

DIRECTOR'S CORNER: New Year, New Name



Geoff Drucker
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The McCammon Group's mission is, and always will be, to help our clients prevent and resolve disputes. But how we fulfill this mission is always in flux. Clients' needs and interests can shift quite quickly in this still new and exciting field.

Recently, The McCammon Group combined Facilitation and Training and Federal Dispute Resolution into one group: Facilitation, Training, and Consulting. We want to make it clear that our full range of services is available to all clients—federal, state, and private—and that these services include conflict coaching, dispute system design, and other forms of consulting.

This issue's feature article is about re-engineering adjudication systems for government agencies, but it carries an even broader message about stepping out of one's comfort zone. For administrative judges, this zone often is adjudicating individual cases, and stepping out means wholesale changes in how cases are processed to adjust to new statutes or regulations or significant shifts in the caseload, or to take advantage of new technologies. The comfort zone in our work is tried and true methods of dispute resolution, and the challenge is to find ways of leveraging expertise gained in one arena to help resolve different types of disputes, or to develop a new approach to an old problem.

To see new opportunities on the horizon, you have to stretch high enough to poke your head above the treetops. It can be quite uncomfortable up there—downright scary sometimes—but the view is spectacular.

ARE WE MANAGING TO THE FOREST OR TO THE TREES? Managing for effective, efficient adjudication requires an integrated approach

By Cecilia Sparks Ford

The trees in my rain-starved northern Virginia neighborhood are just now showing their lovely fall colors as we are getting cooler days and at least some rain. Noticing this caused me to remember that old adage about not seeing the forest for the trees. I find this an apt analogy for thinking about the challenges facing those who manage adjudication organizations in the federal sector. We have been taught to consider each case as a discrete matter. This may cause us, however, to fail to examine

our overall process in order to assess how well it is working and whether improvements need to be made to better serve the public interest. Why is looking at the forest important, you may ask? Unless the overall adjudicative process is functioning in an optimal manner, it will not add enough value to an agency's mission. Moreover, we cannot really assure that the process will be sound in any one case without confidence in the process as a whole.

Managing

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The Departmental Appeals Board (DAB) at the Department of Health and Human Services (HHS) now provides administrative adjudication under more than 60 different statutory and regulatory programs. After extensive review of its case files and questionnaires to both federal and non-federal litigants, the DAB was called a model for case management in a mid-1980's study sponsored by the Administrative Conference of the United States.^[i] As an alternative to expensive civil litigation, the DAB was providing a prompt and flexible process for resolving contentious high-value disputes involving HHS grant programs.

Adjudicative norms for issuing decisions within 30 days of the last case submission and for tailoring the procedures to the needs of each case continued to serve the DAB well as its jurisdiction expanded greatly over the years. In my experience, adjudicative norms for quality and speed are a source of pride and empower adjudicators to meet the demands of a changing environment over time, including any statutory changes affecting procedures or an increasing caseload.

As the DAB Chair and a member of both its appellate bodies, I grappled first hand with managing a complex adjudication organization. And, having seen many workplace improvement systems over the years, including total quality management, continuous process improvement, and government reinvention to name a few, my perspective is that incremental process improvements have little value. I found the key to managing for high quality performance to be an integrated approach using internal re-engineering for needed structural changes (not requiring statutory or regulatory changes) along with ongoing strategic planning, targeted performance goals for case dispositions, and case management data systems for assessing case

flow dynamics and productivity. I used this type of integrated approach in order to produce substantial performance improvements in the DAB's Medicare appeals process. This function had been added to my office in 1995. This small appellate division of about twenty staff including only two judges faced high case backlogs and operated with a first in/first out style. We knew increased scrutiny from the Department's Inspector General and from the Government Accountability Office (GAO) as well as new statutory time limits and other procedural changes were likely. Accordingly, the judges, staff, and I were intent on improving our operations.

We worked with an outside expert in organizational development and process improvement to reach consensus on a re-engineering plan to improve our case flow and timeframes. We used quarterly strategic planning and monthly case status sessions so that we were in control of our

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workload, instead of letting our workload control us. We were able to change our organizational culture and internal case flow process by empowering the judges, attorneys, and other staff to take action to identify and resolve problems. As a result, by 2004, we more than doubled our case dispositions and were adjudicating over eight times as many Medicare claims with fewer overall staff resources (although with more attorney staff) than in 1995, providing more timely service to each appellant. In addition, we were far better prepared to implement new statutory timeframes and to handle our increasing caseload.

While it may be difficult to keep in mind - what to the adjudicator is just one among many cases is potentially a matter of great import to those affected. Whether a contract or grant dispute or one involving claims for disability benefits or for medical services, the parties before us are entitled to the best level of service we can provide. This was brought home to me toward the end of my tenure as DAB Chair.

I opened my e-mail one day to find a message from the daughter of a Medicare beneficiary concerned about the correctness of a decision denying payment for her mother's medical claim. I responded quickly with information on the status of the case, only to receive an astonished response in turn evidencing surprise that a named agency official and real person was involved. While we did shortly thereafter issue a favorable decision on the merits in that case, more importantly, we were able to gain the confidence of a member of the public in the fairness and responsiveness of a government process. As adjudicators, we are not just faceless, nameless bureaucrats dispensing anonymous decisions; any case before us should not be just another in the queue.

An administrative adjudication body's credibility depends on how effectively and efficiently it fulfills its mission for the agency or agencies for which it hears cases, and therefore adds value for society. Effective adjudication means high quality outcomes that are regarded as fair and which are generally affirmed by a higher level of administrative appeal or a reviewing court. Efficient adjudication means using human capital and technology resources as productively as possible. Key questions must be answered in the context of a particular body's mission, caseload, and structure. Grounded in this context, it is possible to evaluate how effectively it is using its human and technology resources.

Decisions or other dispositions should be substantively sound and issued quickly enough to be

Quality, Results, Value.

meaningful to the outside parties and to the affected federal agency. Moreover, disputed matters must be resolved for the lowest possible personnel and technology costs given that there are generally competing demands for limited federal funds. Any alternatives to traditional dispute mechanisms that are offered, such as mediation or arbitration, are subject to these constraints as well. Adjudicative bodies must balance demands for quality and speed in order to be accountable to the public they serve.

A proven method for improving effectiveness and efficiency is process analysis and improvement that considers business processes as they are integrated with technology, human capital, and performance management. Assessing the status quo and defining areas where improvement is needed is the critical first step toward such improvement. A targeted process improvement action plan would include one or more of the following: process re-engineering; a plan for using technology as a management tool; incentive systems for maximizing employee performance and job satisfaction; executive coaching for judges, managers, and staff; and human capital planning for effective management.

Process improvements should be developed to address specific issues and be based on an understanding of the status quo and operational norms. An adjudication organization may have specific process or quality improvement goals that have been imposed by law or policy. If so, it will be possible to develop specific strategies to meet these objectives. It is also possible to develop additional strategies to resolve other issues identified during a comprehensive assessment of current operations.

While adjudication organizations handle highly complex and consequential matters, from an operational standpoint they resemble an assembly line and thereby lend themselves to re-engineering improvements. Each case should match with a dispositional action: withdrawn, settled,

decided, remanded, etc. Also, it is possible to track each case according to when it was received and to know when it was sitting idle or when someone was actually working on it. The ability to analyze workflow this way enables managers to weigh how effectively resources are being used and to develop adjudicative norms and timeframes for case flow.

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The McCammon Group is uniquely situated to assist adjudication bodies because it combines the expertise of retired judges experienced with administering judicial systems and organizational development experts. We can analyze process issues in adjudication and develop improvement plans tailored to each organization's individual needs. Our experienced professionals understand both the challenges faced by adjudicators and how to maximize quality performance in adjudication while protecting substantive decisional independence.

What barriers might an organization face when deciding to even look at whether it should embark on a strategic improvement process? Well, the status quo is comfortable even if not ideal. Also, some judges may use substantive independence in decision making to avoid proper accountability and use of sound management techniques. Such barriers can be handled by using facilitated groups to explore in an objective way how the status quo measures up to an organization's goals and mission.

To fail to look at and address productivity and quality issues in adjudication can result not only in the inefficient use of resources and the wrong mix of staff but also to critical assessments of an organization's performance on the Hill or by Inspectors General or the GAO. Are you using your resources to resolve disputes as quickly as you should? Do you need more hearing rooms or more video conference equipment? What type of staff do you need for the future? What is your case load mix? Can technology improvements enhance your case management? How receptive are judges and parties to using alternatives to a traditional hearing/decision process? Is excessive sit-time a problem? In other words, is the amount of time a matter sits without anyone actively working on it adding significantly to case age? What quality and productivity measures should be used? What is your unique culture and how can this be used to enhance your mission?

It is not really possible to answer these types of questions if you are looking only at the trees and not at the forest. When you climb high enough to see above the treetops, you can envision a bright future.

Cecilia Sparks Ford - November 2007

[i] *Cappalli, Model for Case Management: The Grant Appeals Board, A Study Prepared for the Administrative Conference of the United States (1986).*

Cecilia Sparks Ford was appointed to the Departmental Appeals Board at the Department of Health and Human Services in 1980 and was its Chair from 1998-2006.



Since 1995, The McCammon Group has mediated over 7,000 cases and has provided facilitation and training services to a broad array of government, corporate, and non-profit clients.

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