

'Great' New Idea Breaks Momentum in Family Law Court

By Fred Silberberg

It used to be that in all of the large family law districts in our state, there was a master calendar department. That department oversaw the assignment of hearings to the many trial departments it managed.

Master calendar would set numerous cases all on the same day. The lawyers and parties would arrive at the courthouse that morning, and the calendar would be called. As courtrooms became available, the matters assigned that day went to those courtrooms. And when a hearing or trial began, it proceeded continuously until it came to an end. When the matter was over, the clerk would call back to the master calendar department and another case would be sent. And so, the cycle would continue every court day.

The system was far from ideal, but it worked. Critics complained it was inefficient - that lawyers and litigants spent an undue amount of time waiting to be assigned to a courtroom; that time was wasted when lawyers disqualified a judge and had to go back on the list and wait for another courtroom; that the judges who received reassigned cases had to read each file anew; and that judges learned only parts of each case.

In those days, the larger districts had a "law and motion department," which heard and decided all pretrial motions but no other part of a case. One judge might hear an order to show cause while another would hear the trial.

As a result of these and other grievances, the system was abolished, and in its place came direct calendaring.

Under the present system, a case is assigned to a particular judicial officer upon filing and, in theory, it stays with that officer until conclusion. In this way, one judge can learn about the case and know what transpired from beginning to end, instead of having several judges come in contact with it. With direct calendaring, a judge can control the proceedings and the assignment of hearing dates. He or she can become familiar with the parties and address matters with a more hands-on approach.

Direct calendaring was designed to move cases more smoothly and efficiently through the court system. It has been the order of the day in large counties for many years now. But there's one big problem with it.

It doesn't work.

What was intended to improve the administration of justice has instead turned into a nightmare resulting in more expense for the parties and significantly more delay than ever under the master calendar system. Rather than streamlining matters to expedite resolution of cases, the opposite has occurred. It's time for the court system to admit that direct calendaring, while well-intentioned, is an idea whose time has passed. New isn't always better.

Along with the institution of direct calendaring came the breakup of the week into components. The system had to allow for judges to handle all aspects of a case; as a result, certain days of the week are assigned for motions and orders to show cause, while other days are assigned for trial. One day is generally split between the two.

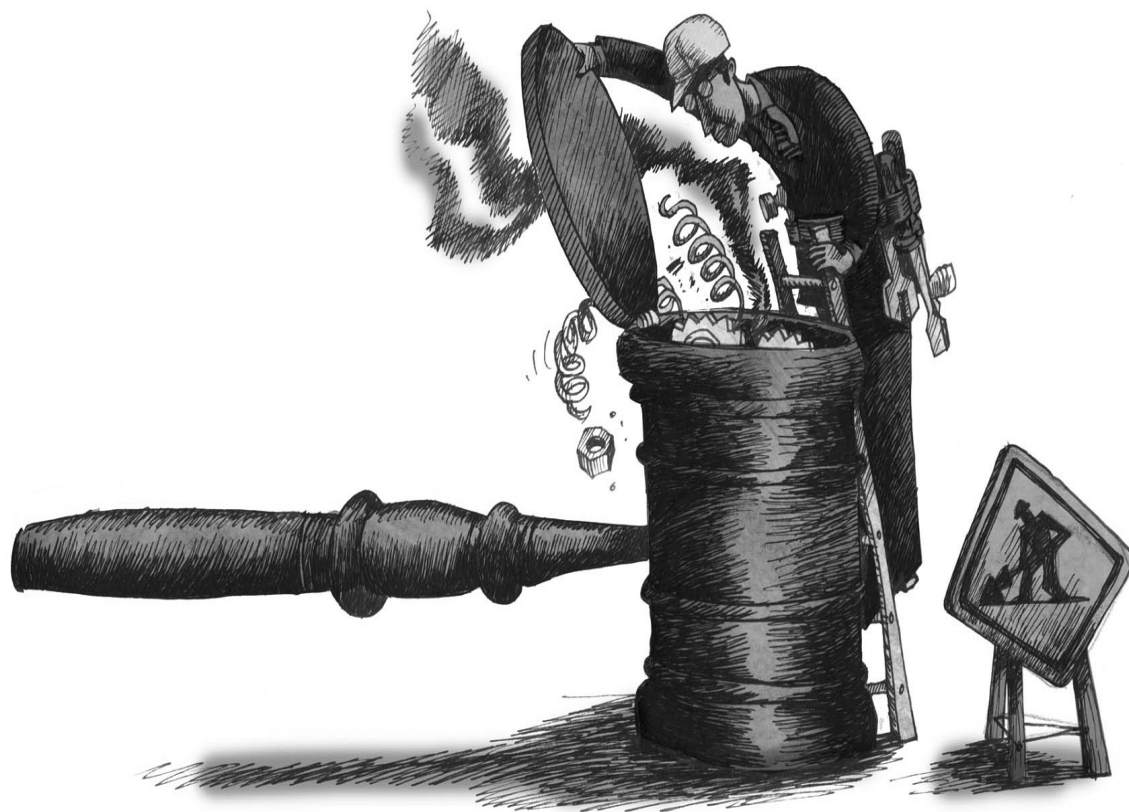
Apportioning the weekly calendar to handle different aspects of a case means that, with the exception of rather short matters, a court cannot finish what it started without interruption. Where an order to show cause regarding custody may require three days to complete, there aren't three days available in the week. When you further consider that there are generally 25 to 30 matters

set per day, the court is then faced with pushing parts of those matters into the future.

While one may think such a delay isn't significant, one would be wrong. A contested hearing over a permanent injunction following a temporary restraining order begins in September. It doesn't finish until December. A custody trial commences in July - and ends the following May. In between are long breaks because the court does not have any time available to continue with the matter. The July proceedings may have lasted all day, but the next available date on the court's calendar wasn't until late September. When that day was used up, the court had a date available in November, but one of the lawyers did not. That put the matter over to December. The parties did not have a full day in December, because the same judge who was going to hear this case had to deal with five ex parte applications on other cases assigned to her, thereby taking time away from the custody hearing that was contemplated to go all day. As a result, the custody matter did not start until late in the day, but then had to be continued to the next available date, which, believe it or not, was in February.

Under the master calendar system, this simply did not occur. It is an absolute truth that not all matters set for hearing on a particular day were assigned to courtrooms. However, once the proceeding did begin it went until it was done. If the injunction hearing had been handled in this manner, it would have been completed the same week it got started. The custody trial would have ended the following week. Both matters would have been resolved more promptly and efficiently. The court would not have to interrupt to hear another matter.

In the days of the master calendar, one department heard ex parte applications all day, and another heard motions. That left the trial courtrooms to run from the beginning of a case to the end. As a result, the evidence was fresh in the minds of the judge and the lawyers. The



court could issue a decision more promptly because the judge knew the facts. He or she did not have to spend hours rereading the transcripts to recall what testimony took place seven months earlier. The lawyers did not have to charge their clients for time spent reviewing what happened back then either, in order to prepare for the next court date.

Moreover, under the master calendar system, pretrial matters were not heard by declaration as they are now. Rather than spending thousands of dollars in attorney time drafting declarations and motions to strike, the parties simply came to court and testified, and the court ruled on the evidence right then and there. It all made a lot more sense.

The master calendar system also addressed another problem. While the intention of the direct calendaring system was to give a case to one judicial officer for the duration of the case, that also has failed. There is a higher amount of turnover for judicial officers in family law courtrooms than in other departments. While the case may be assigned to a particular department for its life, the judicial officer isn't. A case with a fair amount of conflict could go on for more than a year or two. In that time, there could be multiple judicial officers assigned to it. So much for having one judge become familiar with the case from beginning to end.

Sometimes we have to admit that new ideas aren't always good ones. With direct calendaring, this is the case. If we want to handle things more logically and efficiently, let's admit that the experiment did not work. Out with the new - in with the old.

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