mediators** be amended to add a new part (c) as follows:

17-104(c): *Additional qualifications for mediators of cases referred from the Business and Technology Case Management Program of the circuit courts. To be designated by the court as a mediator of Business and Technology Program cases, other than by agreement of the parties, the person must:*

- (1) *have the qualifications prescribed in section (a) of this Rule;*
- (2) *within the two years preceding application for approval pursuant to 17-107 of these Rules have completed at least five non-domestic circuit court mediations or five non-domestic non-circuit court mediations of comparable complexity at least two of which must have included the types of cases that are assigned to the Business and Technology Case Management Program; or*
- (3) *within the two years preceding application for approval pursuant to 17-107 of these Rules have completed at least five non-domestic circuit court mediations or five non-domestic non-circuit court mediations of comparable complexity and, before being assigned a case to mediate individually, co-mediated, on a non-paid basis, two cases from the Business and Technology Case Management Program with a mediator already approved to mediate these cases; and*

(4) *agree, once approved as a mediator of Business and Technology Case Management Program cases pursuant to Rule 17-107, to serve as co-mediator with at least two mediators each year who need to meet the requirements of subsection (3) of this Rule in order to be approved as mediators pursuant to 17-104(c).*

(5) *agree to complete any specific substantive law and/or continuing education training that the court may require.*

Comment: Since the cases being referred to the Business and Technology Case Management Program are by definition complex cases it is felt that the mediators being assigned these cases should have more experience and some demonstrated competency which someone who has just received the basic 40 hour mediation training required by 17-104(a) does not have. While the completion of five mediations does not insure that the mediator has the necessary substantive background to mediate all of the cases that will be assigned to this program it does give a good indication that the mediator is able to apply theory to practice. Many mediators have gained their experience mediating cases in the federal courts, administrative agencies like EEOC or the US Postal Service, or privately. Where the experience was obtained is not the concern, only that the mediator is experienced.

Since the Business and Technology Case Management Program will be statewide and the judges designated by the Circuit Administrative Judges, it is anticipated that there will be a Case Management Coordinator specifically assigned to this program who will be responsible for reviewing the applications of the mediators pursuant to 17-107 and insuring that they meet the requirements set forth in 17-104(c)(2) and (3).

If the parties to the mediation prefer to select an individual without these qualifications the Rule clearly permits it. *Cf.* 17-103(b)(2) and (c)(4) of these Rules.

At the present time it is not clear what special substantive law training mediators approved for this track will need. Rather than a specific pre-requisite for substantive training, the requirement for continuing education as mandated by the court will allow the court to assess these needs once the program has been in operation. It is also anticipated that the Case Management Coordinators will maintain the background and specific substantive knowledge of each approved mediator so that the parties, their counsel, and the public may know that mediators are trained and selected on the basis of their education and experience and that the process is open to anyone who is qualified and/or is willing to become so.

Second Proposal: Rule 17-102, **Definitions**, be amended to include a new sub-section (f).

17-102(f) Neutral Expert. "Neutral Expert" means someone who because of

his or her expertise has been selected by the parties or the court to provide technical background information and/or an opinion in a specific area. Cf. Md. Rule 5-706 . An expert appointed under these rules would be bound by the confidentiality requirements of 17-109 and would not be subject to the discovery provisions of 5-706 or the requirements to testify in court or to advise the court of his/her opinion.

Comment: *Cf. Md. Rule 5-706*

Third Proposal: Rule 17-105, **Qualifications and selections of persons other than mediators**, be amended to include a new sub-section (c).

17-105(c) When a person designated by the court to conduct an Alternative Dispute Resolution (ADR) proceeding in a case being administered in the Business and Technology Case Management Program believes that, because of the technical complexity of the subject matter of the case, it would be helpful to have the assistance of an expert to educate him/her about the technical areas involved, the designated ADR practitioner, with the consent of the parties and at their expense, may consult with an expert chosen by the ADR practitioner and agreed to by the parties. Unless otherwise agreed by the parties, the consultation shall not exceed two hours and the ADR practitioner shall be compensated at his/her agreed upon hourly rate. Any expert consulted pursuant to this Rule shall be bound by the confidentiality requirements of 17-109 and is not subject to the discovery provisions of 5-706 or the requirements to testify in court or to advise the court of his/her opinion.

Comment: The variety and complexity of the cases being referred to mediation from the Business and Technology Case Management Program make it difficult to provide a comprehensive, substantive training program that would accommodate all cases. In some cases the parties may select a mediator they feel already has the substantive competency to mediate the matter. In other cases the parties may feel that they can provide the necessary substantive background to the mediator without the need for an expert. Or the parties may choose to hire an agreed upon expert as set forth in this Rule. Since the consent of the parties is required before an expert is selected there is no need to maintain minimum qualifications for the expert. *Cf. Md. Rule 5-706.*

Fourth Proposal: Rule 17-107 **Procedure for approval**, be amended as follows:

Rule 17-107. Procedure for approval.

(a) Application. A person seeking designation to conduct alternative dispute resolution proceedings pursuant to Rule 2-504 shall file an application with the clerk of the circuit court *and/or with the clerk of the Business and Technology Case Management Program* from which the person is willing to accept referrals. The application shall be substantially in the form approved by the State Court Administrator and shall be accompanied by documentation demonstrating that the applicant has the qualifications required by Rule 17-104, if the person is applying for designation as a mediator, or Rule 17-105(a), if the person is

applying for designation to conduct alternative dispute resolution proceedings other than mediation. The State Court Administrator may require the application and documentation to be in a form that can be stored in a computer.

(b) Approved lists. After any investigation that the County Administrative Judge *and/or a judge with administrative responsibilities for the Business and Technology Case Management Program* chooses to make, the County Administrative Judge *and/or the Business and Technology Case Management Program Judge* shall notify each applicant of the approval or disapproval of the application and the reasons for a disapproval. The clerk shall prepare a list of mediators found by the County Administrative Judge *and/or the Business and Technology Case Management Program Judge* to meet the qualifications required by Rule 17-104 and a separate list of persons found by the County Administrative Judge *and/or the Business and Technology Case Management Program Judge* to meet the qualifications required by Rule 17-105(a) for conducting other alternative dispute resolution proceedings. Those lists, together with the applications of the persons on the lists, shall be kept current by the clerk and be available in the clerk's office to the public.

(1) The list of mediators approved pursuant to 17-104(c) to mediate cases referred from the Business and Technology Case Management Program shall include information about the mediators qualifications, experience, background and any other information that would be helpful to litigants selecting an individual best qualified to mediate a specific case.

(c) Removal from list. After notice and a reasonable opportunity to respond, the County Administrative Judge *and/or the Business and Technology Case Management Program Judge* shall remove a person from a list if the person ceases to meet the applicable qualifications of Rule 17-104 or Rule 17-105(a) and may remove a person for other good cause.

Comment: These amendments to the Rule provide the Business and Technology Case Management Program the same authority to manage ADR practitioners in its program as currently resides with County Administrative Judges. Since the mediator requirements for the Business and Technology Case Management Program are more stringent it is appropriate that the program maintain its own lists and monitor its own program.

Fifth Proposal: Rule 17-108 **Fee schedules**, be amended to include a new sub-section (b) and the rule read as follows:

Rule 17-108. Fee schedules

Subject to the approval of the Chief Judge of the Court of Appeals:

(a) Circuit Court Programs. The County Administrative Judge of each Circuit

Court may develop and adopt maximum fee schedules for persons conducting each type of alternative dispute resolution proceeding other than on a volunteer basis. In developing the fee schedules, the county administrative judge shall take into account the availability of qualified persons willing to provide those services and the ability of litigants to pay for those services. A person designated by the court, other than on the agreement of the parties, to conduct an alternative dispute resolution proceeding under Rule 2-504 may not charge or accept a fee for that proceeding in excess of that allowed by the schedule. Violation of this Rule shall be cause for removal from all lists.

*(b) **Business and Technology Case Management Program.** The administrative judge of the Business and Technology Case Management Program may develop and adopt maximum fee schedules for persons conducting each type of alternative dispute resolution proceeding other than on a volunteer basis in this Program.*

Comment: Rule 17-108(b) gives the same authority to the administrative judge of the Business and Technology Case Management Program to set fee schedules that is currently given each county administrative judge. It is recommended that the fee set for mediators be \$200 per hour unless the parties agree otherwise. The recommended rate is higher than that set in most circuit courts but given the complexity of the cases referred to this Program and the added experience required of the mediator the higher rate is warranted.

IV. THE USE OF TECHNOLOGY IN THE BUSINESS AND TECHNOLOGY CASE MANAGEMENT PROGRAM

Introduction

The report of the Business and Technology Court Task Force envisioned a statewide case management process with a “virtual docket” and electronic filing of pleadings and court orders. It also encouraged the use of various legal technologies to store, share and present evidence both in court and over the Internet between lawyers, ADR providers and Courts. Another technology the Task Force considered in testimony and its deliberations was the use of various forms of remote conferencing from computer-aided teleconferences to videoconferences.

The proposed approach in this implementation plan is to introduce various technologies in specific phases. The phasing would combine training with proven technologies that are readily available at a reasonable price for the courts and lawyers. Subsequent phases would include pilots and experiments integrated into the concept of an electronic case file and remote proceedings.

Commonly used technologies include e-mail, Internet access, electronic briefs and electronic exchange of pleadings through eFile systems. E-mail is widely used in law firms of all sizes, who almost all now have access to the Internet. For filing court documents electronically, over

20,000 lawyers nationally are now registered users of state and federal eFile systems. Over 200 lawyers in Maryland have started to use the eFile system in Baltimore Asbestos cases in Baltimore. Multiple judges and court personnel are involved this project. The lawyers come from all sizes and types of firms, representing both plaintiffs and defendants.

It is possible with current technology to completely automate the business and technology cases with a comprehensive “electronic case file” to share case data. While eFiling addresses pleadings and court orders, other supplemental systems are needed to handle evidentiary documents, transcripts and computer presentations in chambers, courtrooms and “virtual” meetings with remote participants. These are more challenging and longer-term endeavors suitable for consideration in the latter phases of the Business and Technology Case Management Program. Depending on costs and levels of training, participants can introduce these other existing technologies over time and let them prove their efficacy for handling business and technology disputes.

The following plan lays out a blue print for this phased approach. The Section III addresses the functional basis for introducing technology. Section IV describes the functions that may be amenable to technology. Section V addresses data volumes, while Section VI considers the process and workflow. Costing information is in Section VIII and the phased implementation is outlined in Section IX. The Final Sections address key challenges and opportunities.

Some of the components of the technology-enabled case management process include:

Electronic Clerk’s Office

A.

The clerk would have a complete electronic case file upon initiating an electronic Business and Technology case. The clerks would monitor and provide quality control for electronic filings and assure the automatic updating of the Court’s case management and judicial information systems

Electronic Law Office

B.

The lawyers would initially have access to a virtual statewide docket system and the filed pleadings with any attached exhibits. The system would provide electronic service of responsive pleadings on counsel and have facilities to serve summonses and subpoenas in paper form. As the case progresses the lawyers can file their own papers digitally and share access to an electronic case file of with orders, memos, briefs, all with attached evidentiary documents and transcripts filed with the ADR provider and the Court. The materials used in the ADR activities would remain private and only accessible by the parties, their counsel and the 3rd party Neutral. The lawyers can share correspondence and common documents such as transcripts and discovery exhibits that are not filed with Neutrals or the Court.



Electronic Alternative Dispute Resolution and Neutrals

C.

In addition to equipping the Courts, the Neutrals will also need to share the electronic case file, though a secure and private environment under appropriate confidentiality orders. Following the lead of the ABA Section of Dispute Resolution, there should be experiments with remote mediation using various levels and videoconferencing and “net meeting” software over the Internet. As the speed of Internet connections improve new computer-based videoconferencing will cost less than traditional corporate video conferencing and utilize desktop computers with desktop cameras or “web cams.”

The lawyers would have remote access to Neutrals for various forms of alternative dispute resolution such as mediation, neutral case evaluation and even software tools for double blind bid & offer negotiations.

Electronic Chambers.

D.

In the chambers the judge and staff will have access to the electronic pleadings and the case file. The judge can review motions and file all orders electronically and make them immediately available to all parties. In the latter phases the Judges can access an electronic repository of admitted exhibits and transcript extracts. They will also be able to conduct videoconferences with remote counsel, parties, and witnesses (as appropriate). They will also be able to take advantage of on-line, interactive net meetings with remote presentations of evidence over the Internet.

Electronic Courtroom.

E.

The Courtroom equipment and design would give the Judge, courtroom staff and parties access to the electronic case file while in court or attending a “remote” hearing or trial. Projection equipment would allow videoconference hearings and the introduction of evidence in electronic form. The layout should follow the model of Courtroom 21, the “courtroom of the future” in Williamsburg, Virginia at the College of William & Mary School of Law.

Figure 1: Diagram of Implementation Phases

<u>Phase I</u> Readily Available Easy to Implement	<u>Phase II</u> Longer Lead Time	
Electronic Pleadings Virtual Statewide Docket Internet Management of ADR	Electronic Presentations & Conferencin g	
Collaboration via eFiling, e-mail, Text Chat, Teleconferences	“Net meetings” for remote presentations	<u>Phase III</u> Advanced Systems
Digital exhibits and transcript excerpts attached to eFilings	On-line data banks of exhibits and transcripts	Full Electronic Case File with collaboration tools
Electronic presentations to desktop and in court as court room projection equipment acquired		Remote Hearings
TV-type video conferences, existing equipment and public video rooms	New TVs, cameras, bandwid th	Internet IP Video conferencing with web cams

<p style="text-align: center;">Export / import data between eFiling and local Court Systems</p>	<p style="text-align: center;">Exchange XML eFiling with Courts and Law Firms</p>	<p style="text-align: center;">Integration with Court and Law Firm Systems</p>
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Integration and Workflow

As the pieces come together over time, the ultimate goals of the technology implementation plan is a court process that combines electronic filing, on-line evidence repositories, Internet-based conferencing and presentations into a seamless workflow that will mirror the utilization of technology by the business community. The system also needs to be fully integrated into the circuit courts' case management and judicial information system. For access, the combined systems will provide all of the participants, lawyers, clerks and the Judge access to the case file 24 hours a day 365 days per year

History

In December 2000 the Maryland Business and Technology Task Force recommended the establishment of a new program in the Maryland Differentiated Case Management (DCM) System to handle business and technology cases. One of its key conclusions was to utilize technology in the handling the cases. The closing sentence of the report stated:

“Having a court that has special business and technology competence and uses technology to administer its docket puts Maryland in the forefront of adaptation to the new realities of the Information Age.” (Business and Technology Court Task Force, December 2000, Page 18)

In the Report, the Task Force recommended the use of electronic filing or “eFiling” to establish an on-line docket for all cases in the program and to allow parties to exchange documents electronically with the Court and Masters. Section IX of the Report concluded that eFiling was feasible and commented:

“It is both feasible and cost effective for the Business and Technology Case Management Program to use e-filing. Lawyers and the court can exchange documents and conduct their work more productively, efficiently and effectively. There is considerable value in allowing a court devoted to the resolution of disputes between business and technology companies to use the dominant media by which the litigants and their lawyers create documents, exchange them and communicate with each other.” (Task Force Report, page

17. The full text of Section IX is reproduced in Appendix A)

Since the issuance of the Task Force Report a Maryland Rules subcommittee reviewed Maryland Rule **16-307**. “Electronic filing of pleadings and papers.” (See, appendix B.) The Rule provides that a Circuit Administrative Judge may submit a plan for a pilot eFiling system to the State Court Administrator for approval. The Subcommittee concluded that no additional Rule-making was needed at this time for a circuit court eFiling pilot program. This Committee agrees with that conclusion and, therefore, sees no need for any further change.

Technology

The Task Force’s original technology findings and recommendations focused on an electronic docket and eFiling as feasible for adoption in the near term. Since the issuance of the Task Force Report, the Circuit Court for Baltimore City launched an eFiling project that will eventually handle 20,000 asbestos cases. The State Court Administrator and the Court of Appeals approved a pilot plan for Baltimore City that implemented the system with a Case Management Order. (Attached in Appendix C.) The Maryland Bar Committee on Technology, then Chaired by Michael Oliver, Esq., reviewed the Technology recommendations and offered a number of additional technologies that should be considered in implementing the Court Program. That list of additional technologies was included in Footnote 3 of the original Task Force report. (See, Appendix A.).

Not Automation for Automation’s Sake

Two important considerations in using technology are its purpose and its impact. Technology for technology’s sake is not a sufficient justification. At a minimum, any technology implementation plan should improve identifiable processes for a reasonable up-front cost and show a return on investment in a reasonable time.

It is not enough, however, to automate existing practices and expect improvements. Automation projects frequently address fragmented work processes that have evolved piece by piece over time. This is particularly true in the legal field, where tradition and piece-meal changes might dictate the way certain case types are handled -- even for different judges in the same courthouse.

Starting an automation project is a good time to look at the basic purposes of the activities and evaluate their core functionality.

Automaton vs. Innovation

Automation projects do not just streamline existing processes; they can also present an opportunity to introduce innovations. Technology can offer capabilities that do not exist in the world of paper process. In an address to the American Bar Association in London during a program on “Wiring the Legal Profession in the 21st Century,” Professor Richard Susskind, the

Technology Advisor to the Lord Chief Justice of England, observed that banks never had small outdoor booths that were open 24 hours a day with a hand that gave out twenty pound notes after reading an identification card. ATM's or Automated Teller Machines transformed the face of banking not by enshrining existing practices but by allowing genuine innovation.

Innovation, with or without automation, begins by looking at basic processes and functions afresh. Whether we seek to apply automation to what we presently do or we use automation to change the way we do things, we need to understand the processes and core functionality.

Functional Description of Court Processes

In the court system the key processes involve managing case data, exchanging data between the courts, law firms and justice related agencies, and conducting various meetings, conferences, hearings and trials where the participants come together to resolve disputes or render justice. As the cases unfold and terminate the court system also provides access to the parties and the public on case records, schedules, docket entries, documents filed by the parties and their lawyers, case disposition information and judicial rulings.

Each of these processes has some present or potential counterpart in automation

Managing Case Data

F.

Case management systems were among the earliest applications in the legal field. Courts, agencies, corporate law departments and law firms with large caseloads have used computer databases to track case profiles and events. Information categories or "fields" include case name, case number, date filed, case type, parties, lawyers, the judicial officer, events, documents filed (docket entries in court systems combine events and documents filed,) amount in controversy, and disposition data.

Court systems and lawsuit tracking systems have some significant functional differences. Lawsuit tracking systems have financial and management controls for the conduct of the lawsuits, accounting and some risk management features. They have fields for insurance coverage, reserves, budgets, lawyer time slips, billings, proposed settlement amounts, final resolution amount, case issues and a narrative case synopsis. Government agency systems contain more fields for statistics and tracking than for timekeeping and financial management. Court systems collect filing fees, court costs and fines and serve as the on-line public repositories of court records, particularly final case disposition and judgments.

Circuit courts in Maryland presently use three case management systems. Prince George's County is installing the ACS/SCT Banner System, which has been working with CourtLink on an eFiling component. Montgomery County uses the Inslaw system for the criminal docket and developed it own system for civil and other matters. It is exploring new systems that include imaging and eFiling. The rest of the circuit courts use the statewide JIS system called AMA. Without some electronic filing middleware this system cannot presently accommodate any

interface with eFiling systems.

Several approaches to integrating eFiling with case management systems have developed nationally. The traditional approach has hold off on electronic filing until there is a full and complete integration with the courts case management system. The drawback to this approach is that it is extremely time consuming, expensive and can divert resources and energy from the principal focus on the change management needed to create an electronic court.

Other courts have allowed completely separate systems, sometimes in part because of the challenge of interfacing with a legacy system. The courts create a paper file jacket with the complaint and insert a notice that the case activity is being tracked on the separate eFile system. They post a similar electronic notice on the court's case management system and capture all future docket entries and documents on the eFile system. At the end of the case, the clerk also posts case disposition information on Court CMS and in the paper file jacket. Very few courts have also required the clerks to post docket entries in both systems.

The last model is a phased approach with an initial stand-alone system with an active work plan to integrate it with the court's case management system. A phased approach increases the prospects of a successful project while at the same time allowing for a very quick start-up. The Circuit Court for Baltimore City in their electronic filing pilot for asbestos cases adopted this approach. In parallel with court efforts, the providers of eFiling systems are integrating with the case management systems in courts and in law firms using open legal data interchange standards. These emerging standards use a new Internet data format called XML (eXtensible Mark-up Language) that were developed by members of the court, law firm and law enforcement community in conjunction with an emerging standard body called LegalXML, Inc. (www.legalxml.org).

Thus in the phases depicted in Figure 1, the Courts will initially export and import any data they wish to exchange. They will start to use the Legal XML Court Filing Standard currently being tested in four states. The final stage will allow data interchange between law and Court systems using electronic filing middleware (eFM.) Part of the development of LegalXML standards also contemplates integration between eFiling and case management systems in the law firms.

Exchanging Case Information

G.

Case management systems in courts and law firms are not quite mirror images of identical twins. Their resemblance is more that of fraternal twins. What they have in common is what they must exchange with other systems. Law firm systems send billing and timekeeping data to corporate counsel and insurance company systems. The data transmission contains case identifier information. Agency case management systems share information with the courts, but more so in the criminal justice arena than in civil litigation.

A consortium of court and law related organizations have developed a Court Filing Standard¹ that defines the most basic data elements used in an “electronic envelope” transmission from a law firm to a Court eFiling system. The core exchange data includes Case ID numbers, the filing date, and the names of parties and lawyers plus the title of the pleading. This data is used to construct a docket entry with the filing date.

As the Court Filing standard is perfected it will pave the way for law firms systems to exchange data directly with Court systems. For now any direct exchange requires custom programming by court system managers and the vendors of law firm case management systems.

Access

H.

The court case management systems have provided another important function in Maryland. For over a decade the circuit courts have made their case records available over dial-up networks to the State JIS system and the separate systems in Prince George’s and Montgomery Counties. With a modem and a password-protected account any pre-approved subscriber can access case profile information, docket entries and case disposition information in civil and criminal cases. While lawyers use these dial-up systems, the press, private investigators, credit reporting agencies and even individual retail businesses make heavy use of these capabilities.

Both the Montgomery and Prince George’s County Circuit Court records are available over the Internet through CourtLink (www.courtlink.com) without prior approval by court personnel. CourtLink is a commercial system and is available to any member of the public for fees that average \$10.00 per search.

The CourtLink system also has a notification feature that tracks new information against a user profile. The user can track cases by court, case type, party name, and law firm. When there is a new case or a new docket entry, that matches a party name in a profile, for example, the system sends an e-mail notification to the user. This is an example of a capability that is not feasible with a manual system.

In a nationwide study of eFiling by the US Department of Justice many of the lawyers rated instant access to court papers as one of the most significant and widely used aspect of the Federal eFile system.

¹ Legal XML, Inc., the National Association of Court Managers (NACM) and the Conference of State Court Administrators (COSCA) have collaborated on the proposed Court Filing standard, which is undergoing interoperability testing in Georgia, California and New Mexico. The proposed Court Filing and other Standards are posted on the LegalXML website at <http://www.legalxml.org/CourtFiling/>

Technology Capabilities

A. eFiling

1. eFiling Functions

eFiling allows law firms and courts to exchange documents electronically. Courts can also submit electronic orders, opinions and administrative messages to law firms in electronic formats. This is a more organized process than e-mail, which suffers from incompatible document formats and multiple e-mail software packages. An eFile system allows law firms to submit documents, submit filing fees, view docket entries and access the full document with machine-readable texts and any attached exhibits with digital images.

In its more integrated form, an eFile document moves directly into the court's workflow processes and case management systems. In turn, the court can conduct internal business with electronic routing of documents to support activities by the clerk and judges.

eFiling involves the electronic transmission of an "original" document (e.g., pleading) to the court clerk (or designee). The system maintains case information that may be accessed by the court and attorneys. The information includes, at a minimum: case number (unique to the court of issuance), the court, case profile information, parties and attorneys as well as law firm internal accounting information (i.e., attorney assigned, client/matter number, etc.)

2. System Components

The electronic filing system is a collection of application software and underlying technologies that together enable the electronic filing, service, storage and retrieval of pleadings, motions and other documents filed in trial court litigation. All users should have three basic functions where allowable. They may **file only** (documents to the court), **file and serve** (file documents with the court and serve parties in the case), or **serve only** (serve documents to parties in the case without filing with the court.) Users are guided through these actions with clearly marked navigation tools on a web site. After filing, users may search and view documents in an electronic file room.

3. Electronic Documents

The electronic documents may start as digital text files from word processing software on computers or as an electronic “image” of a paper. Since almost all law firms use word processing software to produce pleadings, filers only need to attach the electronic file to the submission. The lawyers will only need to scan and create an image of paper attachments to pleadings. The image file does not contain machine-readable text that can be word searched like documents in Lexis-Nexis and WestLaw legal research systems. The image is not searchable and could be a photo, a diagram or a letter with handwritten comments.

The eFile system overcomes incompatibilities between word processing systems by using a common format called a “Portable Document Format” (PDF) that preserves the format and appearance of the document, including fonts, spacing, paragraph numbers and headings independently of the word processing document. Subscribers can view the document on any computer monitor and print it on any printer. The document is also locked down so it can’t be changed. In most of the Federal systems and many of the state systems, the PDF document becomes the official court record rather than paper. All of the documents may be printed to paper if needed. The point, however, is to eliminate the transfer and storage of paper.

Additionally, users should be able to search for the electronic documents filed in court, in their own file room or in the firm’s file room. Simple tools should prompt the user to search for information such as case number, court, filing date, filer and other factors. They should also be able to locate various filing types such as complaints, motions or orders.

4. Electronic Service

Electronic service allows the court, parties, and attorneys to serve legal documents to other parties and counsel in the case. The systems also provide service via fax. When selecting recipients of service documents from the electronic service list, the initiator of service can specify all parties, individual parties, or a pre-defined group of parties. The users themselves should be able to maintain the Service list data. They can define custom service groups through a web-based profiles for each firm, lawyer and staff authorized to use the system.

The system’s electronic service feature should also provide a seamless and confidential method for members of a litigation team across firms to distribute drafts of proposed pleadings, templates, answers, interrogatories and the like.

5. Authentication of Filers

The system must rely on proven, industry-standard security mechanisms to assure proper handling and security of the transactions. Users should log in to the system with a user name and password issued after the court clerk or system administrator verifies the lawyer is a licensed practitioner or member of a law firm. In the initial phases only lawyers and staff should have the right to file papers in court. This has been the norm for most eFiling systems in state and Federal Courts who regard lawyers as officers of the court subject to bar discipline. The Court will need to establish procedures to authenticate *pro se* filers. The system needs to offer fully secure sessions, particularly during the sign-on sessions when the users transmit ID's and passwords and well the initial sessions when they sign-up for services on-line, receive passwords and provide financial information ranging from credit cards to clearinghouse accounts. A specialized server or separate service may be needed to control authentication of user credentials as an added layer of security.

6. Security of Filings

Prior to filing or during exchanges between lawyers the documents will require additional security to preserve confidentiality and privileges. Users will need to send digitally signed and even encrypted documents to other system users, Neutrals and the Court. These might include documents with special privacy concerns, documents filed under seal or with some restrictions on access. After filing, the security options available with PDF software can lock down the document to preserve it as the official record. These features make the document tamper-proof. These electronic documents may be used by 3rd parties later or for enforcement of judgments in other states.

7. Proof of Filing and Service

At the conclusion of a successful filing or service, the system provides electronic confirmation to the filer or initiator of service. The confirmation includes the time and date. The acknowledgment receipt provides certification that the Court received the filing. The system provides a proof of service summary to the initiator of service. This allows the user to view an up-to-date report indicating the current status of each service delivery attempt.

8. Filing Deadlines

A court rule will need to address whether the filing deadline occurs at the end of court business hours or prior to midnight. All documents received after the deadline will be considered filed the following business day.

9. Accommodation for Pro Se Filers

Pro Se filers will need special rules and procedures to file pleadings and participate in court proceedings over the Internet. Credit cards, bank account numbers or verified digital signatures may provide sufficient safeguards against identity theft or confusion. In the initial stages many eFile operations let the pro se filers (and even attorneys without adequate computer facilities) file documents electronically at public access terminals physically located at the court.

Virtual Docket

I.

The eFiling process creates its own docket entries. The generic eFiling transmission form includes the case number, the date, document type, the title, the name of the filing party and the name of counsel who is filing and the lawyers or parties who receive a copy for service or as a courtesy. This document information can automatically create a listing with the date and title, such as:

“7/20/2001 Motion for Summary Judgment by Plaintiff John Smith”

The Federal CMS-ECF eFile system, CourtLink, and other providers use the elements of the title and date to construct the docket entry automatically. Court clerks can review and reject filings that do not comply with Rules and procedures. In addition to entries associated with a filing, court clerks will also need to record separate docket entries for case events, such as courtroom activities or bench rulings, that are not associated with the filing of a document.

Electronic Motions and Briefs

J.

Lawyers universally create motions and briefs on word-processing systems. Along with Adobe Acrobat PDF and Internet mark-up language these word-processing systems can easily add diagrams, photos of exhibits and other innovative features such as links to case law, statutes, prior pleadings, transcripts and exhibits.

A typical Motion for Summary Judgment will contain exhibits, transcript extracts and copies of prior pleadings. The Answer to the Motion may contain copies of identical documents. This is done so the court will have a self-contained package of information. With paper filing, the case jacket may now contain three copies of same pleading.

Electronic filing also reduces the bulk of the main document and eliminates much of the duplicate filing of exhibits and pleadings. The Federal eFiling system has already seen a reduction in this duplicative filing. It requires parties to put in a hypertext link to prior filings rather than add another copy of the same paper to the motion.

A hypertext link can point to any digital “object” such as another document, an exhibit or a case citation. The full text of the opinion could reside on the CD-Rom brief, on the Maryland Court of

Appeals Web site, WestLaw or Lexis. Innovative lawyers have filed “multimedia” briefs on Compact Disks (CD-ROM) with non-text objects such as spreadsheets with formulas, sound clips, animations and even video segments. As telecommunications bandwidth increases it will be feasible to file similar objects over the Internet.

Decision Database

K.

One of the goals recognized by the original Business and Technology Court Task Force was to have a collection of opinions by judicial officers. One purpose of the opinion database is to provide lawyers and litigants with a growing body of predictive information at the trial court level to advise clients on likely rulings. Another purpose was to encourage collegiality and consistency among the judges. This is the very successful model used by the Delaware Chancery Court.

Such a database of textual material would include rulings on discovery motions, motion motions to dismiss, summary judgment rulings and opinions.

ADR rulings would be very helpful but it may be appropriate to limit access to subscribers. Otherwise, there should be general access to the public for all published opinion.

There may be a need for additional structured databases of rulings, verdicts, and settlement amounts to allow for pattern analysis.

Evidentiary Documents

L.

An eFile pleading may contain attachments to evidentiary documents. Some documents, such as a transcript or a word processing file may already be in digital format. They can easily be attached to the “parent” pleading as another document in a protected eFile “envelope” using the Portable Document Format (PDF.)

Traditional paper-based evidentiary documents present a special challenge in eFiling. The law firms must use an image scanner to convert the paper to a digital format that resembles a fax or a photograph. The digital copy or image is then attached to the main filing. This process should not be confused with Optical Character Recognition (OCR.) OCR attempts to convert the images of individual words and letters into machine-readable text. The lawyer may elect OCR to full text search technology. Some documents convert to OCR better than others. Faded copies and faxes do not translate with high levels of accuracy. For Court filing, OCR represents a transformation of the underlying content of the document. It is no longer a mere facsimile of the original paper.

A recent study by a federal agency revealed only a small percentage of pleadings include attachments. Of those attachments, an even smaller number include documents converted from paper to a digital format. The study draft concluded, however, that the initial cost to buy

scanning equipment and software plus the on-going cost of scanning the documents offset some of the gains of electronic filing. It was also more cost-effective to have trained staff to make the digital copies. Staff hourly rates are lower than lawyers, who should be spending time on writing and case analysis.

Electronic Conferences

M.

Business disputes know no boundaries. With the globalization of the US Economy a Maryland company can easily do business across the US and Canada as well as overseas. Modern technology offers electronic collaboration tools that can eliminate many personal appearances and accommodate parties in different times zones. It is a significant undertaking to go to Court just inside the state of Maryland.

Using these tools can reduce unnecessary trips for a party traveling from the Eastern Shore or Western Maryland to the major urban centers. It will also save time spent in traffic congestion for lawyers traveling between Baltimore, Annapolis and the Maryland suburbs of Washington DC. This is particularly true for administrative activities, but the implementation plan also recommends experiments and planned use of virtual meetings for ADR, chambers conferences and court hearing. These electronic collaboration tools include TV-type videoconferencing, trial presentation technologies and tools used in Internet communications.

1. Video Conferencing

Video Conferencing uses TV monitors, cameras that pan and zoom, document cameras to broadcast paper documents and devices that convert computer-based or digital data to analog video signals. Courtroom 21 at the Marshall-Whythe School of Law School at the College of William & Mary in Williamsburg, Virginia has conducted extensive experiments with videoconferencing and the presentation of exhibits and witnesses in remote proceedings.

The Courts in Maryland presently have some videoconference equipment and hook-ups for criminal arraignments. One of the early activities needed in this technology implementation plan is an evaluation of existing facilities and acquisition of new equipment for use in chambers and for courtroom presentations. It will also be necessary to assess the number of law firms and parties who have equipment or who are willing to invest in equipment. Law firms and parties that do not have equipment can use "public video rooms" that are available for hourly usage. There is a national network of firms who broker the use of public rooms, including chains such as Kinko's that offer public video rooms, conference scheduling services, technical support and the full range of presentation equipment.

In the initial phases of the proposed implementation plan the parties will need to experiment initially with administrative matters and non-evidentiary hearings. Law firms with equipment or access to a public video room can participate in the proceedings with

courts and ADR neutrals. The parties can also attend and observe these sessions. During this phase the lawyers can present visual exhibits and computer screen shows or animations from remote locations. The use of videoconferencing may prove very useful in ADR where there is more give and take among the neutrals and the participants.

The next step is to present live testimony of experts and lay witnesses. One example of the highly efficient use of remote expert testimony is to have medical examiners appear directly from their offices rather than take off significant time for what are sometimes routine appearances.

2. Trial Presentation Technology

Business and Technology cases tend to involve more documents and exhibits than other cases. Over the last twenty years slide projectors, then overhead projectors and now computer projection equipment have become commonplace. Several courthouses in Maryland make such equipment available in at least one courtroom and allow lawyers to bring their own projection equipment. This implementation plan recommends providing such equipment for courts that adopt a Business and Technology Case Management Program.

3. Net Meeting Tools

Along with standard video shown on TV monitors, the lawyers, neutrals and judges can also use on-line tools to conduct meetings over the Internet, now called "Net meetings." The benefit of using these tools is that the participants can use them from their desktop computers. They do not need to gather in a videoconference room or use a public video room to show visual displays of documents and computer screen shows. The technology for videoconferencing using Internet Protocols (IP Video) is not yet robust enough to compete with TV type video, but when it becomes commonly available over the next few years the set up fees and operational costs will be significantly lower.

In the initial stages of the implementation plan any participant with a reasonably fast Internet connection can conduct a teleconference and have everyone view the same computer display using free Internet browsers. This means parties in an ADR session, in a chambers conference or in a courtroom can show exhibits and computer screen-shows at a higher resolution than with a TV and at much lower costs. Programs like WebEx and PlaceWare cost \$25 per hour per connection and only require a computer, an Internet connection, a free Internet browser and a teleconference phone. A similar session with TV Video cost \$50 per hour per connections and requires a room full of equipment at each site or renting a public video room at \$200 to \$250 per hour per site.

Netmeetings have an additional capability called "Text Chat" where a group of individuals can type messages to each other in real-time. Commercial "eLawyering" sites have offered legal information and advice in private one-on- one "Chat Rooms." This technology by itself assumes some proficiency in typing, and the technology implementation plan does not call for text chatting by itself. It can be used very

effectively to supplement Netmeetings combined with teleconferences.

The text Chat feature allows the parties to type messages to each other during a Netmeeting and teleconference. Chat tools also allow a “Whisper” so each side can communicate only with each other. Chat and Whisper are not available with TV videoconferencing. In comparative demonstrations of TV and IP Video for “Cybermediation” and virtual hearings in American Bar Association technology programs, the participants found they could manage their side of the cases more effectively with these chat capabilities.

4. Transcript and Exhibit Repositories

By 1998 over 90% of the top 500 law firms report using litigation support systems to store and retrieve documents and transcripts. These programs allow lawyers and judges to conduct full text search of textual documents (not images) and transcripts. Some of the transcript systems record testimony in real-time and can be synchronized with a video of a deposition or court proceeding. These widely used tools allow firms in multiple locations to share an electronic repository of case data. Judges have also been given access to admitted exhibits, designated testimony from depositions and the on-going transcript during hearings and trials.

By 2001 almost all of the litigation support vendors had deployed Internet-based versions of these repositories. The early phases of this implementation plan envisions that the lawyers on each side of a case will use or adopt litigation support tools. They should be encouraged to avoid duplication of cost and effort by creating common repositories of shared documents and transcripts. They should also be encouraged to share the repositories with the neutrals during ADR and with the Court at appropriate points in the life cycle of a business or technology dispute.

The challenge is the sheer number of systems on the market. The Neutrals and the Judges cannot be expected to learn multiple systems, and the judicial system in Maryland does not have enough experience to make an informed choice of one system over another. While the Court and parties experiment with different systems in the mid-term phase of the implementation plan, open data interchange standards for litigation support documents may enable the systems to communicate with each other. Based on more experience and structure evaluations, the Court and ADR community might conclude they need to standardize on a single system.

5. The Electronic Case File

With a single system or open data interchange the Court should aim for an integrated “Electronic Case File” during the third phase of the implementation plan. The Electronic Case File will allow access to case management data, pleadings, case law and evidentiary material in a single program available to the parties, Neutrals and the Court. All these functions are presently done on multiple disparate systems. The implementation plan will need built-in evaluation and feedback mechanisms to assess what combination of functions and technologies will work best in the long run.

Alternative Dispute Resolution (ADR) Processes

In order for the Business and Technology Case Management Program and the parties to operate efficiently as a statewide court process it will need to use information technology to access, monitor and manage the ADR component. A Web-based environment reduces the inefficiencies of paper-based business processes and allows for the court, administrators and neutrals to manage the ADR process quickly and cost effectively. This approach will allow this innovative case management program to achieve higher levels of case resolution in a shorter period of time. The Business and Technology Case Management Program would be ill advised to maintain redundant paper processes any longer than necessary.

As with the introduction of most technology, individuals have to change the way they do business. Thus the change recommended to facilitate the ADR should be implemented in a phased in approach similar to the approach adopted for the technology program. It is important to recognize at the outset that the web based system of management be open to the parties as well as the court. It should also support the notion that, over time, the parties will have the opportunity to use the system before a lawsuit is filed in court.

Types of ADR

N.

Neutrals will use electronic filing, teleconferences with net meeting and TV type videoconferencing to administer the cases, conduct ADR and post their decisions or recommendations. They can use a variety of methods, some of which are described below. The listing of these processes is in no way intended to limit the use of other ADR processes that are agreed to by the parties:

1) Arbitration: “Arbitration” means a process in which (1) the parties appear before one or more impartial arbitrators and present evidence and argument supporting their respective positions, and (2) the arbitrators render a decision in the form of an award that is not binding, unless the parties agree otherwise in writing. [cf. 17-102(b) Md. Rules]

2) Mediation: “Mediation” means a process in which the parties work with one or more impartial mediators who, without providing legal advice, assist the parties in reaching their own voluntary agreement for the resolution of the dispute or issues in the dispute. A mediator may identify issues and options, assist the parties or their attorneys in exploring the needs underlying their respective positions and, upon request,

record points of agreement reached by the parties. While acting as a mediator, the mediator does not engage in arbitration, neutral case evaluation, neutral fact-finding, or other alternative dispute resolution processes and does not recommend the terms of an agreement. [cf. 17-102(d) Md. Rules]

3) Neutral Case Evaluation: “Neutral Case Evaluation” means a process in which (1) the parties, their attorneys, or both appear before an impartial person and present in summary fashion the evidence and arguments supporting their respective positions, and (2) the impartial person renders an evaluation of their positions and an opinion as to the likely outcome of the dispute or issues in the dispute if the action is tried. [cf. 17-102(f) Md. Rules]

4) Neutral Fact-finding: “Neutral Fact-finding” means a process in which (1) the parties, their attorneys, or both appear before an impartial person and present evidence and arguments supporting their respective positions as to particular disputed factual issues and (2) the impartial person makes findings of fact as to those issues. Unless the parties otherwise agree in writing, those findings are not binding. [cf. 17-102(g) Md. Rules]









































5) Settlement Conference: “Settlement Conference” means a conference at which the parties, their attorneys, or both appear before an impartial person to discuss the issues and positions of the parties in the action in an attempt to resolve the dispute or issues in the dispute by agreement or by means other than trial. A settlement conference may include neutral case evaluation and neutral fact-finding, and the impartial person may recommend the terms of an agreement. [cf. 17-102(h) Md. Rules]

6) Double-Blind Bids & Offers: The plaintiff makes a money demand (confidential) and the defendant makes an offer (also confidential.) The parties define the arithmetic rule that settles the case. For instance the parties can agree that if they are within 20 percent, 15 percent, or 10 percent then the case is settled for the average of the two numbers. The parties can agree to make 1, 2 or 3 tries. Computer programs such as Cybersettle or Click’nSettle use mathematical models like this and have handled over 20,000 matters by hundreds of insurance carriers.

Media for ADR

O.

The neutral ADR practitioner(s), the parties and their lawyers will be able to select the appropriate conferencing and Internet tools to facilitate the method of ADR [arbitration (A), mediation (M), neutral case evaluation (NCE), neutral fact-finding (NFF), settlement conference (SC)] selected.

-                  The parties and their lawyers will be able to file claims, arguments and exhibits online. The neutral will file a written decision or evaluation online. (A, NCE, NFF)
-          The parties, their lawyers, and the neutral(s) will be able to schedule, via a videoconference or a traditional ADR session. They can use Netmeeting tools, evidence repositories and the eFile system to exchange papers, make presentations, and respond to questions online. (A, M, NCE, NFF, SC)
-               The parties, their lawyers, and the neutral(s) can meet interactively in a chat room setting where the neutral (s) can ask written questions and exchange written answers. (A, M, NCE, NFF, SC)

- The parties, their lawyers, and the neutral(s) will be able to meet and communicate verbally in a teleconference and still give on-line presentations of documents and other exhibits or materials over the Internet. (A, M, NCE, NFF, SC)
- The parties, their lawyers, and the neutral(s) will be able to meet using broadcast quality video with TV type technology. They will also be able to present evidence such as documents, visual exhibits and screen shows over the video link. As IP video quality improves they will be able to meet face-to-face over the Internet with Web Cams, make on-line presentations and use text chats as well.

Deployment of ADR Types and Media

A.

1. PHASE ONE

The web-based system will at a minimum provide the following:

1. **List of Neutrals:** An accurate up to date list of all qualified neutrals – mediators and experts who have been qualified pursuant to Rule 17-104. The list must be capable of being sorted geographically, by areas of expertise and experience and in any other way that will facilitate the parties’ selection of a neutral
2. **Notification of ADR Events:** The case management coordinator will post required ADR events. The notification will include the case number, the identity of the parties and their lawyers.
3. **Selection of a Neutral.** The system will allow the parties will to select and agree on a Neutral or expert.
4. **Scheduling of ADR Events.** The system will enable the parties to schedule the time and place of the ADR event. The court will be able to monitor the timeliness of event activity and to provide input when requested by the parties.
5. **ADR Event Reports.** The Neutral will file all reports required by the Court and desired by the administrator to monitor and evaluate activities. The system will retain this data for access anywhere anytime.
6. **Privacy.** The system will facilitate the secure electronic exchange of information between the parties and the Neutral.
7. **Court Supervision of Neutral Activity.** The court will be able to monitor the schedules, timeliness and statistical information about neutral activity including openings and closings.

8. **Financial and Time keeping.** The system will provide for the complete time and financial accounting for the parties and the Neutral, which will allow for the transfer of funds from the parties to the Neutral.
9. **Electronic Case File Access.** The system will allow the parties to access the Court's electronic case file anywhere anytime.
10. **Reports.** The system will provide complete reporting ability for the Court, the parties, and the Neutrals.

2. PHASE TWO

During this phase the components deployed in phase one will be evaluated for effectiveness, modification and expansion. It will also include a component to allow for basic transfer of data from the Court's case management system to the web-based ADR system. In addition, the plan calls for expanding the use of Net meetings and videoconferencing from the offices of neutrals, lawyers and consenting parties who have equipment or wish to use the technology. Depending on location and the cost-effectiveness of equipment charges, facility rental fees and telecommunications costs, any of the participants can "attend" video conferences and hearing from a public video room. These facilities are widely available now. The participants can also use teleconferences with or without Net meetings for administrative matters, resolving process disputes and even for ADR sessions.

3. PHASE THREE

In this final phase the plan aims for a full electronic web-based ADR program. This will include a higher level of integration between the ADR program and the Court's case management system, online videoconferencing with the Neutrals and the parties via a web-browser, microphone and web cam at their desktop. Parties can still use TV type videoconferencing and public video rooms if needed.

Data Volumes

The Court systems in Maryland handle over 1,000,000 cases every year. From the filing of the initial process and entering case profile information to scheduling, docketing, hearings, disposing of cases and compiling statistics, the judicial information systems in Maryland have evolved over 30 years to handle massive case loads for criminal, traffic, civil, probate, juvenile and family matters. Business and Technology cases come under the civil docket in the Circuit Courts for the Counties and Baltimore City.

Because of inconsistent categorization in the differentiated case management system within counties and then across counties, there is no firm baseline number to count all the disputes involving businesses and technology questions. Testimony at the Task Force hearings varied widely, from as few a 50 cases per year to 300 cases in populous counties. If all eight target counties and judges exceed 100 cases each, there are still less than 1,000 cases in a mid-range

projection and no more than 2,500 cases state wide at the most. These cases in turn are spread over at least three case management systems with JIS (Judicial Information System) run by the state Court Administrator covering six counties with the AMA System, Montgomery County's custom-developed system and ACS/ SCT Banner System in Prince Georges. 800 to 2400 cases still requires scheduling at least two parties and one judge or neutral per event, per case and managing a significant number of documents and pages of data.

In counts of actual docket entries, the number of underlying documents and pages are likely to reveal that many contested business and technology cases have more data than the average. Some preliminary statistics developed during the 1995-1996 JusticeLink experiment in Prince George' County reveal the average motor tort and foreclosure cases had twenty filings per side. There is no data on the number of pages in Maryland caseloads, but a study of federal eFiling document page counts revealed 8-10 pages average across several cases for the main filing, such as a motion, but larger number of pages when the main filing had attachments. Attached documents varied widely across case types with a few as 4 pages, on average, to as many as 15 pages. Filings with attachments only occurred 10% of the time in smaller cases, but up to 40% of the filings in environmental law suits.

If Business and Technology cases resemble environmental actions more than smaller, low-volume cases, we can draw some parallels for planning purposes by examining the range from low to high for filings, pages, attachments and case volumes.

Figure 2: Filing Volume Projections

Types	Low	High
Main Filings	15	40
Pages per Filing	8	10
Attachments per filing	10%	40%
Pages per Attachment	5	15
Average Pages per Case	300	640
Case Volumes	800	2400
Page Volumes per Year	240,000	1,536,000

In data processing terms, a quarter of million pages to one and half million pages is a relatively small number range. Most litigation support, document management and eFiling software can handle much larger volumes. Business and Technology cases may make up less than 1% of the circuit court caseload for the whole state, but the number of document, pages and activity by lawyers and judges may take up a disproportionately larger amount of effort by the parties and court personnel.

Process Analysis and Workflow

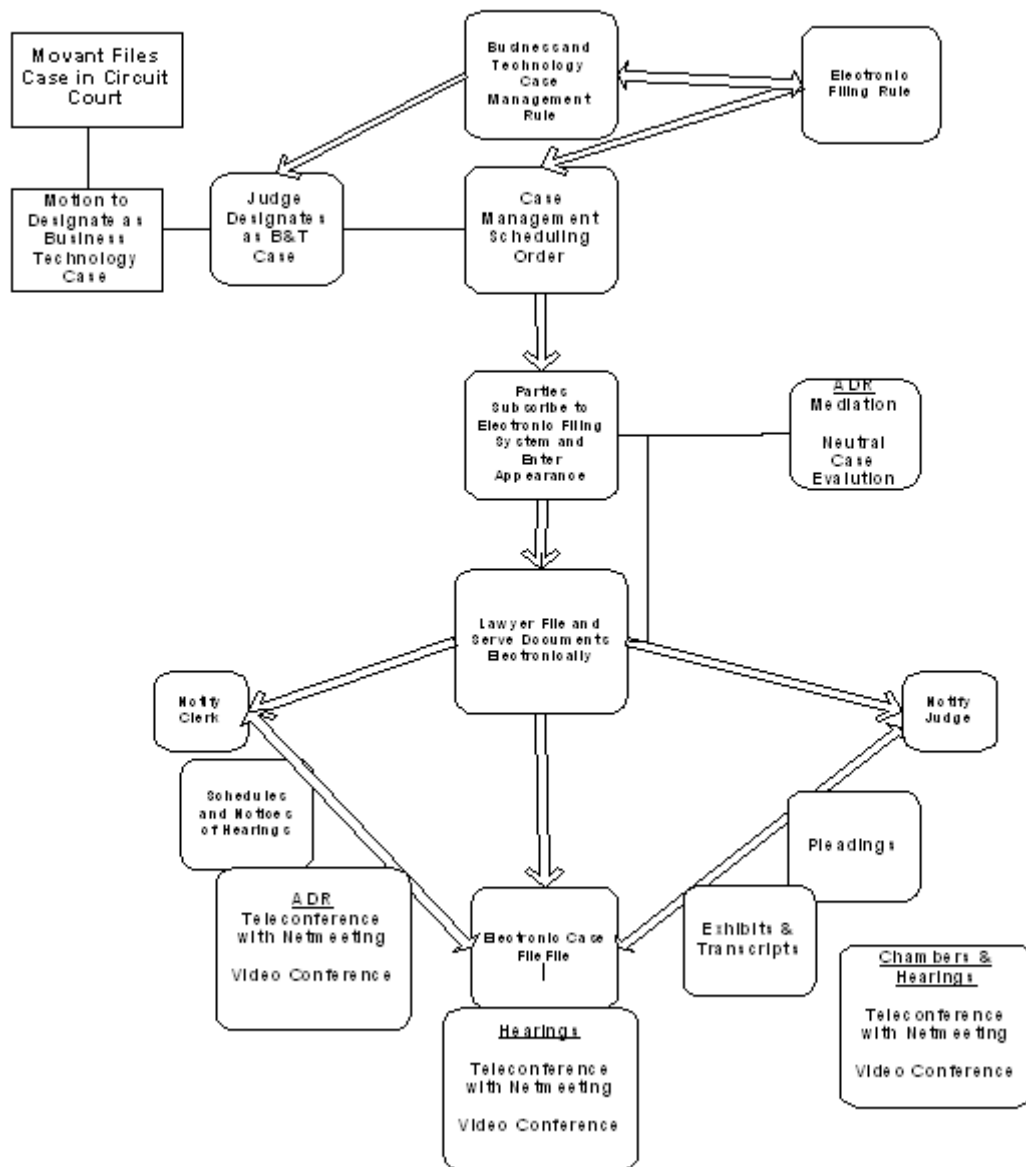
The art of implementing a computer-based system is to account for the natural workflow of data, activities, approvals and decisions through the entire case life cycle. The chart on the following page depicts the various steps in the proposed case management workflow for the use of technology in business and technology cases.

B.Enabling Steps

The initial steps to establish electronic filing in Business and Technology cases will require court Rules on any special steps and procedures as well as an Electronic Filing Rules. Case management orders may suffice for experimentation during initial pilot testing.

Figure 3: Work Flow Diagram

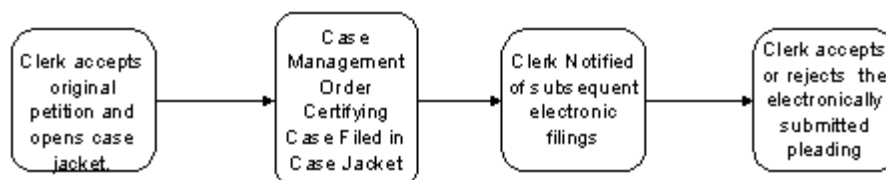
Business And Technology Case Program Flow



C. **Early Case Initiation Steps**

The process will begin with a case that qualifies for the Business and Technology program track. During the initial phases of filing the movant files a traditional case in a local circuit court. The clerk will open a case jacket, which will be filed in accordance with local procedures. This file will contain the original pleading and the case management order certifying the case as a Business and Technology Case. The Order will provide that all future pleadings will be accessed through the electronic filing system by subscribers or at the public access terminal. The clerk will accept or reject subsequent pleadings and maintain the filings in the electronic filing system.

Figure 4. Court Clerk's Workflow



The lawyers will need to subscribe to the electronic filing service, but will then file and serve all pleadings and attached exhibits electronically. One of the earliest steps will divert the case to ADR for efforts at mediation, neutral case evaluation and the like.

Steps to Exchange and Share Data

D.

The Clerk in the local court will set up schedules and issue notices of hearing and trial. The Business and Technology Task Force recommended assigning a single judge for the entire life cycle of the case. Once the judge is notified he or she will have access to all the electronic filings and can issue orders and case correspondence from a computers in chambers. The parties may elect to use an electronic repository to share the exhibits and transcripts, but in the initial phases they will attach exhibits to electronically filed pleadings. The neutrals and the court will only have access to these exhibits through the eFile system unless the parties voluntarily share some elements of their repository. Eventually the docket, pleadings and exhibits will all reside in an electronic case file.

Steps to Collaborate and Meet Virtually

E.

Throughout the process the parties can use teleconferences with Net meetings and video conferencing for ADR efforts, chambers conferences and hearings. Ultimately, the technology will allow trials in a courtroom with local and remote projection equipment, real-time transcripts and videoconferencing.

Costs

It is very early to project costs for the full life cycle of the proposed technology infrastructure. The type, number of units and costs of different hardware and software packages will change according to the adoption rate by a yet unknown number of participants. Based on knowledge of the commercial prices of some items and familiarity with budgets for other technology court projects, it is possible to estimate some broad cost range for implementing the project over the next two years.

Major Cost Pools

F.

The major cost pools will include

1. Project design
2. Annual management
3. Technology training
4. Equipment charges, installation and annual maintenance
5. Software installation and annual maintenance fees
6. Telecommunications charges

Establishing the first two to three courts will involve a prototype and test activities to establish workflow procedures, system protocols and training for a rollout to other courts. Each court's readiness in turn will affect the timing of different cost elements.

There are some additional significant variables. The first variable is the plan to phase in different technologies over time. This will affect when costs are incurred.

The second variable is whether the court will outsource the work in whole or in part, and to what extent the court can use existing staff or will need to hire additional staff to meet scheduled activities.

Based on high level cost estimates for outsourcing for a comparable court project, checked against known equipment costs, completely outsourcing the work could run as high as one half-million dollars for the first two to three courts with the initial grouping of less than one hundred litigants and Neutrals. Once the whole system is established, costs for additional courts will run \$100,000 - \$200,000 each. This cost range includes training an increasing number of legal professionals and office staff for the courts, neutrals and lawyers.

Cost Components

A.

The cost components include

1. Needs assessment and equipment inventory for all candidate courts
2. Design of the overall system plan, phasing and prototype specifications
3. Design of procedures and training modules for Court IT and support staff as well as internal trainers

4. Acquisition, installation and testing of systems, hardware and connectivity (including wireless networks to avoid cables in the Court room) for courtroom presentation equipment.
5. On-going telecommunications monthly charges
6. Hardware for courts, chambers, staff and central administrative functions not handled by on-line services. e.g. servers for documents database, image repositories and web-based meeting traffic.
7. Public access terminals in Courthouse for filing and access by business and technology litigants (and counsel when needed)
8. Internet Bandwidth, Wide Area Networks and a possible Virtual Private Network for Lawyers and Neutrals for secure joint evidence repositories and Netmeeting communications.
9. Video Equipment
 - a. Video monitors, video cameras, document cameras and conversion devices to show digital information over a closed circuit video broadcast. These costs will supplement (or modernize) existing in-court equipment and add video conferencing capabilities in chambers. These can have point-to-point communications with one video to one other video.
 - b. Video bridges for multi-point connections (outsourced to services such a Sprint) allow multiple parties to participate in single session conferences e.g. a Neutral or Judge and two or more parties in different locations. Some participants will have to rent “public video rooms” to participate.
 - c. In the longer term the technology is very likely to shift to Internet based video from the computer desktop. This will not eliminate the need for the video conferencing equipment in courts and conference rooms.

11. Technology Training & Support Costs

Technology training will most likely require a combination of outsourcing high-level design to a team of experts in the different technologies and then “training the trainers” to bring the functions in house. The design, phasing, field experience and the rate of user population growth will ultimately dictate the volume and frequency of training. Training involves course design, classroom training in basics and in the advanced use of each technology as it comes on line and when new users come on line

a) Technical Support / Help Desk

Successful technologies projects require on-going technical support for system operators and a combination of systems and procedural support for users. The growth rate in the number of courts, cases and users combined with experience in the average level and type of support will allow project managers to project annual support requirements. Some vendors will provide free training and extensive support. Other vendors may charge initial training and support fees for the start up period as well as annual fees for additional courses and varying levels of support. The costs for these services can vary depending on response times and the severity of the condition. As the system grows it will require an increasing level of help desk support for a growing user population. There will also be annual costs for back-up resources in peak periods as well as high-level support for technical personnel who maintain the systems at the court.

b) Technology for 3rd Party Neutrals

These estimates do not include hardware or software for Neutrals, but they do include costs for technology training. There should be consideration to providing court-supplied equipment and network level communications to the neutrals, at least in the initial phases. Some of these cost elements could be charge backed to litigants as the pilots become on-going projects.

The neutrals will need up-to-date computers with fast Internet connections, capable of processing Internet video. They will also need videoconference equipment or cost coverage for the use of Public video Rooms. The State may be able to negotiate a better deal for higher levels of use.

The neutrals will also need software licenses for all local software required especially for the Business and Technology Court Case Management program. These costs can include Net meeting software, image retrieval software, or transactions fees for ADR service providers.

The Neutrals and staff should be able to attend free technology training provided by the courts.

c) Costs for Law Firms, Clients, Witnesses

Law firms will need to purchase their own equipment and pay any fees associate with access, filing, storage and functions of the Court system or vendors systems. They would have to purchase video conferencing equipment or use public video rooms. While the law firms should be able to pass many costs on to their clients, the costs and fees should be reasonable. The Court should use its bulk purchasing capabilities for any discounts it can legitimately obtain for participants in the program.

The Court should provide technology training without charge initially. Whenever possible, it should utilize vendors who do not charge for training or user help desks.

Lawyers and neutrals can attend introductory group seminars in a central locations followed by on-site training at individual courthouses. It may be cost effective to provide on-site training to law firms with heavy business and technology caseloads. One of the benefits of the conferencing technology is that it can be used to conduct remote training. This capability makes it possible to give training to very small groups (even one-on-one) with short-notice, all delivered over the Internet with teleconferencing.

Phased Deployment:

Near Term

B.

1. Web site

The Business and Technology Court Program will need its own website with basic information (maps, hours of operations, contacts. It should also contain an extensive answer to “Frequently Asked Questions” (FAQ) on processes, troubleshooting, rules and procedures.

2. eFiling

The Court of Appeals and the State Court Administrator approved an eFiling plan and Case Management Order for the 20,000 asbestos cases in Baltimore. Building on this existing and approved eFiling protocol will allow the Business & Technology Court Program to get an early start. The approved CourtLink system does not presently integrate with the JIS Case management system. Integration may take significant resources and lead-time, and should be deferred until later stages.

Montgomery County is also considering eFile providers with an emphasis on imaged documents in criminal and juvenile proceedings rather than civil cases. The statewide District Court system is also considering eFiling for Landlord and Tenant disputes.

3. Virtual Docket

The generic eFiling system model contains a list of filed document by title, e.g.

“ November 2, 2001, Motion for Summary Judgment by Plaintiff, filed.”

Both CourtLink and the Federal eFile system use the elements of the title and date to construct an automatic docket entry. Court clerks will need to record separate docket entries for case events, such as courtroom activities or bench rulings that are not associated with the filing of a document.

4. Initial Collaboration Tools

Parties, neutrals and judges with Internet connections can use commercial ADR services and Netmeeting tools to view same documents and presentations during a traditional teleconference. They can similarly use existing videoconferencing equipment and public video rooms to start pilots for ADR sessions, chambers conferences and non-evidentiary hearings.

Mid Term

C.

1. Case Management Data

The Clerks and the eFile provider will need to develop and test strategies to transfer changing case profile information and docket entries between the eFiling system and court case management systems. As an example, the parties in an existing case may wish to transfer rather than re-enter information from the court CMS system to the new Business and Technology Case Management Program. It may be possible to block and copy case header and docket information from the court CMS. A local court may wish to run copies in parallel and keep them up to date. In the mid-phase phase this exchange might take place using Legal XML encoded data. Integration of this scale will take programming effort and labor by the court and the vendors.

2. Evidence Repositories

The parties should be encouraged to use litigation support extranets to application service providers (ASP's) to sharing discovery documents and transcripts between counsel. The lawyers should also be encouraged to share admitted exhibits and designated transcript extracts at ADR sessions and court proceedings hearings. The key to these efforts is to conduct structured evaluations of different tools and approaches.

3. Expanding use of video conferencing

As the courts and participants acquire videoconferencing equipment they should aggressively expand their range of activities from administrative matters to substantive meetings with neutrals and the remote electronic appearance of lawyers, parties, expert witnesses and lay witnesses beyond the jurisdiction of the court.

Longer Term

D.

1. Integration of eFiling with Case Management Systems
2. IP Video Conferencing
 - Presentation of witnesses in remote proceedings.
 - Lower cost and more convenience for lawyers, neutrals, parties' and judges desktops
1. Experiments with Expert Systems
 - Computer Aided Neutral Case Evaluation
 - Risk Assessment and Decision Tree Evaluations
1. Establish a Full Electronic Case File

Challenges and Opportunities

As the court considers the initial implementation of the support technology for the Business and Technology Case Management Program, it is important to keep in mind some of the challenges ahead.

Diverse Case Management Systems.

B.

While the circuit courts of the state have developed a significant technological infrastructure, one of the principle challenges to the creation of an on-line electronic case file is the diversity of case management systems. Currently there are at least three separate case management systems in operation in Maryland circuit courts.

Multiple Approaches to eFiling

C.

Several approaches to electronic filing integration with case management systems have developed nationally. The all or nothing approach has been to require full and complete integration of eFiling with the court's case management system. The drawback to this approach is that it is extremely time consuming, expensive and can detract resources and energy from the principle focus on the change management aspects of creating an electronic court.

Recently courts have recognized that a phased-in approach increases the prospects of a successful project while at the same time allowing for a very quick start-up. The Circuit Court for Baltimore City in their electronic filing pilot for asbestos cases adopted this approach

D. Technology Training

Technology training is critical to the success of the case management program. All participants must be able to use a computer and operate an Internet browser. Specialized training for each participant's use of technology will also be necessary

E. Mandatory v. Permissive Electronic Filing.

The issue of "mandatory versus permissive" use is ever-present in shaping a successful e-filing project. And there are arguments on both sides. However, a compelling factor is getting enough initial cases to develop experience and make reasonable decisions about the future. A mandatory approach with some flexibility is more apt to overcome inertial resistance to change. Indeed, almost all pleading rules are mandatory.

Quite a few years ago, the rules committees of most courts passed mandatory rules requiring switching the size of the paper from legal to letter size--a major economic impact on lawyers, but a considerable cost saving to courts. The savings which electronic filing can bring to the courts are far greater than the savings brought about by a reduction in the size of paper. Moreover, it would be a glaring contradiction for a business and technology court case management program designed in part to meet the needs of the fast evolving technology business community to be built around a paper based file system. On the rare occasions when a party was unable to file electronically through the Internet a computer disk could be taken to a public access terminal provided at each circuit court.

F. Adopting a Phased Plan

To provide for the greatest level of success in the quickest time period we recommend a phased approach. This methodology minimizes risks and spreads costs over several budget cycles. It also allows reasonable modifications to the plan based on experience.

The case volumes will gradually grow, beginning with a modest number of case by willing participants in the early pilot stages but then requiring widespread participation after overcoming inevitable growing pains. As knowledge and acceptance grows a carefully managed program to introduce support technology will enhance the adoption of the business and technology court program in the business, technology and legal community.

Conclusion

With challenges come opportunities. The technology plan for the Business and Technology Court Case Management Program will help the judiciary and the Bar establish a foundation for the court of the future in Maryland. The public (not just business and technology litigants) will increasingly use the Internet to conduct business with banks, stockbrokers, lawyers and the court. They are the ultimate customers for all of us.

The recommended path in the technology plan is a phased approach to take full advantage of available technologies and to position the Court to test and adapt to emerging technologies. Indeed, the entire program should be a laboratory for the implementation of advanced technologies that could improve the administration of justice throughout our court system.

The original task force report concluded:

“There is considerable value in allowing a court devoted to the resolution of disputes between business and technology companies to use the dominant media by which the litigants and their lawyers create documents, exchange them and communicate with each other.”

An even larger value lies in a forging a partnership between the business and technology community with government leaders, the Bar and the Court to anticipate the need to upgrade the judicial machinery in Maryland. This project may take years to bear fruit, but starting now and proceeding in phases will keep Maryland in forefront of rendering justice in the Information Age.

Appendix A

Business & Technology Court Task Force Report: IX ELECTRONIC FILING²

The Task Force was also charged with evaluating the feasibility of establishing a system for the electronic filing, or “e-filing,” of pleadings within a Business and Technology Case Management Program. In its basic form, eFiling simply allows law firms and courts to exchange documents electronically. In its more integrated form, it allows law firms to submit documents, view docket entries and submit filing fees directly into the court’s workflow processes and systems. In turn, the court can conduct internal business with electronic routing of documents and activities. Courts can also submit electronic orders, opinions and administrative messages and actions to law firms in electronic formats.

Generally, law firms that represent businesses have automated practice management systems and create one hundred percent of their internally generated documents using word processing and document management systems. It is now commonplace for business-oriented law firms to use e-mail extensively to exchange electronic documents with clients. Indeed, clients are demanding such exchange.

The courts in Maryland have a distinct advantage as they are, for the most part, already fully automated. The Judicial Information Systems (JIS) and case management systems in the Circuit Courts for Montgomery and Prince George’s County provide one hundred percent coverage of all pending cases. The administrative office of the courts, JIS and county governments also provide microcomputers and word processing capabilities to every circuit court judge’s chambers throughout the state. A significant number of circuit court judges have internal e-mail capabilities through courthouse networks, and a growing number have modem and even network based high-speed Internet connections.

A. Non-Use of E-Mail for eFiling

Except in extremely limited circumstances, neither the courts nor the law firms in Maryland have used electronic mail for filing or service. This reluctance is well grounded. In spite of emerging standards for e-mail, there can be significant incompatibility between mail systems and substantial problems in exchanging documents created in incompatible word processing formats. Word and WordPerfect documents can have significant incompatibilities, particularly with paragraph numbering, tables of

² _____ **MARYLAND BUSINESS AND TECHNOLOGY COURT TASK FORCE REPORT**, Created by House Bill 15, Chapter 10 of the Maryland Acts of 2000, Wilbur D. Preston, Jr., Chairman; Hon. Steven I. Platt, Vice-Chairman; Steven Tiller, Reporter.

citations, and precise recreation of formats, such as headers, footers and footnotes. Indeed, this Task Force has experienced some problems in the exchange of meeting agendas and minutes between members.

Once filed it is frequently impossible to maintain public record level control over e-mail storage and computer directories. Finally, even if a document is “electronically delivered” by e-mail, the clerk’s office has to post the receipt, create a docket entry and oftentimes print the document to get it to chambers, file it in permanent storage at the courthouse and even microfilm or image scan the document for back-up storage systems.

B. E-Filing’s Secure and Compatible Formats

eFiling allows law firms to transmit electronic documents to courts and to each other in compatible formats, complete with an automatically generated docket entry and a permanent filing retrieval system and audit trail.

Instead of using e-mail, eFiling uses the Internet FTP or File Transfer Protocol to transmit the document and associated filing data to a Neutral but highly secure web site. The court connects with this web site through a single, secure channel rather than allow thousands of lawyers to have direct access to the court’s systems. The web site and underlying databases maintain a highly traceable audit and retrieval trail while the document is delivered to the court and to counsel designated for service in a format that eliminates incompatibility between word processing formats

C. E-Filing in Maryland (1995 – 2001)

In 1995 Prince George’s County began one of the earliest successful e-filing pilot projects. The project was a demonstration initiated by the National Center for State Courts.

For the last three to four years the Circuit Court for Baltimore City has laid the foundation for an e-filing system for over 10,000 asbestos cases.³ Baltimore began its initial efforts to contract for a first generation e-file system called CLAD (Complex Litigation Automated Docket) offered by Lexis-Nexis. CLAD has been continuously in use in the Superior Court of Delaware and other jurisdictions since 1991 for asbestos, environmental, insurance, and tobacco cases.

³ Since the issuance of the Task Force Report, the Circuit Court for Baltimore City launched an eFiling project that will eventually handle 20,000 asbestos cases, which have consolidated after removal to Baltimore from every county in Maryland.

D. E-File Costs

One of the prevailing e-filing systems, JusticeLink, involves no direct financial expenditure for software by the court. The business model for installation, data conversion, user training, maintenance and user support is built on transmission fees by the sender and access fees by those other than the receivers of the documents or the court. JusticeLink charges \$0.10 per page with a \$2.00 minimum for filing and a \$2.00 minimum for service. There is no charge for indefinite storage in a highly secure and redundant processing facility. Another prevailing system, WestFile, presently contemplates either a \$10 - \$15 delivery fee or a prepaid subscription plan, again, with no charge to the court. These delivery prices are either competitive with current manual costs for delivery or well below them. Although the law firms and parties financially support the system, they end up paying less than the same task in a manual system.

Courts and law firms will need to devote time and resources to the installation of certain software and training. Vendors will need access and some labor effort to examine equipment, set up the system, address any data conversion issues and coordinate training efforts. These costs are best absorbed by the larger law firms that traditionally represent businesses in their legal disputes. This proved true in New York where an eFiling system was initiated in its business court. Firms appearing before the business court were, in effect, made to be guinea pigs for establishment of an eFiling system that will soon be rolled out to the general docket.

There can be indirect costs for a court to upgrade its computers, printers and Internet connections. If a judge hears a case within the Program in a jurisdiction with insufficient computing equipment or telecommunications facilities, there could be delays and costs needed to implement the needed upgrades or use a temporary facility with proper equipment.

E. Feasibility of eFiling for a Business and Technology Court Function

It is both feasible and cost effective for the Business and Technology Case Management Program to use eFiling. Lawyers and the court can exchange documents and conduct their work more productively, efficiently and effectively. There is considerable value in allowing a court devoted to the resolution of disputes between business and technology companies to use the dominant media by which the litigants and their lawyers create documents, exchange them and communicate with each other.

Based on experiences in other jurisdictions and the groundwork already in place from the efforts with the Baltimore asbestos cases, the Task Force has been told that eFiling can be made operational in less than two months. With relatively minimal costs, the Business and Technology Case Management Program can start its existence with its own statewide “virtual” docket and document exchange repository. [³ Original Footnote of

Task Force]

Footnote 3.

³ In addition to establishing electronic dockets, calendars and eFiling, the Business and Technology Case Management Program should consider using other technologies to conduct its business. By taking advantage of different technologies for publishing case data, exchanging information and electronic conferencing, the Program can improve its own productivity. These tools, which should be affordable and comply with open standards, include:

On-line repositories of evidentiary materials (digital images of documents, electronic transcripts, computer based and computer generated documents and other evidence) for use by parties and hearing officers.

Multimedia briefs – Business litigators are increasingly using presentation and desktop publishing software to compose briefs on CD-ROM disks and e-filing sites. These briefs not only include digital exhibits in the text, but also include links for references to the record, the case law and even high tech exhibits such as computer animations and video clips.

Double blind bid and offer software allowing parties to post double-blind settlement offers on a highly secure web site. The applications analyze the spread between the bids and allow multiple rounds of bidding.

Whiteboards or Netmeeting – This technology uses a live Internet site for parties simultaneously review an exhibit or even mark-up an issue online. NetMeeting software comes free with Microsoft Windows while Internet-based services such as WebX and PlaceWare allow anyone with a web browser to conduct on-line meetings by collaborating on documents, screen shows and “whiteboards” which function like a blackboard in which anyone can draw a diagram that appears on the screens of every participant’s computer.

Video conferencing - This technology can be very effective in settlement conferences, remote examinations of expert witnesses and on-line court hearings

Appendix B

Maryland Rule 16-307 Electronic filing of pleadings and papers.

- g. Applicability; conflicts with other rules. This Rule applies to the electronic filing of pleadings and papers. A pleading or paper may not be filed by direct electronic transmission to the court except in accordance with this Rule. To the extent of any inconsistency with any other Rule, this Rule and any administrative order entered pursuant to it shall prevail.
- h. Submission of plan. A County Administrative Judge may submit to the State Court Administrator a detailed plan for a pilot project for the electronic filing of pleadings and papers. After consulting with the County Administrative Judge, the Clerk of the Circuit Court, the vendor identified in the plan, and such other judges, court clerks, members of the bar, vendors of electronic filing systems, and other interested persons as the State Court Administrator shall choose, the State Court Administrator shall review the plan, considering among other things: (1) whether the proposed electronic filing system will be compatible with (A) the data processing and operational systems used or anticipated for use by the Administrative Office of the Courts and by the circuit court, and (B) electronic filing systems that may be installed by other circuit courts; (2) whether the installation and use of the proposed system will create any undue financial or operational burdens on the court; (3) whether the proposed system is reasonably available for use by litigants and attorneys at a reasonable cost or whether an efficient and compatible system of manual filing will be maintained; (4) whether the proposed system will be effective, not likely to break down, and secure; (5) whether the proposed system makes appropriate provision for the protection of privacy; and (6) whether the court can discard or replace the system during or at the conclusion of a trial period without undue financial or operational burden. The State Court Administrator shall make a recommendation to the Court of Appeals with respect to the plan.
- i. Approval; duration. A plan may not be implemented unless approved by administrative order of the Court of Appeals. The plan shall terminate two years after the date of the administrative order approving it unless terminated earlier or extended by a subsequent administrative order.
- j. Evaluation. The Chief Judge of the Court of Appeals shall appoint a committee consisting of one or more judges, court clerks, lawyers, legal educators, bar association representatives, and other interested and knowledgeable persons to monitor and evaluate the plan. Prior to the expiration of the two-year period set forth in section c of this Rule, the Court of Appeals, after considering the recommendations of the committee, shall evaluate the operation of the plan.
- k. Extension, modification, or termination. By administrative order, the Court of

Appeals may extend, modify, or terminate a plan at any time.

1. Public availability of plan. The State Court Administrator and the Clerk of the Circuit Court shall make available for public inspection a copy of any current plan.

HISTORY: (Added June 5, 1995, effective July 1, 1995; amended June 5, 1996, effective Jan. 1, 1997.)

VIII. TRAINING PROGRAM FOR CLERKS AND ADMINISTRATORS

Just as important as specialized judicial training is to the effective implementation and maintenance of the Business and Technology Program so is the proper training of other court personnel directly associated with the day-to-day management of cases in the program. The aforementioned includes court administrators, DCM coordinators, clerks of court and their staff and IT personnel. The Committee therefore recommends a comprehensive training program for the aforementioned to include sessions on the types of cases included in the program, milestones in case processing, forms typically used in Business and Technology cases, terminology used in Business and Technology cases, issues common to Business and Technology cases, and the use of technology (current and planned) in the management of the Program.

The initial session, which may be two days in length, should take place at the Judiciary Training Center in Annapolis and participation should be statewide. Annual follow-up sessions should be conducted regionally. The follow-up sessions will serve as refresher courses and will address any problems or issues. The training program should consist of:

1. An overview of the Business and Technology Program
 - History
 - Rule governing its establishment
2. Common Issues in Business and Technology Cases
3. Business and Technology Terminology
4. Case Processing
 - Requesting approval for cases to be included in the Business and Technology Program
 - Description of various case subtypes in the program
 - Exchange of data between courts
 - Monitoring deadlines and adherence to guidelines and procedures

5. Navigating Through the System

- Paper vs. Electronic filing and docketing

6. Measuring Performance

- Collection of Relevant Data
- Customizing Reports
- Using Data to Assist in Effective Case Management
- Analyzing Data

The annual follow-up sessions should serve as forums for exchange of ideas and discussion of issues and concerns that may have arisen during the year. This will build an expertise base upon which jurisdictions and judicial personnel can draw resources for the Business and Technology Program. Like any other organization, the Judiciary is faced with turnover in personnel and changes in operation resulting from legislation, changes in rules of procedure and new technologies; therefore, continuous training is essential for a knowledgeable workforce and effective system. The training should be coordinated through the Administrative Office of the Courts' Training Department and should take place prior to implementation of the Business and Technology program. The facilitators should have garnered some level of expertise in the area.

IX. UNIFORM STATISTICAL DATA AND PERFORMANCE STANDARDS

The Committee believes that in order for the Business Technology Case Management Program in any and all of the circuit courts to be efficient relevant data must be collected, compiled, and analyzed. Collecting relevant, accurate and uniform statistical data is essential to effective case processing, forecasting and judicial planning, as well as measuring system and program performance. Administrative and Program Judges, Administrators, and Clerks should have access to statewide comparative analyses using uniform and accurate data. Without statewide uniform statistical data, it would be impossible to determine compliance or compare performance. Working from the premise that all of the courts operate as one Judiciary, then it is necessary that there be some similar thread that binds them all together. While local cultures may dictate some variances, there has to be one common measuring device containing uniform factors which are common to all of the Circuit and County based Business and Technology Case Management Programs and which accurately and fairly measure their efficiency.

The Interim Report of the Judiciary Statistical Oversight Committee recommends the adoption of Uniform Data Standards for the Maryland Judiciary. These standards will enable judicial leaders to monitor and assess the feasibility, utility, and performance of the Business and Technology Case Management Programs. The following uniform

data standards and essential data elements are therefore recommended by the Business and Technology Case Management Program Implementation Committee:

A. *A case management system must include*

1. Case type
2. Case subtype
 - Business Implications (Y/N)
3. Case management track
4. Judge code
5. Jurisdiction code
6. Attorney(s) name and address
7. Names and addresses of all parties
8. Names and addresses of all witnesses
9. Fields for all possible events
 - a. Filing date
 - b. Pretrial activity/motions
 - c. Trial start date
 - d. Consecutive trial days
 - e. Trial end date
 - f. At issue date
 - g. Discovery deadlines
 - h. Scheduling conference
 - i. Settlement conference
 - j. ADR programs
10. Time standards/milestones
11. Automatic scheduling for next event
12. Interpreter requested and language

M. Linkage of related cases

There should be a mechanism within a system that allows the user to link related cases and parties.

1. Case type
2. Case subtype
 - Business implications (Y/N)
3. Lead case identifier
4. Date of filing
5. Court
6. Case number
7. Names of parties
8. Date of last order
9. Type of order
10. Common identifier

K. Notification of parties to the case

There should be a component in the system that allows for automatic notification of all parties for each scheduled event.

1. Name, address and telephone number of defendant
- 1 2. Name, address and telephone number of plaintiff
- 2 3. Names, addresses and telephone numbers of witnesses
- 3 4. Names, addresses and telephone numbers of attorneys
- 4 5. Date notification mailed

L. Monitor age of cases from last major event (backlog)

A system should enable the user to monitor pending caseload, both active and inactive, measure the age of cases, and compare the age of the cases with time standards.

1. Filing date
2. Case type
3. Case subtype
 - Business Implications (Y/N)
4. Track assigned
5. Date of last event
6. Date of next scheduled event

G. ADR professional information

A system should allow the user to maintain information on all ADR professionals utilized by the court.

1. Name
2. Address
3. Telephone number
4. Attorney (Y/N)
5. Type of ADR for which professional is qualified
6. Court approval flag
 1. Area(s) of expertise
 2. Date ADR ordered
 3. Date ADR completed

D. Delays in case processing

A system should enable the user to monitor delays in case processing, including the reason for and length of delay.

1. Case type
2. Case subtype

- Business Implications (Y/N)
 - 3. Track assigned
 - 4. Date of postponement
 - 5. Postponement reason
 - 6. Person requesting postponement (Court, Plaintiff, Defendant)
 - 7. Event at which postponement was requested/granted
 - 8. Date of next scheduled event following postponement
 - 9. Case deferred by judge under 2-507, including length of deferment
- G. Total case processing time and time elapsed between events by type of case
A system should enable the user to measure the total amount of time the case is in the judicial system, as well as the time elapsed between events.
- 1. Case type
 - 2. Case subtype
 - Business Implications (Y/N)
 - 3. Date of appearance of Counsel
 - 4. Date of service on first defendant
 - 5. Date first answer filed
 - 6. At issue date
 - 7. Date of filing of interlocutory appeal
 - 8. Date of interlocutory appeal decision
 - 9. Date of bankruptcy filing
 - 10. Date of bankruptcy discharge
 - 11. Discovery deadline
 - 12. Date of Scheduling Conference
 - 13. Date of Settlement Conference
 - 14. ADR scheduled date
 - 15. ADR report receipt date
 - 16. Trial start date
 - 17. Consecutive trial days
 - 18. Trial end date
 - 19. Date of disposition
 - 20. Date judgment entered
 - 21. Post judgment activity
 - 22. Date of appeal
- H. Alternative Dispute Resolution Usage
A system should contain a mechanism that allows the user to monitor the usage of ADR programs.
- 1. Filing date
 - 2. Date ADR ordered
 - 3. Case type

- 1 4. Case subtype
 - Business Implications (Y/N)
 5. Type of ADR
 6. Outcome of ADR
 - No agreement
 - Full agreement
 - Partial agreement
 - Binding decision
 - Non-binding decision
 - Incomplete
 7. Date report received from ADR
- H. Age of active caseload by track and case type
A system should enable the user to monitor the age of the pending caseload and compare with established standards.
1. Date of filing
 2. Case type
 - 1 3. Case subtype
 - Business Implications (Y/N)
 4. Track assigned
 5. Date and type of last event
 6. Date and type of next scheduled event
- G. Disposition of cases
A system should enable the user to monitor dispositions at the disposition stage and to track fallout rates.
1. Case type
 - 1 2. Case subtype
 - Business Implications (Y/N)
 3. Track assigned
 4. Disposition date
 - 2 5. Stage at which case was disposed
 - At issue
 - Discovery
 - Scheduling Conference
 - Settlement Conference
 - ADR
 - Trial begin
 - Trial end
 6. Date of event
 7. Type of trial

K. Case processing times by case type

A system should enable the user to measure case processing time by case type and disposition.

1. Case type
- 1 2. Case subtype
 - Business Implications (Y/N)
3. Track assigned
4. Date of filing
5. Scheduled event
6. Date of event
7. Date of disposition
8. Type of disposition
 - 2-507 dismissal
 - Judgment for plaintiff
 - Judgment for defendant
 - Partial judgment for plaintiff
 - Partial judgment for defendant
 - Withdrawn by plaintiff

L. Usage of Business and Technology Program

The system should enable the user to determine the number of cases for which requests were made for inclusion in the Business and Technology Program compared with the number actually approved.

1. Case type
- 1 2. Case subtype
 - Business Implications (Y/N)
3. Request made for Business and Technology Program (Y/N)
- 2 4. Request Granted (Y/N)
- 3 5. Reason request not granted

M. Financial Information

A system should allow the user to maintain financial information.

1. Amount in controversy
2. Amount of award
3. Fines assessed
 - Amount
 - Payee
 - Due date
 - Date paid
4. Court costs
 - Amount
 - Date paid

Payer

Without uniform statewide statistics, there will be no way to accurately assess the Business and Technology program from a systemwide perspective. Any customer should be able to move from jurisdiction to jurisdiction throughout the State without encountering differences in the terminology and analyses of statistical reports. This will become even more critical as the Judiciary moves into the arena of electronic filing and case processing. Attorneys who handle Business and Technology cases generally are specialized and, as a result, conduct business throughout the State. If an attorney is filing similar motions in several different jurisdictions, then the required information and process should not differ. Likewise, the uniform data captured in the case management system in each jurisdiction, once analyzed by the judicial leadership, will be an effective assessment tool to analyze the work of the Business and Technology Program. Without uniform data, such an analysis would not be possible.

Inherent in the types of data recommended for collection and analysis is the ability to measure performance of the Business and Technology program. The Committee therefore recommends the following Performance Standards Program:

1. The Business and Technology program should ensure that everyone has an equal opportunity to participate. There should be uniform statewide filing standards to which everyone is required to adhere.
2. The Business and Technology program should establish and comply with guidelines for timely case processing.
3. The Business and Technology program should include a security component to ensure that the rights and privacy of those parties electing to file electronically are protected.
4. The Business and Technology program should ensure a fair and reliable judicial process. There should be fairness, integrity, equality and clarity in court decisions and actions.
5. Procedures in the Business and Technology program should adhere to relevant laws, rules and policies.
6. The Business and Technology program should develop and implement uniform forms and instructions, as well as formalized procedures.

X. CONCLUSION

The “Conclusion” of the Maryland Business and Technology Court Task Force Report is equally applicable to the work of the Implementation Committee. It is therefore reiterated here.

The Business and Technology Division Task Force was composed of a diverse cross section of judges, legislators, educators, lawyers, and business people who recommended that a statewide Business and Technology Case Management Program be grafted onto Maryland’s already successful DCM system in an effort to improve the efficiency of an outstanding Judiciary. We do not view these recommendations, as some have suggested, as a “slippery slope,” leading to the unwarranted proliferation of specialty courts. Other jurisdictions have found that the establishment of so-called business courts, divisions or programs have succeeded in administering business disputes more effectively without leading to such a problem. Indeed, the realities that have guided our deliberations and driven our recommendations, *i.e.*, the increasing specialization of the world around us generally, and the legal profession, in particular, have compelled our conclusion and recommendation that an even better and more specially trained judiciary is required in order to efficiently serve the citizens of our State in the twenty-first century.

This proposal for a Business and Technology Case Management Program, we believe, is unique and innovative, and provides Maryland with the opportunity to shed its perception as having an anti-business atmosphere while not damaging the integrity of the Judiciary. Indeed, this report has already attracted extensive local and national attention. Having a court that has special business and technology competence and uses technology to administer its docket puts Maryland in the forefront of adaptation to the new realities of the Information Age.

Respectfully submitted,
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Honorable Donald C. Davis
Honorable Michael D. Mason
Honorable Albert J. Matricciani, Jr.
Honorable Ronald A. Silkworth
Honorable Dexter M. Thompson

Mr. Frank Broccolina
State Court Administrator and
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