NEW YORK STATE BAR ASSOCIATION

NYSBA

Task Force on Family Court

Final Report

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Family Court Task Force
Final Report
Table of Contents

I. **INTRODUCTION**.....1

II. **EXECUTIVE SUMMARY**.....5

A. The Crisis in New York's Family Court.....5

B. Able Leadership has Resulted in Major Improvements in Family Court.....5

C. Effect of Task Force's Recommendations.....6

D. Note as to Juvenile Delinquency Issues.....7

E. Summary of Recommendations.....7

III. **TASK FORCE RECOMMENDATIONS**.....13

➢ **RESOURCES FOR FAMILY COURT**

1. The need for more Judges.....13
2. Funding more judges and quasi-judicial staff.....16
3. Creation of Family Court Magistrates.....18
4. Screening child support cases.....22
5. Mediation.....24
6. Court Facilities and Security.....28
7. Avoiding Piecemeal Trials and Delay.....29
8. Use of Outcome Assessments.....35
9. Operations of Court Clerks.....36
10. Expanded Court Day.....37
11. Diversity of New York's Family Court.....39
12. Frivolous, Vexatious or Repeated Filings.....40
13. Family Court Act Section 255.....41

➢ **RESOURCES FOR INDIVIDUAL LITIGANTS**

14. Assigned Counsel.....42

15. Assistance for Unrepresented Litigants.....46
16. Immigrants.....51
17. Access to Family Court for Those with Physical and Mental Disabilities....54
18. Civil Legal Services.....56
19. Court-ordered Psychological Evaluations.....58
20. Availability of Kinship Guardianship and Kinship Foster Care.....59

➢ **TECHNOLOGY**

21. Paperless Courts.....60
22. E-Filing.....62
23. Use of Video Technology.....64
24. Training.....66
25. Best Practices for Family Court.....68
26. Collaboration.....76

IV. TASK FORCE SUBCOMMITTEE REPORTS.....79

A. Report of the Subcommittee on Resources for Individual Litigants.....79
B. Report of the Subcommittee on Technology.....110
C. Report of the Subcommittee on Resources for Family Court.....115
D. Report of the Subcommittee on Court Operations, Case Management and Staffing.....125

V. APPENDICES.....133

A. Members of the Task Force.....134
B. Hearings (Dates, Places and Winesses).....136
C. Consultations.....139
D. Research Memoranda Prepared by Ms. Celia Curtis.....140
D-I. The Use of Quasi-Judicial Personnel in Family Court.....140
D-II. California's Child Support Commissioner and Family Law Facilitator Program.....164

E. Research Memorandum Prepared by Ms. Nicole Bandura—Mediation in Custody and Dependency/Child Neglect Situations.....174
F. Other States' Experiences.....183
G. Bibliography.....184
H. New York State Child Welfare Court Improvement Trainings—2010, 2011, 2012.....191

I. INTRODUCTION

The Vital, Unique Role of New York's Family Court

Family Court is the place where often difficult decisions are made about children. The Court determines paternity for children born outside of marriage. For some, the family-tree begins with adoption and many adoptions are finalized in Family Court. When parents, married or unmarried, separate from one another, their issues of child custody, visitation and child support are heard in Family Court. Issues of domestic violence are heard in Family Court. When children are accused of committing crimes, their cases are heard in Family Court. Children who are truant or who are accused of running wild, beyond their parents' control, are petitioned into Family Court. Child abuse and neglect cases are heard in Family Court. Parents' rights to their children may be terminated in Family Court. The Court oversees cases for children throughout the children's stay in foster care.

If you stand in a Family Court waiting room anywhere in New York State you may see mothers and fathers, children, extended family members and especially grandparents, social workers, mental health professionals, police and service providers. Unlike other courthouse spaces, there is no filing fee to pay to begin a case. The number of adults with briefcases and legal pads are well outnumbered by people, young and old, who resemble a cross section of the community. Clients of the Court often arrive at the Court with children in tow, bearing handwritten petitions.

Because Family Court hears emergency cases as well as scheduled matters, there is a level of raw emotion on display in the waiting areas. The victim of an assault by an intimate partner sits in the waiting room at a Family Court with red rimmed, wet eyes. She shares the space with young parents and infants awaiting DNA testing (paternity). She sees still other young parents, fretting relatives nearby, who await an emergency removal hearing when mother and newborn infant share a positive toxicology for heroin.

The issues are as personal and serious as they come—Family Court determines the fate of your children. Delay is taken most seriously in Family Court. An infant who is removed from her mother at birth and spends her first three years of life in foster care will be shaped forever by the experience. A judge, who controls the quantity and quality of the infant's time with her family, is dictating that child's future, according to the social scientists.

The men and women who serve in Family Court, both on the bench and behind the scenes doing back office work or serving as security or intake workers, are dedicated to the work of the Court. By and large, they see themselves as public servants, trying to do the right thing for children and their community. It requires patience and a sense of mission to work in what is sometimes a pressure cooker. There is always more work than time, more people to serve than hours in the court day. When emotions run high for clients of the Court, the anger and hurt, venom and fear are shared, sometimes explosively, with those closest at hand; that is, the judge and Court staff, as well as other clients of the Court. It is not glamorous work. Family Court judges are not in it for prestige or success. They aspire to positively affect the quality of life in their communities.

In anticipation of the 50th Anniversary of the institution called Family Court in 2012, it seemed important that the New York State Bar take stock of the state of our Family Courts. For those who have never been to Family Court and wonder why any of us should care about what goes on there, the Task Force directs them to observe in any classroom in any community in New York State. As any school teacher knows, trouble rides the school bus. A child, whose family has problems, brings his problems with him on the bus and into the classroom. The problems surface on the playground and at childcare. One child's problems affect all of the children around him. The quality of decisions made in Family Court affects all of us. They affect the quality of life in a community. The conditions and circumstances in which serious decision-making occurs is an issue for all of us.

The Task Force and Its Mission

In 2010, The Task Force on Family Court of the New York State Bar Association was appointed by then President Stephen P. Younger to examine the challenges that New York Family Courts face and recommend measures that would better enable the courts to meet the demands placed upon them. In forming the Task Force, President Younger stated:

> There may be no place where shaping the future and restoring confidence in our government institutions comes together as clearly as in our family court system. To thousands of New Yorkers, family courts are the face of our legal system but, unfortunately, with overcrowded dockets, too few judges, and far too many delays, these courts resemble hospital emergency rooms and our family law attorneys are forced to perform triage.

The commitment of the Association to strengthening Family Courts was carried forward by Mr. Younger's successors, 2011–2012 President Vincent E. Doyle III, and President Seymour W. James, Jr. who took office as President on June 1, 2012.

The Task Force was charged with examining and reporting recommendations concerning the following priority issues:

- Whether more resources are needed for the Family Court and in what areas.
- Whether better case management and staffing processes are necessary.
- Whether the Family Court can make better use of technology.
- How Family Court operations can better serve families who come in contact with the court.
- How counsel are utilized in Family Court.
- Other issues deemed relevant by the Task Force.

Commitment of the Bar Association

The decision to create the Task Force rested upon the historic commitment of the Association to further the effective administration of and equal access to justice for all—both the represented and unrepresented. Traditionally, the Association has advocated that state policymakers provide adequate funding for the state's courts. As in previous years, sufficient funding was one of the

Bar's legislative priorities for 2012. In April 2012, after the state budget had been adopted and funding appropriated for the Judiciary, President Doyle stated:

> The Judiciary will be working with a bare-bones budget. We have confidence that Judge Lippman will be able to contain spending with operational changes that will reap savings for years to come. However, we remain concerned about the long-term, cumulative impact of budgetary constraints on the judicial system. Adequate funding of our courts is essential. We will continue to monitor court funding to ensure that New Yorkers have access to justice.[1]

Organization of the Task Force

The Task Force is chaired by Hon. Rita Connerton, Supervising Family Court Judge of the Sixth Judicial District, and Susan B. Lindenauer, former General Counsel of The Legal Aid Society and a former member of the Bar Association's House of Delegates and of the Executive Committee, chair of its Senior Lawyers Section and chair of the Fellows of the New York Bar Foundation.

The Reporter, and Member of the Task Force, was Merril Sobie, Professor at Pace University School of Law and author of *New York Family Court Practice*.

Chair of the Drafting Committee, and member of the Task Force, was Stephen Brooks, former General Counsel of the Interest on Lawyers' Accounts (IOLA) Fund.

Members of the Steering Committee are Judge Connerton, Ms. Lindenauer, Prof. Sobie and Mr. Stephen Brooks. For the complete list of Task Force members, see Appendix A.

The Task Force had four Subcommittees:

- Resources for Individual Litigants, co-chaired by June M. Castellano and Susan L. Jacobs;
- Court Operations, Case Management and Staffing, co-chaired by Laura A. Russell, Nancy Thomson and Lucia B. Whisenand;
- Resources for Family Court, co-chaired by Celia Curtis, Susan Horn and Tamara Steckler;
- Technology, chaired by John E. Carter, Jr.

The Association's Executive Committee Liaison is the Hon. Margaret J. Finerty of Getnick & Getnick, New York City.

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[1] *New York State Bar Association President Vincent E. Doyle Says Budget Protects Judiciary and Legal Services for the Poor*, Press Release, New York State Bar Association (April 2, 2012).

The Task Force's staff liaisons at the Association are Ronald F. Kennedy, Director and Kevin Kerwin, Associate Director of Governmental Relations. The Task Force benefitted from the outstanding assistance of Mr. Kerwin and thanks him for his good counsel and patience.

Hearings

The Task Force held hearings during 2011 and 2012 in each of the state's four Judicial Departments. More than sixty witnesses testified in person and an additional number, who were unable to testify in person, provided written submissions. See Appendix B for hearing dates, locations and names of witnesses.

Research

The Task Force consulted experts in New York and other states as well as at the national level to obtain a full picture of the problems that family courts face and the solutions that were developed. Those interviewed are described in Appendices C and F.

In addition, the Task Force benefitted greatly from the research and work-product of Prof. Sobie's research assistants.

In particular, Celia Curtis prepared the memoranda found at Appendix D-I, discussing the use of quasi-judicial personnel in Family Court, and Appendix D-II, examining California's Child Support Commissioner and Family Law Facilitator Program. Nicole Bandura prepared the memorandum found at Appendix E discussing mediation in custody and dependency/child neglect situations.

The Task Force also expresses its thanks and deep appreciation to Ms. Nadia Arginteanu, a New York State Bar Association Law Clerk and Albany Law School student, who provided her assistance and expertise to finalize this report.

The Task Force undertook an extensive review of published research in regard to the Family Courts of New York and other jurisdictions. A bibliography of the research is at Appendix G.

II. EXECUTIVE SUMMARY

A. The Crisis in New York's Family Courts

When the Task Force was established in 2010, Bar Association President Stephen P. Younger described the substantial caseload and inadequate resources that combine to produce today's crisis in Family Courts:

> Family court filings reached a record high of nearly 750,000 last year statewide, with filings related to family violence increasing 30 percent in the last two years.
> * * *
> From foster care to child abuse and neglect, family courts deal with some of the most difficult issues involving New York's children at their most vulnerable. With a record setting number of statewide court filings last year, there are currently 4,601 filings for every judge. The problem is particularly critical in New York City. From 1991 to the present day, there have been no judges appointed to the Family Court bench in New York City. During this same time, the New York City Family Court total filings increased 23%; from 206,186 to 253,421 in 2009.[2]

At the close of 2011, total Family Court case filings statewide approached three-quarters of a million.

B. Able Leadership Has Resulted in Major Improvements in Family Courts

The Task Force recognizes the vital commitment of Chief Judge Jonathon Lippman, his predecessor, Chief Judge Judith Kaye, and former and current Chief Administrative Judges—Jonathan Lippman, Ann Pfau and Gail Prudenti and the Office of Court Administration to addressing the impacts of burgeoning filings in the Family Courts and the failure, over many years, to have a sufficient number of legislatively authorized Family Court judicial positions. The creation of the Support Magistrates position as well as the utilization in the Family Courts of court attorney referees and judicial hearing officers, the numerous committees and commissions created to consider and develop best practices, pilot projects, training and legislative proposals demonstrate the strong and ongoing support of the judiciary and the entire court system to effect improvements in the Family Court despite limited resources.

Throughout this report, the Task Force expresses many concerns about the operation of Family Court, but it is important to bear in mind that the problems and challenges that are analyzed result from courts that labor under an overwhelming number of cases, well beyond any level commensurate with available resources. Statewide, those who work in Family Court, whether as members of the judiciary, quasi-judicial officers or in the wide variety of support functions, are dedicated individuals who perform to the best of their abilities, under the daily strain of cases

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[2] *State Bar President Stephen P. Younger Announces Creation of Family Court Task Force*, Press Release, New York State Bar Association (July 28, 2010).

replete with the tragedies of children and their families and achieve exemplary results despite the challenges they face.

The Annual Reports issued by the Honorable Edwina Richardson-Mendelson, Administrative Judge of the New York City Family Court, and by the Honorable Craig Doran, Administrative Judge of the Seventh Judicial District, provide important evidence of some of these accomplishments, as do the many reports issued on the work of advisory committees, commissions and studies.

The current Family Court Leadership Team, the Honorable Michael V. Coccoma, Deputy Chief Administrative Judge for Courts Outside New York City, the Honorable Edwina Richardson-Mendelson, Administrative Judge of the New York City Family Courts, and the Honorable Sharon S. Townsend, Supreme Court Justice, 8th Judicial District, Erie County and Vice-Dean for Family and Matrimonial Matters, New York State Judicial Institute, all of whom are involved in the work of the Task Force, demonstrates strong leadership and personal engagement in further improving Family Court. The Task Force thanks them for their efforts and for their participation. The Task Force thanks all of the court personnel for their time and effort in providing information and assistance to the Task Force.

C. Effect of Task Force's Recommendations

The Task Force recognizes that a significant number of its recommendations will require both fiscal and personnel resources. All of the Task Force recommendations must be weighed in light of their impact on existing conditions. The new proposals should not replace or supplant the old unintentionally. In no way does this Report suggest that effective existing efforts or programs should be curtailed or abandoned. Further, the Task Force understands that the Family Courts throughout the state are diverse in their needs and the needs of those they serve. There can be no one-size-fits-all.

Over the past several years legislative enactments have increased the burdens on Family Court without adding any resources to handle these added responsibilities. The added statutory provisions include: 1. Expanding domestic violence jurisdiction; 2. Increasing the frequency and complexity of permanency hearings; 3. Liberalizing the ability to apply for child support modifications and 4. Mandatory check of court records in custody, visitation and matrimonial proceedings to ensure that no person involved in the proceeding had a history of matters that should be of concern. No added funding or staffing was provided with any of these jurisdictional expansions. The Task Force firmly believes that there should be no expansion in the responsibilities or tasks given to the Family Court in this state without a commensurate expansion in funding and authorized staffing.

The need for additional judges is paramount, but any increase in the number of judges and other court personnel and resources also requires an increase in the number of attorneys for those entitled to counsel and those who are unrepresented because of their inability to afford counsel.

These additional attorneys also must be supported with funding and all of the other resources they need to effectively represent their clients.

D. Note as to Juvenile Delinquency Issues

The Family Court has jurisdiction over youths who are charged with delinquency or designated felonies. Legislative proposals have been made to raise the age of Family Court jurisdiction to eighteen years of age. Whether the mechanism will be to have these cases handled by the adult criminal justice system subject to the procedures and dispositions under the Family Court Act or directly by the Family Court is not as yet clear. Other NYSBA committees are currently addressing the issues involved. The Task Force on Family Court takes no position on these issues at this time.

However, the Task Force believes that it is appropriate to reiterate that any expansion of the jurisdiction of the Family Court must be accompanied by a commensurate expansion in resources for the court; namely: funding, judges, quasi-judicial personnel, non-judicial support, court room space, security and the like. Additionally, the Task Force strongly supports all efforts to divert existing cases as well as any cases arising as a result of expanded jurisdiction through use of strengthened Youth Courts, probation diversion and pilot projects such as the Education Court in Westchester County.

E. Summary of Recommendations

Each of the Task Force's four Subcommittees prepared reports which are included in this report. While the Task Force's recommendations reflect the work of these Subcommittees, the recommendations also have been expanded to include recommendations arising out of additional sources of information, including Task Force meetings, hearings, reports from other organizations, interviews and the work of the Task Force's researchers.

RESOURCES FOR FAMILY COURT

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1. The Legislature must authorize new judgeships in Family Court. The New York State Bar Association should make the approval of new judges in Family Court a priority of its legislative agenda. The lack of judges to hear the overwhelming number of cases involving the safety and well-being of children results in long delays, piecemeal trials, uneven access to justice and a public perception that the forum is ineffectual and unworthy of community confidence. In the short term, judges from other courts should be assigned to sit in Family Court to ease delay.

Supervising Family Court Judges should assist Family Court Judges in implementing best practices standards of effective case management.

2. There must be adequate funding to support judicial and quasi-judicial resources for the court. There is a significant role for quasi-judicial personnel in the Family Court system.

3. To bring greater efficiency to the administration of cases, and enable families to obtain swifter, more coordinated resolution of their often interlocked matters, the Legislature should establish "Family Court Magistrates," officers who would carry out the duties of, and replace, Court Attorney/Referees, Support Magistrates and Judicial Hearing Officers. Immediate steps should be taken to secure the necessary approvals to authorize existing Support Magistrates to enter consent-custody and visitation orders. This would require the Court System to request that the Executive Branch seek approval of the Federal government, which funds the Support Magistrate program, to amend the State Plan and require legislative action to amend Section 439 of the Family Court Act.

4. Preliminary assistance should be established for all case types, particularly including child support cases. Most parties in child support cases are unrepresented and hence unprepared and uninformed when entering a court part. If the parties could appear initially before an officer as provided in some states, such as California, the case might be resolved on consent at that level, or at least the parties' needs and expectations could be clarified. They would also be better prepared and thereby decrease the court time needed to adjudicate the matter. Since the child support program is largely federally funded, the introduction of a preliminary assistance officer would be cost effective.

5. Mediation programs should be greatly strengthened, expanded, and funded. While mediation is inappropriate in certain circumstances, such as matters involving domestic violence, it is especially useful in child custody, child welfare, and child support cases. Mediation is cost effective and saves resources for both the State and counties. Therefore, funding mechanisms should be explored, including, perhaps, a combination of State and local (County Law 722) funding. Expanded use of mediation should be evaluated through pilot programs in several counties having dissimilar characteristics.

6. The condition, accessibility and security of each Family Court courthouse are of critical importance not only to the users of the facility but also to the public's perception of the role of the Family Court within the justice system. Emphasis must continue to be placed on bringing all Family Courthouse facilities up to an acceptable standard with regard to space, technology, accessibility, adequate court rooms, waiting rooms, attorney interview space, children's centers and security.

COURT OPERATIONS

7. A methodology should be established to avoid or at least greatly minimize "piecemeal" trials or hearings conducted over the course of several months. The Family Court does not routinely conduct continuous trials or hearings. There are several understandable reasons, including calendar congestion, but the result is inefficiency and delay. The Task Force is proposing various mechanisms to address this issue and other impediments that delay the resolution of cases.

8. The ability to conduct outcome assessments should be enhanced and extended to encompass custody, visitation and family offense proceedings. The Uniform Case Management System currently provides judges and administrators with an effective tool for overseeing Family Court proceedings. The Task Force is exploring ways to enhance the system to provide information on long term outcomes which could provide the means to reduce successive or repeated proceedings and appearances.

9. There should be greater uniformity in the operations of the court clerks' offices. Practicing in different county Family Courts frequently involves different procedures and practices; even the court clerk office hours vary by county.

10. The State Bar Association must urge the Legislature to provide adequate funding to permit Family Court to continue the ability to be in session for a full court day, as was the standard in the past.

11. Family Courts cannot be one-size-fits-all operations, but must serve the needs of the communities in which they operate. Legislation to authorize an expanded role for technology in Family Court would benefit litigants, especially in Family Court in rural counties.

Specialty courts feature extensive judicial monitoring of parents' progress in services aimed at restoring the family. Whether and to what degree these courts achieve their mission should be empirically measured. To the extent that the best elements of these courts can be replicated in all Family Courts, they should be.

12. The issue of frivolous, vexatious or repeated filings was discussed at a Task Force hearing. In most counties, the filings arise where a litigant seeks to harass another or where a litigant does not understand the court and its procedures. Current remedies include requiring litigants to seek permission before submitting new filings, and community education. The use of filing fees might be an additional remedy. The Task Force recommends that further study should be undertaken to determine the scope of the problem, and if the scope warrants action, new methods for addressing it should be employed so long as they do not bar legitimate access to justice.

13. Family Court Act Section 255 should be amended to expand the court's ability to order relevant governmental agencies to provide appropriate services. Section 255 was intended to provide the court with the ability to order necessary services by the Executive Branch. However, in the fifty years since enactment the Section has been severely limited through case law interpretation and legislative amendment.

RESOURCES FOR INDIVIDUAL LITIGANTS

14. The rule and procedures for assigning counsel to represent adults who are unable to afford counsel should be reviewed and should be applied with greater consistency throughout the state. Several witnesses have testified that there is a wide disparity in applying standards. Further, a party who is denied assigned counsel may not be told the reason for the denial. The Task Force recommends that the Office of Court Administration initiate a collaborative process that would lead to adoption of a statewide protocol for the determination of eligibility for assigned counsel that would be uniform in application, yet provide for an appropriate degree of judicial discretion with due regard to local differences. In so doing, the process should also clarify the relevant Family Court Act provisions and add transparency.

15. Unrepresented litigants need greater assistance and advice. One dominant theme during the Task Force hearings has been the challenges faced by the large number of unrepresented Family Court litigants. Although several programs, such as Legal Information for Families Today (LIFT), provide legal information in some counties, many counties have no consistent source of legal information. Legal information services should be made available statewide. The Family Court should also explore the use of technology to help provide information to unrepresented litigants, such as educational videos and improved website resources. In addition, a program utilizing pro bono attorneys in New York City to provide limited advice assistance may be a model for pro bono expansion throughout the state; however, its effectiveness should be examined. Finally, in general, written communication from the court should be increased, particularly for unrepresented litigants. These materials should include case specific information and timelines as well as a unifying document articulating basic rights and including local variations in rules.

16. The growth of the immigrant population around New York State places unique pressures on the Family Court. The Family Courts are often the first point of contact with the justice system for immigrant families. In New York City the current percentage of the population made up of immigrants and children of immigrants has not been equaled since early in the twentieth century. The growth in immigrant population is not limited to New York City and its suburbs; it is to be found in much of New York State. With this increasing population of immigrants comes a number of needs: ensuring that the immigrant community understands the justice system and in particular the Family Court; ensuring that there are sufficient and well trained interpretive services so that litigants may have their day in court; and ensuring that entry into the courthouse, filing of documents

and receipt of document and orders from the court are understood by those with limited or no English language proficiency.

17. Persons with physical and mental disabilities have special needs in obtaining access to Family Court. The Task Force recommends that Family Court take all steps necessary to ensure that litigants with disabilities receive full physical access to courthouse facilities and the assistance needed for representation in the court's proceedings. There are other disability issues which arise in Family Court that are beyond the scope of this report, including parental incapacity, support payments, custody, special educational and mental health services. The Task Force believes that these other issues of disability should be the subject of a separate, comprehensive study.

18. There is a direct relationship between the availability of representation for low income litigants and adequate additional funding for civil legal services, as well as, for mandated representation whether by assigned counsel or by institutional providers. Further, to meet the need for representation in the Family Court expanded pro bono representation must be part of the picture.

19. Procedures for court-ordered psychological evaluations in child custody and child neglect cases and for reviewing and introducing the resultant forensic reports should be more consistent. The reliance of court-ordered evaluations varies enormously throughout the state. In some counties they are routinely ordered in child custody cases, whereas in other counties they are rarely ordered. The quality of the evaluations and procedures governing their introduction and use also vary widely. Several witnesses have suggested the need for promulgated rules and the adoption of standards to ensure at least minimal uniformity.

20. There is a need to achieve more uniform availability of kinship guardianship and kinship foster care throughout the State.

TECHNOLOGY

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21. The "Paperless Court" should be expanded statewide. Paperless courts are far more efficient and reliable. OCA has been encouraging and assisting this development, which is still in its infancy. Expansion, with the goal of eventual statewide implementation, is one possible Task Force recommendation.

22. Another technological improvement which has great potential is electronic filing. The Legislature has just authorized a pilot project in six counties to be selected by the Office of Court Administration, involving filings in child protective and delinquency proceedings. Ultimately, the Legislature should authorize the court system to implement e-filing in all cases in every county with a presumption that unrepresented litigants would not opt-in.

23. The use of video technology should be explored. The Family Court appears to have an excellent statewide video technology system. The system might be expanded to encompass non-substantive appearances, pre-trial conferences, and translator and interpreter services.

RAISING THE BAR

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24. Family Court judges, quasi-judicial staff, and court attorneys must have expertise in the wide breadth of law relevant to Family Court including juvenile delinquency, child protective, custody and visitation, foster care/permanency and family violence. They should also be conversant in social science concepts and familiar with current thought in child and human development. In order to keep current, these professionals must have access to quality continuing legal education opportunities on the entire spectrum of applicable law. Family Court judges and other legal professionals in Family Court need time outside of court to attend trainings. In the face of tighter budgets, most programming is offered in a webinar format. Family Court judges need opportunities to exchange ideas with their peers at trainings.

25. "Best Practices," innovative improvements in Family Court, are found throughout the State. Examples are cited in court and professional publications. Those who study Family Court, including this Task Force's Subcommittees and witnesses at its hearings, applaud existing best practices and recommend new ones. All matters heard in Family Court are vital, not the least of these are domestic violence matters. The Task Force recommends that a facility be established to provide research, evaluation, education, communication, assistance in implementation and recognition of those who have excelled in developing best practices.

26. The Task Force heard examples of collaborations that benefitted Family Court and those who are involved in its proceedings. When children and their families are affected by courts and the government, there is generally a significant community interest in assisting them. The volunteerism that underlies these efforts is strong in New York. The Task Force recommends that further collaborative projects should be developed between the bench, bar and the community. In keeping with the recommendation in this report about coordinating and expanding best practices, successful collaborations should be widely communicated.

III. TASK FORCE RECOMMENDATIONS

RECOMMENDATION 1: THE NEED FOR MORE JUDGES

The Legislature must authorize new judgeships in Family Court. The New York State Bar Association should make the approval of new judges in Family Court a priority of its legislative agenda. The lack of judges to hear the overwhelming number of cases involving the safety and well-being of children results in long delays, piecemeal trials, uneven access to justice and a public perception that the forum is ineffectual and unworthy of community confidence. In the short term, judges from other courts should be assigned to sit in family courts to ease delay.

Supervising Family Court Judges should assist Family Court Judges in implementing best practices standards of effective case management.

The Significant Need for More Family Court Judges

There are not enough judges to hear the overwhelming number of cases involving New York's children.

Last year, total filings in Family Court in New York State approached three quarters of a million in number.[3] As courts opened for business on January 3, 2012, 26 % of the previous year's filings, or 188,982 filings, were still pending, and had been pending over 180 days.[4]

"Filings" represent children who are the subjects of petitions filed in Family Court. Family Court has jurisdiction over child custody and visitation cases, child and spousal support cases, adoptions, proceedings to determine paternity of children, family offenses, PINS and juvenile delinquency matters, child abuse and neglect cases, termination of parental rights petitions and foster care reviews. The safety and well-being of children are at the heart of these controversies.

There are no filing fees in family court. New York law provides unlimited access to family court to anyone wanting to file a petition.[5] This leads to the characterization of Family Court as a "'pro se' tribunal, i.e., a court whose doors are open to any member of the public who believes he has a justiciable claim against any other individual."[6] As then-State Bar President Stephen P. Younger stated when this Task Force was formed, "to thousands of New Yorkers family courts are the face of our legal system."[7]

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[3]The exact figure for 2011 was 715,738 (Administrators Set to Confront Increased, Widespread Case Logjam, N.Y.L.J., Apr. 10, 2012, at 6.).

[4]*Id.*, April 10, 2012

[5]FCA 216-c (b).

[6]Sobie, Practice Commentaries, McKinney's Cons Laws of NY, Book 229 A, FCA C216-c.

[7]*State Bar President Stephen P. Younger Announces Creation of Family Court Task Force,* Press Release, New York State Bar Association (July 28, 2010).

So, who is responsible for the huge volume of important decisions? Who returns the gaze of thousands of New Yorkers as they pass through the portals of Family Court?

There are 149 Family Court judges in the State of New York. By statute, forty-seven of those judges are authorized for appointment to the New York City Family Court. A handful of additional judges are assigned to New York City Family Court from the New York City Criminal and Civil Court benches.[8] The balance of the 149 judges sits in upstate New York counties. Of that number, forty are three-hat judges who sit as County, Surrogate and Family Court Judges in a particular county and another six serve in both County and Family Court.

In twenty years there has not been a single new Family Court judgeship created in New York City.[9] There have been only four Family Court judgeships created outside the City of New York during the last decade.[10] While the New York State Legislature has not acted to create new Family Court judgeships, it has increased the responsibilities of those men and women already sitting in Family Court.[11] The Legislature enhanced judicial oversight of children in foster care with the 1999 New York Adoption and Safe Families Act and required more frequent hearings in its 2005 New York Permanency Law. The Legislature broadly expanded Family Court jurisdiction in 2008 in family offense matters to include "intimate partners" among those who have recourse to Family Court.

Lengthy delays in hearing and disposing of cases, multiple adjournments as well as the inability to hear cases to conclusion on consecutive days are systemic problems that result from too few judges. The anecdote of one experienced attorney summarizes the issue: "We have a custody case which was commenced in August of 2007. We are on our seventh jurist and no trial has been commenced . . . Each time a new judge is assigned, he or she must be brought up to speed on the increasingly complicated . . . posture of the case and multiple additional court appearances are required. Each party has lost innumerable days from work and, more significantly, the children's lives have been in limbo now for almost five years . . . . [T]he extreme shortage of Family Court judges in New York City . . . is the cause of these problems."[12]

Without an increase in the number of Family Court judges, the system-wide challenges of the court will not be fully or successfully addressed. To abide a system which is shamefully understaffed is to accede to the conclusion that problems of child welfare and family violence are unimportant and unworthy of serious government attention. In the 50th anniversary year of

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[8]At the beginning of 2012 there were 55 judges in total in New York City Family Court.

[9]*New York State Bar Association Task Force on Family Courts, First Dep't., Jan. 11, 2012 (testimony of Hon. Edwina Richardson-Mendelson, Administrative Judge for the New York City Family Courts).*

[10] New York Senate Committee on the Judiciary Report, October 30, 2009. Kids and Families Still Can't Wait: The Urgent Case for New Family Court Judgeships.

[11]*New York State Bar Association Task Force on Family Courts, First Dep't., Jan. 11, 2012(testimony of Jane Golden, Secretary, Council on Children of the NYC Bar Association).*

[12]*New York State Bar Association Task Force on Family Courts, First Dep't., Jan. 11, 2012 (testimony of Karen Simmons, The Children's Law Center).*

Family Court, the institution should not remain a "stepchild" of the court system.[13]

How to Increase the Number of Judges

The number of judges and the method by which attorneys become Family Court judges is defined by the Legislature.[14] Legislative action is required to increase the number of Family Court judges. The Family Court Act would have to be amended to authorize additional judgeships in particular counties outside the City of New York and/or to increase the overall number of judges authorized to be appointed within the City of New York.

One alternative legislative measure would be the creation of additional Court of Claims judgeships. Additional Court of Claims judges, if authorized, would be appointed by the Governor with the consent of the State Senate to nine year terms of office.[15] A Court of Claims judge may be made an acting Supreme Court justice by designation of the Chief Administrator of the Courts upon consultation and agreement with the presiding justice of the appropriate Appellate Division.[16] While Court of Claims judges may not be directly appointed to serve in Family Court, if they are assigned as acting Supreme Court justices they have concurrent jurisdiction over Family Court cases which are then transferred to them.[17]

The route to more judges in Family Court via the Court of Claims is circuitous. Its advantage is flexibility. It creates a pool of judges who may be assigned and reassigned wherever they are needed in the State of New York.

Presently some judges are assigned to Family Court from other courts. As an interim measure, the Task Force recommends that more judges should be assigned to Family Court from other courts until the Legislature acts to authorize additional Family Court judgeships.[18] Outside New York City, judges in County and City Courts may be assigned to Family Court. In New York City, judges in the Supreme, Civil and Criminal Courts could be assigned to Family Court.

The Task Force recommends that the New York Legislature take action to authorize the creation of additional Family Court Judgeships and/or create a category of Court of Claims Judges [19] who

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[13] Chief Judge Sol Wachtler's remark in 1987, "*Family Court is Struggling with Caseload, Experts Say*," NY Times, November 15, 1987.

[14] Family Court Judges in the City of New York are appointed by the mayor of New York for ten year terms (FCA §123). In upstate counties, judges are elected to ten year terms (FCA§ 133). New York law fixes the existing number of Family Court Judges (FCA § 121 [within NY City] and FCA §131 [upstate New York])

[15] NY Ct. Cl. Act 2 (2) (a)

[16] NY Const. Art VI, § 26; *see,* 22 NYCRR Parts 33 and 121.2.

[17] Legislation creating additional Court of Claims judges intended for use in family courts would be similar to what was done in anticipation of the Rockefeller Drug Laws in 1973 when 68 new Court of Claims judgeships were created in anticipation of an avalanche of criminal cases.

[18] The Fund for Modern Courts' 2009 report, A Call to Action-The Crisis in Family Court, p. 9.

[19] See N.Y.CONST. art. VI § 9; see also, N.Y. Jud. Law, Court of Claims Act Art. 2

will be available for designation as acting Supreme Court Justices to hear Family Court matters anywhere in the state.

Increasing Judicial Effectiveness

It is imperative that Administrative Judges and Supervising Family Court Judges work with Family Court judges to develop and implement Best Practice models of case management in individual courtrooms and system wide. This Task Force recommends that Administrative Judges and/or Supervising Family Court Judges receive increased training in effective case management tools and practices and then be given sufficient time off the bench to work with Family Court judges to implement practices system-wide. The lessons of skilled Family Court judges and clerks and of organizations like The National Council of Juvenile and Family Court Judges with success in managing active calendars should be communicated to every Family Court judge. Court administrators should emphasize the importance of effective case management.

The highest levels of court administration in New York State are involved in a Family Court Leadership Team. New York City Family Court has its own Family Court Administrative Judge. The New York Office of Court Administration administers the Child Welfare Court Improvement Project which targets the five boroughs of New York as well as 16 counties outside New York City for judicial training and to pilot projects in child welfare best practices. The work at the top of the administrative pyramid is aimed at developing training opportunities for individual judges to assist them in developing local best practices models. Family Court judges are tied to their courtrooms with heavy calendars. With time at a premium, most Family Court judges are available to attend a fraction of the trainings that are offered. The gravamen of trainings and management models must be communicated to all Family Courts judges.

The Task Force recommends that judicial administrators be given sufficient resources and time to permit Supervising Family Court Judges to work with Family Court Judges to implement Best Practices in case management and calendar control, with an emphasis on tailoring practices to fit local needs.

RECOMMENDATION 2: FUNDING MORE JUDGES AND QUASI-JUDICIAL STAFF

There must be adequate funding to support judicial and quasi-judicial resources for the court. There is a significant role for quasi-judicial personnel in the Family Court system.

Without an adequate number of Family Court judges, the Family Court system is dependent upon Judicial Hearing Officers (JHOs), court attorney/referees and support magistrates for its continued functioning. Quasi-judicial decision-makers are not a substitute for Family Court judges but they play a valuable role in the Family Court system. These positions should be adequately funded and supported.

Judges presently share parts of their workload with Judicial Hearing Officers,[20] court attorney/referees[21] and support magistrates. In 2009 the Office of Court Administration reported that there are eighteen JHOs and forty-two court attorney/referees in New York City Family Court as well as thirty-eight support magistrates. In upstate counties there were sixty-two JHOs, eighty-eighty support magistrates and twenty-seven court attorney/referees at work.

Judicial Hearing Officers may include any persons who have served for at least one year as a judge or justice of a court of the Unified Court System, in other than a town or village court, who are designated by the Chief Administrator of the Courts to act.[22] They may be assigned either to hear and report or to hear and determine cases. They may be assigned to particular cases or to parts of court.[23]

Court attorney/referees are attorneys who hear matters referred to them by a judge with the consent of parties. When consent is not given by the parties, the court attorney/referee is empowered to hear and report a matter for decision to the judge. With parties' consents, the court attorney/referee may hear and decide matters. Typically, they are used in matters involving custody, visitation and permanency hearings. Qualifications for the position of court attorney/referee include admission to the New York State Bar and two years of service as an associate court attorney (which in turn requires six years of service as a court attorney) or eight years of relevant legal experience gained after admission to the New York State Bar.

In the Appellate Division First, Second and Fourth Departments, court attorney/referees are utilized in Family Court. They are not used in Family Court in the Appellate Division Third Department.

The approximately 120 support magistrates employed by the Unified Court System are non-judicial employees who are appointed to a three-year term initially, with the ability to seek reappointment to five-year terms thereafter. Their responsibilities are described in FCA § 439. They are permitted to hear and determine issues of child support, spousal support and paternity, with some limitations. A huge volume of cases heard in Family Court are child support related and heard by support magistrates. As one example in 2009, Albany County Family Court disposed of just over 17,190 matters. Of that number, at least 7,000 matters were child support related, according to OCA figures.

Judicial Hearing Officers are per diem employees of the Unified Court System, paid at the rate of

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[20]Retired Judges who are designated for a one year term which may be extended for one additional year. 22 NYCRR 122.1.

[21]The Appellate Division Third Department includes the counties of Albany, Broome, Chemung, Chenango, Clinton, Columbia, Cortland, Delaware, Essex, Franklin, Fulton, Greene, Hamilton, Madison, Montgomery, Otsego, Rensselaer, St. Lawrence, Saratoga, Schenectady, Schoharie, Schuyler, Sullivan, Tioga, Tompkins, Ulster, Warren and Washington.

[22]22 NYCRR Part 122.

[23] CPLR §§ 4312, 4317.

$300 a day.[24] The use of JHOs was reduced in 2011 due to a major reduction in the state court budget. *The New York Times* reported that "because of high caseloads in many courts, about 300 retired judges have been working for $300 a day conducting hearings. One of the cutbacks was to halt most of those payments, pushing some of those cases back into the system."[25] In the 2012–2013 budget proposal from the Office of Court Administration, a $21,000 increase in appropriations for JHOs in Family Court was sought.[26]

Court attorney/referees and support magistrates are classified as non-judicial employees of the Unified Court System paid at the rate of a Grade 31.[27] Unlike court attorney/referees, 67 percent of the cost of a support magistrate's salary is reimbursed to the State by the Federal government.

The Cost of Back-Office Staff, Training and Security

The cost of employing judicial and quasi-judicial employees cannot be considered in a vacuum. Whether it is a judge, a JHO, a court attorney/referee or a support magistrate presiding at a court appearance, it takes a host of back office support personnel to accept filings, generate summonses, court calendars and notices, and assist the judge in keeping a complete and accurate record of proceedings and enter orders reflecting the work of the court. Court security is a critical component of courthouse operations. Any move to increase funding for judicial and/or quasi-judicial personnel must include adequate funding for the non-judicial staff who support the judge and court operations.

Additionally, the Unified Court System now provides training in the nature of continuing legal educations for its judges, quasi-judicial employees and its court attorneys working in family courts. The cost of the training is included in the court system budget. OCA opened the Judicial Institute on the campus of Pace Law School in White Plains, New York in May, 2003, as a collaboration between the Office of Court Administration and Pace Law School. Continuing education seminars and conferences are produced at the Judicial Institute which also hosts live events. In the present era of austerity, most of the programs at the Judicial Institute are offered in webinar format. The costs of training must be included as a part of the cost of funding additional judges.

RECOMMENDATION 3: CREATION OF "FAMILY COURT MAGISTRATES"

To bring greater efficiency to the administration of cases, and enable families to obtain swifter, more coordinated resolution of their often interlocked matters, the Legislature should establish "Family Court Magistrates," officers who would carry out the duties of, and replace, Court Attorney/Referees, Support Magistrates and Judicial Hearing Officers. Immediate steps should be taken to secure the necessary approvals to authorize existing

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[24] 22 NYCRR 122.8

[25] NY Times, May 16, 2011 , Page A1 *Cuts Could Stall Sluggish Courts At Every Turn*

[26] 2012-2013 OCA Itemized Estimates of the Annual Financial Needs of the Judiciary, Page. 25

[27] 22 NYCRR Part 107.

Support Magistrates to enter consent-custody and visitation orders. This would require the Court System to request that the Executive Branch seeks approval of the Federal government, which funds the Support Magistrate program, to amend the State Plan and require legislative action to amend Section 439 of the Family Court Act.

Background

When the Family Court was established in 1962, the only adjudicatory position was that of judge and every petition involving, *inter alia*, child support, custody and visitation, and child protection, were assigned to and determined by a judge. The purely judge-based model was a continuation of a then century old practice; since the advent of children's laws only judges could adjudicate those issues.

The first employment of non-judge adjudicatory officials dates from 1978, when the position of "hearing examiner" was added. The position implemented 1975 Federal legislation, which imposed stringent requirements to speed the adjudication of child support cases and provided Federal funding to accomplish that goal. Federally funded, the hearing examiners were initially "per diem" officials who heard testimony and reported to the judges. Subsequently, in 1985 the Legislature enacted Family Court Act Section 439. Under Section 439 the hearing examiner position became full-time and the examiners were granted the authority to determine child support, subject to the filing of objections with a judge. The 1985 legislation remains largely in effect, although in 2003 the title "hearing examiner" was changed to "support magistrate." Today, support magistrates are an integral part of the Family Court structure throughout the state.

Support magistrate authority is clearly delineated in Section 439. They may hear and determine child support and determine paternity, unless the paternity case involves the issue of equitable estoppel (only a judge may determine equitable estoppel). Support magistrates cannot hear or determine any other issue including, notably, child custody or visitation. Ergo, when a case involves both custody or visitation and child support, as occurs frequently, the case is bifurcated and the parties must appear before a support magistrate and a judge. When a case is settled, as most are, the stipulation must be presented to and entered by both a support magistrate and a judge, doubling the time, effort, and expense of adjudicating the case.

The second quasi-judicial office which has proliferated in recent years is the court attorney/referee. The New York City Family Court pioneered in the development and use of referees. Faced with an explosion of cases which threatened the viability of the entire court, the administrators turned to CPLR Article 43, which authorizes the appointment of referees in any civil court to hear and determine cases upon the consent of the parties or to hear and report cases without the consent of the parties. Although referees may theoretically hear any case or any aspect of a case (except, perhaps, juvenile delinquency), they were initially employed only in child custody and visitation proceedings. More recently, the enactment of Family Court Act Article 10-A, which mandates permanency hearings for children who have been placed outside their homes, but did not provide the needed resources, led to the assignment of referees to hear and determine permanency. As of 2011, 45 court/attorney referees were employed in New York

City and 27 were employed in the rest to the state (with the exception of the Third Department, which does not use the position).

The third quasi-judicial official is the Judicial Hearing Officer (JHO). JHOs are retired judges who are appointed pursuant to the CPLR on a part-time or full-time basis to hear and determine or to hear and report. Their authority is identical to that of the referee, although the Family Court has employed JHOs in a greater variety of proceedings. Recently, the number of JHOs has been reduced drastically as a result of the budget crisis.

Unlike support magistrates, court attorney/referee and JHO authority is not prescribed in the Family Court Act. The titles are not even mentioned in any of the several hundred FCA sections; a person who read the Act would never suspect that the positions existed. Their appointment is governed by the very general CPLR provisions and their authority is *ad hoc*. Nevertheless, the number of quasi-judicial officials in New York City, including the support magistrates, greatly exceeds the number of judges and they are responsible for determining the large majority of cases filed in the New York City Family Court. Their impact throughout the rest of the state is also very significant.

NYSBA Legislative Proposal

Several years ago, the NYSBA approved a legislative proposal to merge the three quasi-judicial positions by establishing the new position of Family Court Magistrate.[28] Under the proposal, the Family Court Act would be amended to provide specific authority to hear and determine specific cases or aspects of specific cases (such as discovery issues). Their appointment, re-appointment and terms of office would be statutorily delineated. The proposed legislation would maintain separate child support parts, a requirement for Federal reimbursement, but permit the assignment of individual magistrates to the different magistrate parts.

To date, the proposed legislation has not been introduced. The Bar Association should include the proposal for consideration as a legislative priority and seek enactment during the next session of the Legislature.

Consequences of Current Limitations on Authority

The present authority of the support magistrates is strictly limited to a determination of child support. Family Court Act Section 439 stipulates as follows: "Support Magistrates shall not be empowered to hear, determine and grant any relief with respect to … custody, visitation including visitation as a defense … , which shall be referred to a judge." These exclusions (together with several other less controversial exclusions) were apparently legislated to ensure Federal reimbursement, which is available only for child support. The problem is that custody and visitation issues are frequently entwined; child support follows custody as surely as night follows day. Both must be initially determined, while modification and enforcement actions

[28] *The Family Court Magistrate — A Legislative Proposal*, New York State Bar Association Committee on Children and the Law (2003, Revised 2004)

frequently involve the both aspects. The difficulty is outlined in Task Force Member Celia Curtis' report, annexed to this Report as Appendix D.

> [T]he same family seeking to establish [or modify or enforce] custody or visitation along with child support must appear before at least two different adjudicatory officials—and probably make multiple appearances before one or more of them. Even a couple seeking to enter a stipulation regarding child support and one other issue must appear before both a support magistrate and a judge or referee on two different days—again, at least in urban areas—with a corresponding waste of court hours as well as their own time and the possibility of multiple and occasionally conflicting court orders.

Solutions Adopted By Other States

It need not be. Several states have authorized their support magistrates or equivalent federally reimbursed officials to settle and enter consent orders or stipulations encompassing both issues. In California, for example, although the child support officials' primary duties are to establish, enforce or modify child or spousal support, they are authorized to join issue regarding custody, visitation and protective orders. The official may also "[r]efer the parents for mediation of disputed custody or visitation issues," and accept stipulated agreements regarding those matters. [See Cal. Fam. Code §4251]. Only contested custody or visitation issues, or more accurately custody or visitation issues which have not been resolved through settlement or mediation, are referred to a judge or referee. Ergo, in California there are many cases involving custody and visitation along with child support in which the parties never appear before a judge or referee. Other states have implemented similar measures.

In those states which provide expanded authority, the time devoted to resolving custody and visitation is not federally reimbursable (which is the reason why no state permits support magistrates to conduct custody hearings). The time must hence be accounted for, as presumably provided in their respective federally approved state plan. The same would be true if New York amended our plan, and the prohibition on conducting contested custody and visitation hearings would be included in an amended Section 439.

Benefits for Creation of Family Court Magistrates in New York

Support magistrates are currently overburdened and consequently could not undertake additional responsibilities unless their number is increased. Further, since custody and visitation is not federally reimbursable, New York would have to increase the magistrate contingent to maintain the current reimbursement level. To illustrate, assume that entertaining non-contested custody and visitation issues would consume ten percent of total magistrate time. To continue the present reimbursement, as well as to avoid inundating the child support parts, the number of support magistrates would be increased commensurately. An additional eleven magistrates would thus be needed (for purposes of this illustration assume the current number is 108). The eleven new positions would in effect be 100 percent state funded (specifically, 90 percent of the new total cost of 119 positions would be eligible for Federal reimbursement). Unless the state is willing to fund the positions it would make no sense to modify the plan (to modify without augmentation

would sacrifice approximately ten percent of the existing Federal funding stream). However, as several states have concluded, expanding magistrate authority is cost effective. The pressure on the court parts devoted to custody and visitation would be largely eliminated, duplication would be minimized (for example, the time devoted to allocuting the parties and entering orders would be cut in half), and the hours spent by the parties who must now appear before multiple adjudicating officials on different days would be substantially reduced. The number of judges assigned to determine custody and visitation cases might be reduced, and the delay and "piecemeal" trial problems, documented in other sections of this report, could be alleviated. In fact, perhaps in recognition of the above realities, the Federal government has recently issued a request for proposals for Federal grants to "pilot" what the Task Force recommends.

RECOMMENDATION 4: SCREENING CHILD SUPPORT CASES

Preliminary assistance should be established for all case types, particularly including child support cases. Most parties in child support cases are unrepresented and hence unprepared and uninformed when entering a court part. If the parties could appear initially before an officer as provided in some states, such as California, the case might be resolved on consent at that level, or at least the parties' needs and expectations could be clarified. They would also be better prepared and thereby decrease the court time needed to adjudicate the matter. Since the child support program is largely federally funded, the introduction of a preliminary assistance officer would be cost effective.

Need for additional resources in child support cases

Child support and spousal support cases constitute almost forty-five percent of the new filings in the Family Courts across New York State. These cases are heard by the approximately 125 support magistrates throughout the State. On average each support magistrate hears between 2,500 and 3,000 cases annually.[29] "The high volume of cases often results in limited time available for hearings which, in turn, results in numerous and /or lengthy adjournments to allow for final resolution . . . Expanding the number of support magistrates will further the goals of the Federal and State child support programs and will result in timely entry of final orders of support."[30]

Support magistrates can hear and determine paternity cases as well as child and spousal support cases and certain contested paternity cases. The Support Magistrate position was created by New York State in response to federal legislation requiring states to "provide child support enforcement services to recipients of Aid to Families With Dependent Children at no charge and to assist non-welfare families in child support collections at a nominal fee. The federal government committed resources to pay most of the cost of running the programs. . . ."[31] In New York two-thirds of the cost of the support magistrate's position is covered by funds received

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[29] *The Task Force on Family Court Hearing, Fourth Dep't, March 29, 2012*, (statement of John J. Aman at 2).

[30] *The Task Force on Family Court Hearing, Second Dep't, March 22, 2012* (statement of Joette M. Blaustein).

[31] Celia Curtis, Esq., *Quasi-Judicial Officials in Family Court*, Memorandum to NYSBA Task Force on Family Court at 144, infra (2011).

from the federal government.

Close to eighty percent of the litigants who appear in support cases are unrepresented. Other than in contempt cases or paternity matters, there is no categorical right to counsel for the litigants who appear before support magistrates. "[T]his places additional duties upon the court. The petitions must be read to the parties and they must be advised of their rights . . . The court must also inform the litigants of the child support calculations . . . pursuant to the Child Support Standards Act . . . (and the various documents and forms required for) . . . mandatory disclosure. This takes time and it is not easy for litigants to absorb."[32]

With their limited resources, the civil legal services programs in New York are unable to provide more than occasional assistance to either petitioners or respondents in support matters. And there is little ability of the existing pro bono programs to meet the need for advice and assistance.

In addition to the obvious need to increase the number of support magistrates and to provide needed support, including security for the support magistrates' courtrooms, the creation of a preliminary assistance position is recommended. The person would hold a new position or, if in an existing position, such as a court-attorney/referee, would be called upon to serve in a new way. The person would handle all cases, except domestic violence, juvenile delinquency and PINS. The person could mediate as is done currently in many parts of the State. Except for support matters, funding would have to be provided by the State. Similar positions—screening, case manager or evaluator positions— have been created in a variety of jurisdictions including Florida and California.[33]

In Florida, unrepresented parties are assisted by a case manager "to ensure that the court system is used effectively and efficiently, that the judges receive the information needed to make a ruling and that the users of the court are aware of the proper requirements for the procedure in front of the court."[34] Two pilot programs in California offer other means to assist with screening support cases. In one, where at least one of the parties is unrepresented, a Family Court Evaluator is appointed to prepare formulaic support schedules, review paperwork and advise the court whether the matter is ready to proceed and may also assist with the preparation of stipulations and make recommendations to the court. In the other pilot, an attorney mediator is hired by the court to assist in the resolution of child and spousal support disputes with a preference given to cases with unrepresented parties.[35]

In Syracuse and Brooklyn, the Center for Court Innovation operates a Parent Support Program in

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[32] *The Task Force on Family Court Hearing, Second Dep't, March 22, 2012* (statement of Catherine M. Miklitsch at 1-2).

[33] Celia Curtis, Esq., *Quasi-Judicial Officials in Family Court*, Memorandum to NYSBA Task Force on Family Court (2011).

[34] *Id.* at 147.

[35] *Id.* at 146–147.

which resource coordinators assist in resolving cases.[36]

These various models provide New York with some examples to explore to assist the both the court and the parties in support cases. Easing the burdens on the support magistrates created by heavy caseloads would benefit the court and the litigants by speeding the process and reducing adjournments and delays.

RECOMMENDATION 5: MEDIATION

Mediation programs should be greatly strengthened, expanded, and funded. While mediation is inappropriate in certain circumstances, such as matters involving domestic violence, it is especially useful in child custody, child welfare, and child support cases. Mediation is cost effective and saves resources for both the State and counties. Therefore, funding mechanisms should be explored, including, perhaps, a combination of State and local (County Law 722) funding. Expanded use of mediation should be evaluated through pilot programs in several counties having dissimilar characteristics.

One of the most potentially beneficial Family Law initiatives in recent years has been the establishment and expansion of mediation, as well as other alternate dispute resolution programs. Family disputes are especially emotional, difficult to resolve, and often continue for many years. However, they are especially amenable to non-adversarial alternatives to litigation. In the past decade, court mediation programs have proliferated across the country. [See Appendix E, "Mediation in Custody and Dependency/Child Neglect Situations."] Several states maintain statutorily mandated mediation programs; many others maintain programs in which the court may in its discretion refer a case for mediation, or the parties may agree to mediate prior to formal adjudication.

In New York, several Family Courts initiated mediation programs in the past decade. The applicable procedures varied by county. A few utilized professional mediators, while several were staffed by pro bono attorneys assisted by other professionals. In 2005, the Legislature enacted Family Court Act Section 1018, which authorizes mediation services in child protective cases "at any point in the proceedings to further a plan for the child that fosters the child's health, safety, and well-being." In response, the New York City Family Court established the "Child Permanency Mediation Program." A 2011 evaluation of the project concluded that the program had achieved a successful outcome in many cases, as well as significant savings in the number of court appearances and the time needed to resolve disputes.[37]

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[36] "The program links non-custodial parents who are involved in child support cases with a range of employment services and other assistance, including job skills development, vocational training, case management, family life skills classes, continuing education and literacy classes, legal advice and representation, transportation assistance, and child care." http://www.courtinnovation.org/project/parent-support-program. (Last viewed September 10, 2012).

[37] Thoennes and Kaunelis, *New York City Child Permanency Mediation Program Evaluation*, Center for Policy Research (2011).

Unfortunately, most of the still embryonic mediation programs were suspended or cancelled as a result of the current budget crises. As noted in the Permanency Mediation Evaluation "in September 2011, the Permanency Mediation Program was suspended due to budget cuts in the New York City Family Court."[38] Similar programs were suspended throughout the state. Most child custody mediation programs were also suspended, although several have been restarted, at least on a pilot basis.

Judge Lisa Bloch Rodwin of the Erie County Family Court, a strong supporter of mediation, shared her concerns with the Task Force about cuts in mediation at Family Court in her county while praising its successes:

> Our mediation program was cut back tremendously. Mediation works. Mediation allows people to have a voice to establish their future and their relationship with their children's future.
>
> We now only have one mediator left. She has told me that for only $300 a case, they are able to settle the cases. That pulls away the strain on the judges and the court attorney referees. In addition, we have the most successful child permanency mediation program in the state where we have been able to settle incredibly complex termination of parental rights cases with conditional surrenders so that the parents have some access or visitation post-termination, post-adoption with their children, and that, again, relieves us from doing trials.[39]

Judge Gerard E. Maney, Supervising Judge of Family Court in Albany County, was also enthusiastic about mediation:

> [T]o resolve disputes better and in a more efficient basis for the children that are in Family Court . . . has been mediation . . . it leaves the decision-making power of the judge back to the parties themselves, and we find that that is probably the best thing to do . . . [W]e strongly encourage it from the bench and the Bar has really welcomed the idea of mediation.[40]

Although, he cautioned that the use of mediation in domestic violence cases had to be carefully considered: "Some experts will tell you that, you know, mediation is a wonderful thing and it doesn't matter about domestic violence, but we're greatly aware of that and so are the mediators."[41]

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[38] *Id.*

[39] *The Task Force on Family Court Hearing, Fourth Dep't, March 29, 2012* (testimony of Hon. Lisa Bloch Rodwin at Margaret O. Szczur at 13:15–14:8).

[40] *The Task Force on Family Court Hearing, Third Dep't, December 1, 2012,* (testimony of Hon. Gerard E. Maney at 27:13–28:4).

[41] *Id.* at 33:14-33:18.

Several witnesses who appeared before the Task Force were critical of the strict adversary system as applied to custody and child protective proceedings, and advocated mediation as a viable alternative. As noted by one witness, Susan Patnode:

> [T]he zealous representation model inadvertently add[s] fuel to the fires of a family in crisis. At the conclusion of these [custody] cases, attorneys left the courtroom, satisfied that the process had worked. However, the parents and children carried the bitter residue of the process with them, often affecting the partners' relationships until the children reached adulthood.[42]

Ms. Patnode, who has served as a mediator, testified that mediation works because it gives parents a set of skills for resolving difficult issues and these skills enable parents to address future familial issues after the initial case is closed. In other words, mediation tends to not only resolve the immediate case, but decreases the probability that the parties will subsequently seek modification or enforcement. Ergo, in addition to increasing the probability of a healthier post-disposition family environment, mediation substantially reduces the large numbers of post-dispositional modifications and enforcement actions which burden the court.

It is crucial that mediation is reinstituted in all Family Courts, and that the programs are expanded to encompass a large majority of custody or visitation proceedings, as well as many child protective actions, including permanency planning. It should be noted, however, that matters involving family violence must always be screened out of mediation.

Mediation programs should be comprehensive; involving multiple hours per case conducted by appropriately selected and trained mediators, and should be carefully structured and supervised. (Nationally, it has been reported that a mediator must devote perhaps as many as five to ten hours to each custody or child protective matter; visitation disputes may be resolved more quickly). The specific recommendations are outlined in the Task Force's Subcommittee on Resources for Family Court report:

- The success of a mediation program is directly related to the quality of the mediators. Strict standards must be implemented regarding selection, training and certification. Pro bono services without adequate funding to support adherence to the standards would likely lead to sub-par services.
- Children have a vital stake in the custody process and should be afforded the right to participate in mediation, unless very young or otherwise unable to comprehend or assist in the process. In fact, mediation can be a less frightening procedure than a court appearance and may be especially suitable for a child's participation.
- Mediation must be seen as non-threatening to lawyers. Lawyers need to know that their clients' rights will be protected and that clients will not be persuaded to make decisions that are not in their interests or based on a lack of information.

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[42] *The Task Force on Family Court Hearing, Third Dep't, December 1, 2012,* (statement of Susan Patnode at 1–2).

- As mediation is not widely used in New York, community leaders and other involved professionals need to be made aware of mediation as an alternative to litigation. Otherwise, parties in divorce and custody cases may not be receptive to the concept.
- It is important to note that, although there are differing opinions, many feel that there should be no mediation if domestic violence or child abuse/neglect is present. Accordingly, attorney mediators must be well-trained in such matters and vigilant for signs of domestic violence or significant power imbalance between the parties. Careful screening for these issues should be done at intake and repeated later in the process.[43]

One overarching requirement, if mediation is to become the norm, is the need for an effective ongoing funding stream. In the past, several projects have relied primarily on pro bono attorneys, perhaps augmented by court staff. Pro bono individuals may provide an important component, but the volume and comprehensive nature of the process demands ongoing compensated programs. Fortunately, one benefit of mediation is a significant reduction of time consuming and expensive litigation. In fact, by shortening the amount of time involved in a given matter, publicly funded mediation would significantly diminish the time publicly paid attorneys who represent the parties in most child welfare and custody matters need to devote to the cases.

Those states which have developed full-scale programs have also enacted permanent funding mechanisms. For example, California, which mandates mediation for all custody and visitation issues, authorized an increase in fees for issuing a marriage license or a marriage certificate, with the proceeds devoted to the costs of mediation. In Florida, a one dollar filing fee was added to all proceedings (not limited to custody or visitation), coupled with a sliding fee schedule for the parties who engage in mediation (ranging from $60 per hour to $120 per hour). Pennsylvania imposed an additional filing fee for divorce and custody complaints and authorized the court to assess further mediation fees on the parties.

The New York Family Court does not assess filing fees (and the Legislature is unlikely to authorize any other dedicated funding stream, such as added marriage license fees). New York, however, provides representation for indigent parties, funded under County Law Article 18-b,[44] and provides for expert services under County Law Section 722-c. As noted by Ms. Patnode, and endorsed by the Task Force Subcommittee:

> These [mediation] attorneys would not be unpaid volunteers, but compensated under the 18-B program. This should result in a cost savings since currently 18-B pays for multiple lawyers in custody cases—one for each parent and one for the child. If Family Court instituted a mediation referral process at intake, and if even fifty percent of those cases were resolved by mediation, followed by a short court appearance to convert agreements to orders, time and money saved could be significant.[45]

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[43] *The Task Force on Family Court, Subcommittee on Resources for Family Court, Final Report* at 3-4, (June 2012).

[44] Note: Attorneys for Children are not funded through 18-b; they are State-funded.

[45] *Id.* at 3.

The savings might even be greater over the long run. Evaluations have uniformly shown that mediated agreements are more likely to be followed by the parties and result in fewer post-disposition proceedings; hence the court's post-dispositional caseload would gradually decrease, with commensurate savings in 18-b legal fees.

The Legislature need not authorize, and OCA need not immediately implement, a comprehensive statewide program under Article 18-b. Two- or three-year pilot programs, encompassing several counties (including one in New York City) with appropriate evaluation components, would prove (or disprove) the efficacy and financial benefits. The Task Force recommends the establishment of such pilot programs as an important step toward a comprehensive statewide Family Court mediation program.

RECOMMENDATION 6: COURT FACILITIES AND SECURITY

The condition, accessibility and security of each Family Court courthouse are of critical importance not only to the users of the facility but also to the public's perception of the role of the Family Court within the justice system. Emphasis must continue to be placed on bringing all Family Courthouse facilities up to an acceptable standard with regard to space, technology, accessibility, adequate court rooms, waiting rooms, attorney interview space, children's centers and security.

Improvements

There have been major improvements in the courthouses devoted to Family Court in most of New York City and in Erie County. However there are many courthouses that continue to be grossly inadequate. These include the facilities in Nassau County, Staten Island and the Yonkers facility in Westchester County. The Task Force recognizes that courthouse improvements are not solely within the control of the court system. The court system, local bar associations and the New York State Bar Association must work together with the community and other interested local groups to secure the necessary funding and support from county government and elsewhere, for courthouse planning, construction and /or renovation, maintenance and security.

Security

The issues of courthouse, courtroom and waiting room security deserve ongoing and close attention. In commenting on conditions in the Family Courts of New York City, Emily Ruben, Attorney-In-Charge of the Brooklyn Neighborhood Office, Civil Practice, The Legal Aid Society, stated:

> In the CVO (custody, visitation, family offense) specialty parts cases are routinely conferenced by court attorneys in small conference room with no court officer present. Similarly, cases where domestic violence is an issue are frequently tried by referees in small rooms with no court officers present, This places litigants, counsel and court personnel at risk. The impact of this practice on litigants should not be underestimated. It serves as a real deterrent to victims of domestic violence who often would rather forfeit their legal rights and not return to court rather than have to sit next to their batterer in a

> tiny room across the table from a court attorney again.
>
> We recommend that all cases be screened for allegations of domestic violence and, where such allegations exist, conferencing and hearings occur in court rooms with a court officer present . . . [W]e also recommend that referee parts be staffed by court personnel, specifically court officers.[46]

Courtroom security must exist for judges and quasi-judicial personnel. The courtrooms used by many support magistrates are small and may lack court officers or other courtroom security. Support disputes can be quite volatile and the lack of security can be dangerous. Given the heightened emotional state of many litigants who enter the Family Court, security is essential in the waiting rooms and, where there are lines outside the courthouse waiting for security clearance at the entrance to the courthouse, on those lines as well. Additionally, where the issue of domestic violence is present, security becomes even more important. In Erie County, the Family Court has a separate waiting room for victims of domestic violence. To the extent that physical limitations permit, this approach is one that should be incorporated elsewhere.

The overwhelming majority of litigants who enter the Family Court are unrepresented and low income. They often bring their children with them to the court because they have no other childcare alternative. Before the recent budget cutback almost all Family Courts had established staffed children's centers where parents could bring young children to be cared for while the parents were in the courthouse. Unfortunately the budget reductions resulted in the elimination of almost one half of the centers and reduction in the days and hours of operation for many others. The Task Force recommends that every effort be made to restore the children's center in all the courthouses.

RECOMMENDATION 7: AVOIDING PIECEMEAL TRIALS AND OTHER DELAYS

A methodology should be established to avoid or at least greatly minimize "piecemeal" trials or hearings conducted over the course of several months. The Family Court does not routinely conduct continuous trials or hearings. There are several understandable reasons, including calendar congestion, but the result is inefficiency and delay. The Task Force is proposing various mechanisms to address this issue and other impediments that delay the resolution of cases.

Urgent Interim Solution to Delay

There is one issue related to piecemeal trials and hearings and to overall delay that cannot await resolution while various strategies are tested to see if one or more will be effective in preventing future piecemeal trials and delays. At the start of 2012, 188,982 proceedings were pending more than 180 days.[47] The Family Court is a court in which almost all proceedings involve children. This delay is unacceptable in the life of a child.

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[46] *The Task Force on Family Court Hearing, First Dep't, January 11, 2012*, (statement of Emily Ruben at 7-8).

[47] "Administrators Set to Confront Increased, Widespread Case Logjams", NYLJ, April 10, 2012.

Delay needs to be addressed as a priority. To do so, as an interim measure, the Task Force recommends that the Office of Court Administration transfer additional judges to sit in the Family Court and aid in reducing this delay. The New York City Family Court, where most of the delay exists, currently has eight judges from other courts to augment its authorized total of forty-seven but more are needed on an interim basis to further address the delay. Although the need is not as dire in the Family Court outside of New York City, interim transfer of judges needs to be considered in these courts as well. Measures of this sort have been utilized in the past to address the delay in other courts, including the criminal courts, the Supreme Courts and the appellate courts. The current delay in the Family Court warrants this interim solution. Temporarily transferring judges as an interim solution to this delay is also likely to result in some reduction in the number of piecemeal trials. The long term solution—which the Task Force strongly advocates—requires additional funding to raise the number of Family Court judges to a level that ensures a truly functional court.

"Piecemeal" Trials or Hearings

Piecemeal trials or hearings held during short periods of time on a given day on a court calendar and repeatedly rescheduled for additional periods of time for continued testimony with lengthy adjournments between the additional trial or hearing dates, as well as other factors that contribute to repeated adjournments and delay the resolution of Family Court proceedings, are of grave concern to the court and to all who appear before the court.

Over the course of the four hearings conducted by the Task Force, one in each of the State's four Appellate Divisions, almost one third of the witnesses raised the related issues of "piecemeal" trials and inordinate delays as those requiring immediate attention.[48]

Typical of the written and oral testimony submitted by witnesses are the remarks of Emily Ruben, Attorney in Charge, Brooklyn Neighborhood Office, Civil Practice, The Legal Aid Society in commenting on delays in custody, visitation and family offense cases. She stated that delays in these cases:

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[48] Seventeen witnesses testified about piecemeal trials and inordinate delays :December 1, 2011 hearing in Albany, N.Y.: Lillian Moy, Executive Director, The Legal Aid Society of Northeastern New York; January 11, 2012 hearing in New York City, N.Y.: Kara Finck, Managing Attorney Family Defense Practice, Bronx Defenders; Emily Ruben, Attorney in Charge Brooklyn Neighborhood Office, Civil Practice, The Legal Aid Society; Meredith Sopher, Director of Child Welfare Training, Juvenile Rights Practice, The Legal Aid Society; James Purcell, Council of Family and Child Care Agencies; Diane Heggie, Council of Family and Child Care Agencies; Jane Golden, New York City Bar Association Council on Children; Honorable Ronald E. Richter, Commissioner of New York City's Administration for Children's Services; March 22, 2012 hearing in Mineola, Nassau County, N.Y. :Donna England, Treasurer Suffolk County Bar Association; Robert Mangi, Nassau County Bar Association; Jeffrey Blank, Supervisor, Brooklyn Family Defense Project, LSNYC; Anna Maria Diamanti, LSNYC ;Mary Grace Ferone, on behalf of Barbara Finkelstein, Executive Director, Legal Services of the Hudson Valley; March 29, 2012 hearing in Buffalo, ,N.Y.: Pamela Neubeck, Attorneys for Children Unit, Legal Aid Bureau of Buffalo; Robert M. Elardo, Managing Attorney/ CEO Erie County Bar Association Volunteer Lawyers Project; Mindy L. Morranco, Chair Practice and Procedures Committee, Erie County Bar Association; Adele Fine, Supervising Attorney, Monroe County Public Defender; Susan Kay Griffith, Supervising Attorney, Family Court Program, Hiscock Legal Aid Society.

> … have a particularly negative impact on … low incomes litigants … people who work as home health aides or day laborers. If they don't work for a day they don't get paid … When they are going to Family Court over and over again, the whole financial underpinning of the family is … in jeopardy. … (T)he threat of many court appearances over long periods of time can result in victims entering into settlements with their batterers that compromise their safety and the best interests of their children.[49]

Testimony was presented on behalf of Barbara Finkelstein, Executive Director of Legal Services of the Hudson Valley about lengthy adjournments in the Family Courts throughout the Hudson Valley and the hardship that this posed for working clients who had to repeatedly take time from their jobs. This testimony provided a most horrendous example of an immigrant client who was a victim of domestic violence with political asylum status waiting for two years to have her custody, family offense and visitation fact finding completed.[50]

In a similar vein Meredith Sopher, Director of Child Welfare Training, Juvenile Practice, The Legal Aid Society, stated that:

> . . . the implication of delays for the children that the Family Court serves can't be (over)emphasized. And when we talk about delays, we often talk about a practical implication. So we think of children in foster care we think (of a child going) from home to home if a case drags on ... or caseworker turnover … But really the mere passage of time even without all of those things and even when a child is at home is detrimental to that child.[51]

Decisions of the appellate courts provide further evidence across case types of the impact of delays, whether due to piecemeal trials or hearings or other factors, on proceedings in the Family Court.

In a recent decision, *Matter of Joseph A. Fuyset O.*,[52] a child protective proceeding in which the court reversed a finding of neglect, the Second Department commented about the inordinate amount of time to commence and complete a fact finding hearing where it found that the issues were not complicated. The case involved a respondent mother who was mentally unstable and suffering from hallucinations—but there was no indication of neglect and the children were doing well in school and receiving appropriate medical care. The record showed that the Family Court had entered an initial removal order, which was continued, but the fact finding hearing was

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[49] The Task Force on the Family Court Hearing, First Dep't. January 11, 2012 (testimony of Emily Rubin at 260:3-25)

[50] The Task Force on the Family Court Hearing, Second Dep't. March 22, 2012(written submission of Barbara Finkelstein at 7)

[51] The Task Force on the Family Court Hearing, First Dep't. January 11, 2012 Testimony of Meredith Sopher at 268:2-14)

[52] Matter of Joseph A. v. Fausat O., 91 AD3d 638, 937 NYS2d 250 (2d Dept. 2012).

not commenced until seventeen months after the removal with the hearing taking an additional sixteen months. The emotional costs to the family and the financial costs to the state due to the delays were clearly extraordinary.

Delayed or protracted suppression hearings in juvenile delinquency cases have led to reversals by appellate courts, see: *Matter of Jabare B.*53 and *Matter of Paul W.*54 See also *Matter of Felix O. v. Janette M.*, a paternity case which was filed in 2004, decided in 2010 and reversed by the appellate court in 2011.55

Proposed Mechanisms to Address Piecemeal Trials/Hearings and Other Sources of Delay
Dedicated trial parts and continuous trials were part of the solution urged by Donna England in testimony submitted on behalf of the Suffolk County Bar Association:

> A dedicated trial part permits a Judge to schedule a trial for a set time . . . in which the Court would have no other cases to preside over and the attorneys would be able to adjourn any other Court appearances based on the schedules trial . . . Continuous trials are more efficient because they establish the flow of a trial . . . Testimony taken today is not as clear three months from now and as a result a trial spread out over a year repeats testimony over and over again. This is a burden for the Court and the attorneys but also for the litigants who experience emotional turmoil over long periods of time.[56]

Others urged:

- the establishment of special motion calendar times or dates similar to those used in the Supreme Court,[57]
- use of staggered calendars, exclusive trial parts or days, exclusive motion days,
- use of law clerks,
- uniformity of adjournment and rescheduling policies,
- use of scheduling orders early in a case both for attorneys and agencies providing services relating to the case,
- development of a study of practices and time frames for reports and evaluations and a study of timely assignment of counsel ,including attorneys for the child,[58]

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[53] Matter of Jabare B. , 93 AD 3rd 719,939 NYS2d 878 (2d Dept. 2012)

[54] Matter of Paul W. , 96 AD 3rd 426, 945 NYS 2d 684 (1st Dept. 2012)

[55] Matter of Felix O. v. Janette M., 2 2011 NY Slip Op 08757 (2d Dept. 2011)

[56] The Task Force on the Family Court Hearing, Second Dep't. March 22, 2012 (written submission of Donna England at 1)

[57] Testimony of Robert M. Elardo, Managing Attorney/CEO, Erie County Bar Association Volunteer Lawyers Project, Task Force Hearing March 29,2011

[58] Testimony of Mindy L. Marranca, Chairperson of the Erie County Bar Association's Practice and Procedure in Family Court Committee, Task Force Hearing March 29, 2011

- judicial scheduling of cases more cooperatively and rationally through the development of a rational scheduling plan for the entire court through strong judicial leadership, and
- mandated pre-trial diversion of custody modification, custody enforcement and custody violation petitions to mediation.[59]

To assist the court in achieving greater calendar control and reduce the likelihood of delay, the Honorable Ronald E. Richter, Commissioner of the New York City Administration for Children's Services, urged that, "judges be extremely aggressive in managing their calendars . . . should open at 9 am without exception . . . (and judges should be) less patient about applications for adjournment."[60]

In a follow-up letter, Commissioner Richter suggested that "Family Court judges must have the ability to manage their own staff, including their court attorneys, referees and case coordinators . . . (t)o manage large caseloads efficiently."[61]

The recommendations directed to "piecemeal" trials and hearings and other causes of delay contained in the written and oral testimony elicited by the Task Force that have been referred to above may be summarized as follows:

- dedicated trial parts,
- continuous trials,
- special motion times or parts,
- staggered calendars,
- aggressive and uniform adjournment and rescheduling policies,
- development of court-house wide rational scheduling; pre-trial diversion and
- early scheduling orders in all appropriate cases.

In addition to the proposals that surfaced during the hearings, The Task Force's Subcommittee on Court Operations, Cases and Staffing reported in part:

> Although additional funding is clearly part of the solution, there is no single measure that addresses the problem of delays. Rather, a combination of steps can be taken to improve the management of cases and calendars.

Certain courts have developed procedures to improve case management that could be replicated. In some counties, a judge will conduct a single trial over the course of several days while other judges assist by handling calendar calls. Erie County Family Court plans

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[59] Testimony of Adele Fine, Supervising Attorney, Family Court Section, Monroe County Public Defender's Office, Task Force Hearing March 29, 2012.

[60] The Task Force on the Family Court Hearing, First Dep't. January 11, 2012 (Testimony of Ronald E. Richter at 284: 8 -16)

[61] Letter dated February 21, 2012 from Honorable Ronald E, Richter, Commissioner, New York City, Administration for Children's Services.

to hold "engagement conferences" as part of its Best Practices/Court Improvement Project. Onondaga provides a similar procedure in child protective proceedings. In most boroughs of New York City, judges' court attorneys conduct such conferences.[62]

The Subcommittee issued a number of recommendations to address court procedures:

- Family Court should institute mandatory scheduling conferences that result in scheduling orders with dates certain.
- Failure to comply with scheduling orders should result in sanctions.
- Non-continuous trials should be eliminated to the greatest extent possible.
- The use of trial parts, such as are used in Queens County, coupled with the screening of cases for issues that require trial should be expanded to additional jurisdictions.[63]
- Consideration should be given to the use of travelling judges to reduce the delay in certain courts.
- Compliance conferences conducted by court attorneys or court attorney referees should be utilized wherever possible.
- Consideration should be given to utilization of direct testimony by affidavit in appropriate cases. (New York County pilot project)
- In New York City, the Administration for Children's Services conducts "child safety conferences" before filing petitions in court. The result is a substantial reduction in filings. Agencies elsewhere in the state should review the practice and replicate to the extent possible.[64]
- The use of additional types of conferences including pre-filing conferences and the engagement conference used in Erie County, as well as mediation approaches, such as permanency mediation would help free up crowded dockets and should be employed more widely.
- The creation of the position of case coordinator should be considered to ensure that cases progress on a timely basis, verifying, for example, that if reports are ordered they are completed when required. This is a position that is used in the Connecticut court system courts serving children and families.[65]

The recommendations of the Task Force Subcommittee on Operations, Cases and Staffing are amplified by those received from the witnesses at the Task Force's four hearings. These recommendations provide a substantial list of approaches to the issues of "piecemeal" trials and

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[62] Task Force on the Family Court, Subcommittee Report on Court Operations, Cases and Staffing at 118-120.

[63] The Task Force was advised that the Queens dedicated trial part has shown promising results.

[64] It should be noted, however, that conferences should be scheduled so as not to delay the filing of cases until late in the day.

[65] Task Force members the Honorable Sharon Townsend and Susan B. Lindenauer met in Middletown, Connecticut with several members of the Connecticut judiciary and bar, the Honorable Lynda Munro, the Honorable James Bentivenga, the Honorable Christine Keller and Barry Armata, Esq. of the Connecticut Bar Association, to discuss the structure, staffing and procedures utilized in Connecticut's courts serving children and families. Connecticut also uses trained volunteer lawyer volunteers from the Connecticut bar to assess cases on filing so that cases likely to result in lengthy trial are sent directly to designated trial sites and parts.

hearings and other factors contributing to delay in the court.

Other examples also exist. "Case coordinators" have been successfully used in Family court in New York City. Expansion of their use merits consideration.

While we do not suggest that these recommendations and examples provide a complete blueprint to address these issues, we believe they provide a strong outline and are worthy of consideration and further development.

RECOMMENDATION 8: USE OF OUTCOME ASSESSMENTS

The ability to conduct outcome assessments should be enhanced and extended to encompass custody, visitation and family offense proceedings. The Uniform Case Management System currently provides judges and administrators with an effective tool for overseeing Family Court proceedings. The Task Force is exploring ways to enhance the system to provide information on long term outcomes which could provide the means to reduce successive or repeated proceedings and appearances.

Documented outcome assessments provide effective evidence that innovative programs have achieved the results that were sought or that further investment of time and other resources would not be prudent. There have been a significant number of assessments undertaken in relation to child protective programs in large part because of funding available to the Family Court for child protective program innovation and assessment through the Court Improvement Project. The recently issued Report, "New York City Child Permanency Mediation Program Evaluation" is an excellent example of the type of assessment that can be undertaken and then utilized to support continued funding for the mediation program in the New York City Family Court. This type of assessment can also be used to support the development or continuation of similar programs throughout the State.

Assessments of innovative projects undertaken beyond those directed to child protective proceedings have occurred but with far less frequency, although notable ones have been conducted by the Vera Institute,[66] the Governor's Task Force on Transforming Juvenile Justice[67] and the recent, federally required *Child Support Standards Act* assessment.[68] An example of such an assessment is a Report issued in 2010 by Onondaga County entitled "Juvenile Justice, A Decade of Reform." The Report provides data over a five year period regarding use of effective diversion programs for both children who may be considered persons in need of supervision or juvenile delinquents. The data show that the approaches used have reduced the number of children referred to Family Court and also reduced the number of children who are referred who end up in detention. However, resources need to be found and allocated to assessment of more

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[66] *Widening the Lens 2008, A Panoramic view of Juvenile Justice in New York State*, VERA Institute (2008); *Getting Teenagers Back to School*, VERA Institute (2010).

[67] *Charting a New Course, A Blueprint for Transforming Juvenile Justice in New York State*, Governor David Paterson's Task Force on Transforming Juvenile Justice (2009).

[68] *2010 Review of New York Child Support Guidelines;* Center for Policy Research, Denver, Colorado (2010).

innovative programs beyond those in the child protective arena.

An example of an innovative projects directed to focusing on children early in Family Court proceedings and providing mechanisms for resolving parenting disputes is the Children Come First Pilot Project that was initially started in three counties (Kings, urban; Nassau, suburban; and Tompkins, rural). The pilot involved social workers who conducted early case screening and provided parents with information about alternate dispute resolution possibilities and linked parents and children to appropriate services. Parenting coordinators were also available to assist with highly conflicting cases involving parenting issues. Unfortunately the budget crisis in 2011 resulted in layoffs of staff and the program has suffered major cutbacks. Erie County has been able to retain some staff for the program to make assessments for referrals for services and mediation. This Pilot Program, as initially envisioned, involving urban, suburban and rural counties is deserving of funding and if refunded would provide a wealth of data for assessment purposes.

The Task Force recommends that funding be found to continue the Pilot Project and to undertake a full evaluation of the data resulting from the project. Beyond the need to assess the data that result from innovative projects, the Subcommittee on Court Operations, Cases and Staffing recommends that there is a need to analyze case disposition data in all types of cases to determine where there are roadblocks or impediments that have a negative impact on timeliness and the ability to conduct continuous hearings.

RECOMMENDATION 9: OPERATIONS OF COURT CLERKS

There should be greater uniformity in the operations of the court clerks' offices. Practicing in different county Family Courts frequently involves different procedures and practices; even the court clerk office hours vary by county.

Witnesses at the Task Force's hearings reported their concern about inconsistent operational practices at Family Court and its Clerks' offices. For practitioners and the unrepresented, the lack of consistent, standardized practices results in delay, expense and inefficient case-handling.

George E. Reed, Jr., an attorney and Family Court practitioner in White Plains detailed his frustration with inconsistent policies as to accessing and copying records.[69]

Keith Morgenheim, the Supervising Attorney of the Family Unit at Neighborhood Legal Services in Buffalo, spoke of the inability that judges have to obtain records concerning cases in other courts that bear upon a case before them:

> . . . [I]n 2012, it's pretty amazing that Family Court still does not have full access to information concerning related cases in other courts. For example, judges

[69] *The Task Force on Family Court Hearing, First Dep't, January 11, 2012* (testimony of George E. Reed, Jr. at 165:21–167:5).

> cannot readily ascertain in domestic violence cases whether there are related criminal charges pending in city, town, village, or justice courts. Judges often have to reply upon sometimes unreliable statements of the litigants about related cases. Likewise, judges do not have access to a database which would verify and locate an incarcerated party within the state.[70]

However, the New York State Department of Corrections and Community Service database is searchable for those incarcerated in State facilities.[71] And, all jurists have access to the statewide directory violence registry of all Orders of Protection and Temporary Orders of Protection.[72]

Dennis Hawkins, the Executive Director of the Fund for Modern Courts provided examples of practices by clerks that actually barred access to the court:

> Our Task Force [of the Fund for Modern Courts] heard that litigants without legal representation were often turned away even before they file a petition. Many court clerks, those possessing excellent management skills, were described as outstanding with *pro se* litigants. Too many others, however, were described as acting as gatekeepers, disallowing litigants the opportunity to file their petitions on grounds that have little or nothing to do with the jurisdiction of the court. For example one clerk decided to turn away women because they were pregnant.[73]

It would appear that the issue of inconsistent procedures and practices in clerk offices could, in many instances, be resolved with little or no fiscal impact. The task confronting Family Court is to agree upon a common set of protocols that provide consistency, enhance efficiency and promote more uniform access to justice. A statewide, collaborative process could accomplish this.

RECOMMENDATION 10: EXPANDED COURT DAY

The State Bar Association must urge the Legislature to provide adequate funding to permit Family Court to continue the ability to be in session for a full court day, as was the standard in the past.

The State Judiciary budget for Family Court must be adequately funded to permit full court days, as was the standard in the past. Additionally, limited overtime must also be anticipated and included in the budget. Family Court Judges are mandated to hear unscheduled, emergency matters every day including requests for orders of protection and applications by social services

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[70] *The Task Force on Family Court Hearing, Fourth Dep't, March 29, 2012*, (testimony of Keith Morgenheim at 70:12–70:23).

[71] http://www.doccs.ny.gov/Univinq/fpmsovrv.htm (Last viewed September 10, 2012).

[72] Established under Executive Law 221-a, it is maintained cooperatively by the Unified Court System and the Division of State Police and accessible by court and law enforcement personnel.

[73] *The Task Force on Family Court Hearing, First Dep't, January 11, 2012*, (statement of Dennis Hawkins at 3).

officials seeking to remove children from their parents' care. With an endemic shortage of judges, conditions are ripe for hurried, harried decision-making and poor morale among judges and court personnel.

Additionally, if we are to successfully address the issue of piecemeal hearings in Family Court, we must accept that it makes more financial sense to conclude a hearing the first day it is scheduled, than to reschedule to hear ninety more minutes of testimony eight weeks hence because that's when the court has its next available date.

When the Judiciary Budget was cut by $170 million dollars in 2011, one immediate response was to reduce the hours of operation in Family Court. Courts opened at 9:30 A.M. instead of 9:00 A.M. and closed at 4:30 P.M. instead of 5:00 P.M. to avoid overtime costs and maintain core functions in the face of personnel reductions. The net result of the shortened work day was to increase the stresses on a system of justice. Money was allocated in 2012-2013 budget to help alleviate such stresses, but care needs to be taken to ensure that Family Court does not again suffer from a reduction in the hours of court operation.

The Hon. Gerard Maney, Supervising Family Court Judge in the 3rd Judicial District, testified, "[T]o a Family Court Judge, the loss of a half an hour a day is tremendous....[It] is ten hours a month. It is impacting our ability to resolve matters." According to many legal services providers from around the state who testified before this Task Force, the reduction in court hours in a system already struggling to make do without enough judges, has increased the bottleneck at the courthouse. Waits are longer to get into court, to see a judge who is juggling myriad cases to establish a daily calendar priority. Bottleneck means that courts are making "temporary decisions without sufficient information … on the fly with a brief argument … [B]ecause of lengthy backlogs, the temporary orders stay in place and they effectively become final orders because of the passage of time … Real harm is being done … Oftentimes … the client walks away. They can't handle this"[74]

The Judiciary budget has to be sufficient to maintain operations for full court days, as is presently the case for Family Courts, with some limited overtime. The State Bar Association and local Bar Associations need to continue to advocate on behalf of the courts.

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[74]*New York State Bar Association Task Force on Family Courts, Second Dep't., March 22, 2012 (testimony of Anita Diamanti, Director of Family Law and Domestic Violence Unit, Suffolk Legal Services).*

RECOMMENDATION 11: DIVERSITY OF NEW YORK'S FAMILY COURTS

Family Courts cannot be one-size-fits-all operations, but must serve the needs of the communities in which they operate. Legislation to authorize an expanded role for technology in Family Court would benefit litigants, especially in Family Court in rural counties.

Specialty courts feature extensive judicial monitoring of parents' progress in services aimed at restoring the family. Whether and to what degree these courts achieve their mission should be empirically measured. To the extent that the best elements of these courts can be replicated in all Family Courts, they should be.

Rural Courts

In a state as geographically diverse as New York, there are Family Courts and two-hat (Family/ Criminal) or three-hat (Family/Criminal and Surrogate) courts located in rural areas which have unique challenges. Clients, attorneys and service providers may be located many miles from the courthouse.

The Task Force Subcommittee on Resources for Individual Litigants surveyed users of Family Court in various counties. One clear trend was the popularity of internet access to the courts. Do-It-Yourself (DIY) Family Court petition forms are currently available on-line.[75] E-filing is the next step in internet access. The availability of e-filing petitions is in the pilot stage in six courts with limited applicability.[76] The Task Force recommends legislation to permit further pilot projects and the expansion of e-filing authority. This resource would be particularly beneficial in rural areas.

Likewise, legislative authority for the use of video-technology in courts would be useful especially in counties which are geographically large.

Specialty Courts

"Problem-solving courts" or "specialty-courts" have been instituted throughout Family Court in New York State. Included in this category are Family Treatment Courts (i.e. drug courts), Integrated Domestic Violence (IDV) courts, Model Transitional Planning Courts (New York County) among others. The premise is that resolving a petition is not enough, but, rather, the underlying issues that bring a family into court must be addressed in order to achieve stable, permanent outcomes for children. A corollary of this premise is that Family Court judges make better informed decisions for children if they have access to those in their community with expertise and familiarity with issues of substance abuse or domestic violence.

There was testimony at the public hearings raising concerns with specialty courts, including, "the devolution of jurisdictional authority to unelected or unappointed judicial personnel and the

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[75]Http://www.nycourts.gov/courthelp/forms.html#f

[76]2012 N.Y. Laws 184

creation of court parts such as the family treatment part with their own largely unregulated procedures."[77] Efforts are underway in various pilot courts involved in the child welfare Court Improvement Projects across New York State to measure whether outcomes for children in the child welfare arena can be improved, whether foster care stays are shortened and permanent outcomes are achieved sooner with discrete approaches. These evidence-based assessments must be supported.

Funding for specialized court parts, like funding for all public endeavors, has been reduced. Evidence-based assessments are useful to the court system which will seek to retain the best elements of these courts whether or not continued funding for specialty courts exists.

RECOMMENDATION 12: FRIVOLOUS, VEXATIOUS OR REPEATED FILINGS

The issue of frivolous, vexatious or repeated filings was discussed at a Task Force hearing. In most counties, the filings arise where a litigant seeks to harass another or where a litigant does not understand the court and its procedures. Current remedies include requiring litigants to seek permission before submitting new filings, and community education. The use of filing fees might be an additional remedy. The Task Force recommends that further study should be undertaken to determine the scope of the problem, and if the scope warrants action, new methods for addressing it should be employed so long as they did not bar legitimate access to justice.

One Court's Experience

Judge Margaret O. Szczur of the Erie County Family Court spoke about the problem of meritless, repeated filings in her court:

> [T]here are people who file all the time. They file regularly . . . and you have people who file what are really meaningless things, and you take up a lot of people's time to get to the point, because when a case comes in, I don't want to give short shrift to someone because . . . they don't have a lawyer . . . so we give them an opportunity to speak to a lawyer before we decide what we're going to do . . . [T]here are certain circumstances where you can say, "We're not going to take this," but by and large, it's an education situation. People don't understand. They don't know . . . and my position is to make sure that we can get them some legal assistance . . . before we dismiss it outright.[78]

She said that as to those who file with an obvious purpose to annoy or harass the court or other parties one remedy was to prohibit them from refiling without judicial permission, a practice that has been upheld by appellate courts. She added that, while she has the power to impose sanctions

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[77] March 22, 2009 Task Force Hearing Second Dept. Professor Jane Spinak.

[78] *The Task Force on Family Court Hearing, Fourth Dep't, March 29, 2012* (testimony of Margaret O. Szczur at 176:6–177:16)

for frivolous litigation, Family Court in Erie County "generally does not use sanctions" in such situations.

The judge believed that community education was an effective tool:

> You know, you'd be hard pressed to prove that these people are intentionally doing this to harass and annoy. They just don't understand. . . . [I]n the few times that I've made myself available to speak to community organizations, many intelligent, well-educated individuals have no clue what . . . goes on in the court system as a whole or Family Court in particular . . . [C]ommunity education goes a lot farther than almost anything else we can do . . .[79]

The Task Force believes that because Family Court is stretched well beyond its capacity any reasonable, new policy that could help to alleviate the problem must be considered. If Courts throughout the State would benefit from implementing uniform measures to reduce filings that do not further the interests of justice, such steps should be taken after further research to determine the size of the problem and appropriate rules to deal with it. In the interim, we note with approval appellate decisions that have upheld the power of Family Court judges to require those who file frivolous petitions to seek the permission of the court for further filings.[80]

RECOMMENDATION 13: FAMILY COURT ACT SECTION 255

Family Court Act Section 255 should be amended to expand the court's ability to order relevant governmental agencies to provide appropriate services. Section 255 was intended to provide the court with the ability to order necessary services by the Executive Branch. However, in the fifty years since enactment the Section has been severely limited through caselaw interpretation and legislative amendment.

Family Court Act Section 255 should be amended to expand the court's ability to order relevant governmental agencies to provide appropriate services.

As originally enacted in 1962, Family Court Act Section 255 granted the court extensive authority to order executive agencies, ranging from mental health facilities to school districts, to provide appropriate assistance and services to children and families. For example, the court could order special education services for a child who, during the course of a child neglect or other proceeding, had been determined to be in need of such services, or order evaluations and treatment to be performed in public mental health facilities. Social, educational, and health services are frequently needed to resolve a case, but may be unavailable. Psychiatric services may also avoid or minimize the need for a child to be placed.

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[79] *Id.* (testimony of Margaret O. Szczur at 184:7–184:21)

[80] For recent commentary regarding the power of the courts to require frequent filers to obtain permission for future filings and the relationship to Family Court Act 216 (c), see: Sobie et al., *New York Family Practice,* West's New York Practice Series (2012–2013 Supplement).

Unfortunately, the original Section has been amended on several occasions to limit the court's Section 255 authority. Thus the court may today order an educational evaluation, but cannot order the educational services which the evaluation determines to be necessary. Or the court may order a mental health evaluation, but cannot order enrollment of the party in a relevant mental health program.

Several witnesses described the court's frustration with amended Section 255, and advocated that the section be expanded. The Task Force agrees. We do not recommend specific expanded parameters. We have concluded that the section is currently overly narrow and recommend that it be amended to permit the court to order relevant governmental agencies to provide at least limited appropriate and necessary services.

RESOURCES FOR INDIVIDUAL LITIGANTS

RECOMMENDATION 14: ASSIGNED COUNSEL

The rule and procedures for assigning counsel to represent adults who are unable to afford counsel should be reviewed and should be applied with greater consistency throughout the state. Several witnesses have testified that there is a wide disparity in applying standards. Further, a party who is denied assigned counsel may not be told the reason for the denial. The Task Force recommends that the Office of Court Administration initiate a collaborative process that would lead to adoption of a statewide protocol for the determination of eligibility for assigned counsel that would be uniform in application, yet provide for an appropriate degree of judicial discretion with due regard to local differences. In so doing, the process should also clarify the relevant Family Court Act provisions and add transparency.

Sections 261 and 262 of the Family Court Act (FCA)
Section 261 of the FCA is clear as to the importance of counsel for adults in many statutorily specified proceedings: "Persons involved in certain family court proceedings may face the infringements of fundamental interests and rights, including the loss of a child's society and the possibility of criminal charges, and therefore have a constitutional right to counsel in such proceedings."

Section 262 of the FCA requires the Court to assign counsel to those who are unable to afford an attorney. "When such person first appears in court, the judge shall advise such person before proceeding that he or she has the right to be represented by counsel . . . and of the right to have counsel assigned by the court in any case where he or she is financially unable to obtain the same."

Professor Merril Sobie has described the court's duty as non-discretionary for those unable to afford counsel: "Assignment of counsel under § 262 of the Family Court Act is mandatory . . . the court has no choice."[81]

Determinations of Inability to Afford Counsel, Currently

Testimony presented to the Task Force described determinations of inability to afford counsel that were inconsistent from jurisdiction to jurisdiction and in some instances involved a broad use of discretion that did not appear to fulfill statutory intent.

Emily Ruben, Attorney-In-Charge of the Civil Practice at the Brooklyn Neighborhood Office of The Legal Aid Society testified that:

> Some judges will ask a litigant, do you own the house you live in? And if the answer is yes, they say automatically you're not entitled to assigned counsel. * * * The real question should be whether there is actually equity in the real property, and, if so, is the person who seeks appointed counsel able to tap into that equity to pay counsel.[82]

Paul Lupia, Executive Director of the Legal Aid Society of Mid-New York, testified that:

> We've had people approach us who have been denied counsel simply on the basis that they own a home, without any inquiry as to whether or not there's any equity in the home, without any inquiry as to how difficult it may be for somebody to access those funds. The home ownership in and of itself has been enough to deny people counsel.
>
> *We've also seen people denied counsel because of co-ownership of assets, where the co-owner is the opposing party. We've even had cases where the opposing party was a spouse, alleged abusing spouse or an alleged abusing significant other in an Article 8 proceeding, and clearly those assets should not be counted in determining whether or not someone should obtain counsel.* (Emphasis added.)
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> We've also seen young adults denied counsel who were financially dependent, 18 or 21-year-olds, and because the thought is that their parents should be accountable, your parents should be paying for this. We've seen people denied counsel because they don't live in the county where the case is venued.[83]

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[81] Sobie, et al., *New York Family Practice, §14.4, Assignment of Counsel for Adults,* (West's New York Practice Series 1996).

[82] *The Task Force on Family Court Hearing, First Dep't, January 11, 2012,* (testimony of Emily Ruben, at 262:16–263:8).

[83] *The Task Force on Family Court Hearing, Third Dep't, December 1, 2012,* (testimony of Paul Lupia at 44:19–45:19).

"18-B" Attorneys

For those litigants whom the Court determines are unable to afford attorneys, it may assign counsel. One source are those known as "18-B" attorneys ("18-B" because the authority for their appointment arises under Article 18-B of the County Law and the companion provision at Section 262 of the FCA).

While addressing inconsistent standards that are used in assigning counsel is the essence of this recommendation, an additional concern must be noted and that is the stress placed on local budgets by the cost of the 18-B program.

The Task Force does not offer a specific recommendation concerning 18-B funding, except to note that the work of assigned counsel is vital for those litigants who otherwise would be unrepresented and, thus, ample funding is essential. The financial problems faced by one county were discussed at a hearing of the Task Force by Donna England, the Treasurer of the Suffolk County Bar Association:

> . . . this past year our Bar Association has been very involved with the problems with regard to our 18-B program. Many of the attorneys who represent clients in Family Court in Suffolk County are on the 18-B list and they are paid by the funding that the county receives as part of the county attorney's budget. Last June we were advised that the county had run out of money to pay 18-B attorneys. The Bar Association, the executive committee appointed the Task Force and we met with county legislatures ("legislators" Ed.) we met with county attorney's office in order to try to raise funds in order to pay the vouchers of the attorneys who are working in the Family Court every day. They were able to find an additional half a million dollars in order to put that into their budget, however, the budget for 2011 is still about a million dollars short . . . if it is behind for 2011 a million dollars, 2012 starts us out paying a million dollars from its 2012 budget to make up for what wasn't paid in 2011. So that would mean that probably in April they will be out of money and of course the county now is having financial problems on its own.[84]

It should be noted that the need for additional funding for 18-B attorneys also relates to the need for additional funding for civil legal services attorneys, as discussed elsewhere in this report.

Recommendation of the Subcommittee on Resources for Individual Litigants

In its report, the Task Force's Subcommittee on Resources for Individual Litigants addressed the need to substantially modify the manner in which Family Court determines eligibility for assigned counsel. The Subcommittee recommended:

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[84] *The Task Force on Family Court Hearing, Second Dep't, March 22, 2012* (testimony of Donna England at 38:12–39:21).

> Assigned counsel eligibility determinations need to be examined to address inconsistency in their application statewide. There is no cumulative data to explain what occurs in each of the counties but there is a high likelihood that some litigants are denied for reasons that are difficult to quantify uniformly. Criteria for eligibility should be statewide. Actual determinations may nonetheless need to reflect local nuances. Individual courthouses should offer litigants a way to assess whether or not assigned counsel can be an option for them. So-called "portals" could be established and provide forms or online information to serve this purpose. Litigants could use these portals to review county specific information as well as statewide protocols. Information could include the standard of income which qualifies someone for counsel, as well as what kinds of resources, such as houses or cars, are included or excluded from the determination of eligibility. Litigants need to know why they do not qualify for assigned counsel. If they disagree with a denial, they should be told what options they have to either question the denial or seek other avenues for free or low cost representation. OCA could generate best practices for courts to consider in these determinations.[85]

Example of a Uniform Standard

While the Subcommittee did not call for a single statewide standard to be adopted, an example exists where a State agency has done that for determining eligibility for free counsel in civil matters. The Interest on Lawyer Account Fund has established eligibility criteria for the free civil legal assistance that its grantees provide. As State regulations, the criteria are mandatory but are structured to provide discretion and flexibility in application.[86]

The Task Force does not suggest that the use of regulations to enforce a uniform standard for assignment of counsel in Family Court is either necessary or appropriate. Rather, the Task Force calls for initiation of a process, led by the Office of Court Administration, that would establish a greater degree of consistency, predictability and equity in the assignment of counsel through the use of agreed upon standards that jurists could apply in disparate communities. In this regard, it would be particularly useful to explore the creation of an online calculator to determine eligibility for assigned counsel. It could be analogous to that currently used through the Uniform Court Management System for support and maintenance calculations.

The Task Force is mindful that changes in the procedure for assignment of counsel may have fiscal implications. But the Task Force believes that if greater availability of assigned counsel reduced the number of unrepresented in Family Court, the Court is likely to realize savings in both time and money.

However, the most compelling reason for improving the procedure for assignment of counsel is

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[85] *The Task Force on Family Court, Subcommittee on Resources for Individual Litigants, Final Report* at 89-90 infra (July 2012).

[86] See: 21 N. Y. C. R. R. 7000.14.

the need of litigants for attorneys in proceedings that can change lives. Section 261 of the FCA declares the right to counsel to be Constitutional. Procedures for determining access to that right must be of equal stature.

RECOMMENDATION 15: ASSISTANCE FOR UNREPRESENTED LITIGANTS

Unrepresented litigants need greater assistance and advice. One dominant theme during the Task Force hearings has been the challenges faced by the large number of unrepresented Family Court litigants. Although several programs, such as Legal Information for Families Today (LIFT), provide legal information in some counties, many counties have no consistent source of legal information. Legal information services should be made available statewide. The Family Court should also explore the use of technology to help provide information to unrepresented litigants, such as educational videos and improved website resources. In addition, a program utilizing pro bono attorneys in New York City to provide limited advice assistance may be a model for pro bono expansion throughout the state; however, its effectiveness should be examined. Finally, in general, written communication from the court should be increased, particularly for unrepresented litigants. These materials should include case specific information and timelines as well as a unifying document articulating basic rights and including local variations in rules.

The Lack of Representation

A 2011 survey of individuals present in the Family Courts of four counties was conducted by the Task Force's Subcommittee on Resources for Individual Litigants. It found that overwhelming numbers of litigants were unrepresented. The Subcommittee reported that: "Over three-quarters of those surveyed did not have an attorney."[87]

Strikingly, survey respondents had no illusions about the consequences of being unrepresented. The Subcommittee observed: "Those who did not have counsel believed that counsel could make a difference and asked for more availability of attorneys. This echoed the belief expressed by respondents that one has more rights if one has an attorney rather than acting pro se."[88]

Dennis Hawkins, the Executive Director of the Fund for Modern Courts, testified that the Fund found a high number of unrepresented persons through a survey and study that a task force of the Fund reported in 2009.[89]

Similarly, Catherine M. Miklitsch, Support Magistrate at the Rockland County Family Court testified:

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[87] *The Task Force on Family Court, Subcommittee on Resources for Individual Litigants, Final Report* at 86, infra (July 2012).

[88] *Id.* at 88, infra.

[89] *The Task Force on Family Court Hearing, First Dep't, January 11, 2012*, (statement of Dennis Hawkins at 1–3; testimony of Dennis Hawkins at 223:6–223:20).

> Most litigants though appearing before the support magistrate appear without counsel and there are some days when at least one person is self-represented, in every case where there's been an appearance for a party, in the vast majority of cases both parties are unrepresented.[90]

John J. Aman, the Deputy Chief Support Magistrate for all courts outside of New York City and located at the Erie County Family Court, described the dire circumstances of those who appear without representation:

> [T]he self-represented litigants that we have are rarely educated and articulate individuals who come in wanting to represent themselves.
>
> Rather, they're young, they're poor, they're minority. They do not have marketable skills. They don't have an education. They may have had involvement in other courts. They may have a number of children in a number of families, and they have drug, alcohol addiction problems and emotional problems, and almost to a person, they are under tremendous financial pressure. They face eviction, utility shutoffs, inability to provide for their children.[91]

Similarly, in its 2010 report, *The Task Force to Expand Access to Civil Legal Services in New York* reported that a large percent of litigants in Family Court were unrepresented. See Recommendation 18, *infra*, for a fuller discussion of its findings.[92]

Legal Information: Types and Means of Delivery

Although in virtually every instance, a litigant is best served by the representation of skilled counsel, the reality is that such representation is unlikely to be achieved in the foreseeable future. Many will continue to appear without counsel and struggle to present their cases. However, information for them is increasingly available from written materials, interactive forms on the Internet, hotlines and in some cases, on-site individuals.

The Task Force's Subcommittee on Resources for Individual Litigants heard support for this approach from those who were interviewed in its survey:

> Respondents offered suggestions on how to improve court operations. Some suggested that litigants receive more written communication from the courts inside the courtroom. There was frustration that procedures were complicated and hard to follow. There was a belief that if the proceedings were summarized and

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[90] *The Task Force on Family Court Hearing, Second Dep't, March 22, 2012*, (testimony of Catherine M. Miklitsch at 112:8–112:14).

[91] *The Task Force on Family Court Hearing, Fourth Dep't, March 29, 2012* (testimony of John J. Aman at 256:4–256:17).

[92] *The Task Force to Expand Access to Civil Legal Services in New York, Report to the Chief Judge of the State of New York* at 17 (November 2010).

those summaries handed to litigants at the conclusion of appearances that there would be greater understanding of what happened in court that day.[93]

Presently, bar associations, non-profit organizations and the court system provide a degree of information and DIY (Do It Yourself) forms. An incomplete list of examples includes:

- *Introductory Guide to the New York City Family Court* published by the Committee on Family Court and Family Law of the New York City Bar in 2012.

- Written materials in New York City Family Courts provided by LIFT (Legal Information for Families Today). The materials, in multiple languages, are as diverse as *How to Start a Case in Brooklyn Family Court, Orders of Protection, Preparing for the Incarceration of a Loved One, Serving Court Papers* and a *Map of Bronx Family Court*.

- Interactive forms that enable the user to create their own court papers at "LawHelp Interactive" (lawhelpinteractive.org), a project of the non-profit ProBono.net.

- Information and DIY forms on the website of the Unified Court System.

- A form provided by the courts that enables one to testify by telephone or other electronic means under certain circumstances.[94]

- A statewide hotline provided by LIFT on Monday through Friday from 9 a. m. to 5 p. m, (212) 343-1122, in addition to Lift's Email and Chat hotline services.

- A Child Abuse Hotline sponsored by the New York State Central Register for Child Abuse and Maltreatment and the New York State Child Support Helpline.

- Although not focused on Family Court, assistance for unrepresented litigants from the Unified Court System's *New York State Courts Access to Justice Program*.

- In a few courthouses the Unified Court System provides "Help Centers."[95]

These services are vital for the unrepresented. Unfortunately, they are not available to all who need them. The Task Force recommends that assistance such as described here should be increased so that all who are unrepresented in Family Court receive this basic help. The Task Force's Subcommittee on Resources for Individual Litigants stated:

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[93] *The Task Force on Family Court, Subcommittee on Resources for Individual Litigants, Final Report* at 88, infra (July 2012).

[94] *Electronic Testimony Application, Waiver of Personal Appearance and Order, Family Court of the State of New York, County of* _____ (F.C.A. §§ 433, 531-a, 580-316 Form 4-24/ 5-6/UIFSA-1010/2004).

[95] Bronx, Dutchess, Erie, Kings, Nassau, New York, Orange, Putnam, Queens, Richmond, Rockland, Suffolk and Westchester. See: *New York CourtHelp,* www.nycourts.gov/courthelp/helpcenters.html (last visited July 31, 2012).

> Family Court should expand information services and assistance for unrepresented litigants. Specific projects that can help accomplish this goal could include:
>
> a. LIFT's "Education and Information Site" model where an organization staffs a location in the courthouse to provide information, direction, and publications - but not legal advice. . . .
>
> b. A "billboard" of information should be available on a screen as soon as litigants get to the courthouse. . . . [96]

The Subcommittee commented: "OCA has a comprehensive website (www.nycourthelp.gov) that could assist many more litigants if its visibility were increased. OCA can utilize its website to promote more "do it yourself" forms that will help non-represented individuals."[97]

The Subcommittee's recommendation is consistent with the plans of the Chief Administrative Judge's Family Court Advisory and Rules Committee, which reported in January, 2012 that its Forms and Technology Subcommittee:

> . . . will continue its revisions of uniform forms as necessitated by new legislation, including, *inter alia*, legislation regarding destitute children expected to take effect in 2012. It will continue its efforts to simplify the current forms to enhance access to justice for self-represented litigants . . . [98]

Use of Technology

The Subcommittee on Resources for Individual Litigants also recommended greater use of technology to provide information to unrepresented litigants: "Videos which explain certain kinds of cases or procedures, including court terminology, could be expanded and shown on a 'loop' in waiting rooms."[99] Videos should be produced in at least several of the predominant foreign languages spoken by litigants for whom English is at best a second language.[100]

Increased Involvement of Pro Bono Attorneys

The greater use of *pro bono* attorneys as providers of information could offer additional assistance to unrepresented litigants.

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[96] *The Task Force on Family Court, Subcommittee on Resources for Individual Litigants, Final Report* at 88, infra (July 2012).

[97] *Id.* at 89.

[98] *Report of the Family Court Advisory and Rules Committee to the Chief Administrative Judge of the Courts of the State of New York* at 195, New York State Unified Court System (January 2012).

[99] *The Task Force on Family Court, Subcommittee on Resources for Individual Litigants, Final Report* at 88-89, infra (July 2012).

[100] See, e. g., *The Task Force on Family Court Hearing, Second Dep't, March 22, 2012*, (testimony of Catherine M. Miklitsch at 121:3–121:17).

The Subcommittee on Resources for Individual Litigants recommended:

> Targeted pro bono services could be utilized. Pro bono counsel can be situated at courthouses so as to be available to provide advice only, not representation. Local counsel can volunteer to offer individual sessions of at least an hour in length . . . Model programs currently exist that should be evaluated for overall effectiveness and measured for their ability to be replicated statewide.[101]

Dennis Hawkins, Executive Director of the Fund for Modern Courts, reported on the successful use of pro bono attorneys to assist unrepresented litigants in the Family Courts of New York City:

> . . . 286 attorneys, pro bono attorneys, are involved in this program, and the program includes 27 law firms and legal departments from the City of New York. It operates in four of the five boroughs, not Staten Island, but all the others.[102]
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> * * *
>
> The attorneys who come from these law firms spend up to a half an hour with unrepresented litigants trying to get their papers in order, trying to explain to them what it is that they're going to experience and what they have to present before they go into court.[103]

Written Communications from the Court

The Subcommittee on Resources for Individual Litigants also proposed a measure to increase the ability of litigants to navigate through their cases:

> At the end of a court appearance, court staff could provide unrepresented litigants with a check list of what to do and bring for their next court date. In general, written communication to litigants should be increased and include case specific information and time lines. Communication should be provided in multiple languages.[104]

Pamela Scheininger, a Court Attorney Referee in New York County Family Court, testified about the benefits derived from effective communication between the court and attorneys, and by extension, with the parties:

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[101] *The Task Force on Family Court, Subcommittee on Resources for Individual Litigants, Final Report* at 88–89, infra (July 2012).

[102] *The Task Force on Family Court Hearing, First Dep't, January 11, 2012*, (testimony of Dennis Hawkins at 225:13–225:18).

[103] *Id.* (testimony of Dennis Hawkins at 226:17–226:23).

[104] *The Task Force on Family Court, Subcommittee on Resources for Individual Litigants, Final Report* at 89, infra (July 2012).

> When judges and court attorneys partner effectively, cases move seamlessly from one part to another part through coordination of calendars and scheduling and through effective communication about each case utilizing shared calendars, clear court endorsements, phone calls, e-mails and meetings . . . Litigants and counsel can rely on judge and the court attorney referee cooperating to bring a case to its rightful . . . quicker conclusion and a family to the place they need to be.[105]

As an example of the use of e-mail to improve communications in another court, Mindy Marranca, Chairperson of the Erie County Bar Association's Family Court Practice and Procedure Committee testified that the expedited matrimonial part of Supreme Court has made effective use of e-mail to send notices and information from the court to attorneys and clients.[106]

It is clear that provision of assistance, information and improved communications to unrepresented litigants is valuable. Important efforts have been undertaken, but it is the recommendation of the Task Force that much more needs to be done, including ensuring that written communications be phrased in a manner that is understandable by all.

The Subcommittee on Resources for Litigants also recommended that unrepresented litigants be provided with a written checklist of what they are to do and what they must bring to their next court appearance with case specific information and time lines in the language that the litigants understand.[107] See also Mindy L. Marranca, Chairperson, Practice and Procedure Committee, Erie County Bar Association, testimony at the Task Force hearing on March 29, 2012 in Buffalo on the need for greater dissemination of information and education.[108]

RECOMMENDATION 16: IMMIGRANTS

The growth of the immigrant population around New York State places unique pressures on the Family Court. The Family Courts are often the first point of contact with the justice system for immigrant families. In New York City the current percentage of the population made up of immigrants and children of immigrants has not been equaled since early in the twentieth century. The growth in immigrant population is not limited to New York City and its suburbs; it is to be found in much of New York State. With this increasing population of immigrants comes a number of needs: ensuring that the immigrant community understands the justice system and in particular the Family Court; ensuring that there are sufficient and well trained interpretive services so that litigants may have their day in court; and ensuring that entry into the courthouse, filing of documents and receipt of document and orders from the court are understood by those with limited or no

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[105] *The Task Force on Family Court Hearing, First Dep't, January 11, 2012* (testimony of Pamela Scheininger at 280:8–280:24).

[106] *The Task Force on Family Court Hearing, Fourth Dep't, March 29, 2012*, (testimony of Mindy Marranca at 144:1–144:15).

[107] *Id.* at 9.

[108] *The Task Force on Family Court Hearing, Fourth Dep't, March 29, 2012* (statement of Mindy L. Marranca at 7-8).

English language proficiency.

Community Understanding of the Family Court
The Honorable Lisa Bloch Rodwin, Judge of the Family Court in Erie County, testified at the Task Force hearing held in Buffalo on March 29, 2012 that:

> [N]ew residents of our communities are coming into our court system. . . . There are 39 different languages in Buffalo city schools.
>
> We have in Erie County formed a collaborative with the goals of providing assistance to the families, providing education [about] the system. We now have six imams who have completed the training . . . to become a foster parent, because we did not have a single Muslim foster parent, and what was happening . . . was the Muslim children were recanting the abuse that had occurred because they couldn't handle being in a home where they were ridiculed for their clothing, for their religion, for what they ate . . .[109]

Judge Rodwin emphasized the need also to educate the legal community about the intersection between immigration and family law. She said that two major trainings for lawyers had taken place in Buffalo to address these needs. Judge Rodwin also commented about the need to educate immigrant communities and said that she had participated in programs for the Somali and Iraqi communities and was scheduled to make a presentation to the Burmese community.

> Understand that each of you and me, we are seen as the enemy, because in these communities, all they know is that the system takes children, and they don't understand . . . don't speak the language . . . don't know what Family Court is, and they don't know the Constitution. . . . [I]n their country physical . . . discipline (is) accepted. Domestic violence is accepted. And we have an obligation to these members of our community to let them know what . . . cannot be tolerated within our system . . . [W]e have an obligation to be proactive so that they do not end up in Family Court.[110]

In Erie County a resource guide has been developed for the community which has been distributed to agencies working with immigrants and refugees and funding is being sought for translations of the guide into various languages and for the creation of CDs accessible to those who are not literate in any language. Similar efforts are underway elsewhere. These efforts need to be replicated so that all immigrant communities in New York have access to needed information about the Family Court.

Interpretation and Translation
The action plan developed by the Office of Court Administration for all the courts throughout

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[109] *The Task Force on Family Court Hearing, Fourth Dep't, March 29, 2012* (testimony of Lisa Bloch Rodwin at 15:3–15:20).

[110] *Id.* (testimony of Lisa Bloch Rodwin at 16:9–16:22

New York State, *Court Interpreting in New York, A Plan of Action: Moving Forward*[111] is an excellent blueprint for addressing the statewide need for interpretation services. In her testimony at the Task Force hearing in Albany on December 1, 2011, Lillian Moy, Executive Director of the Legal Aid Society of Northeastern New York stated that she was proud that New York State is "really a leader with respect to serving LEP (limited English proficient) clients."[112]

One of the recommendations of the Subcommittee on Resources for Individual Litigants was to fully implement the Interpreting in New York Action Plan in all Family Courts throughout the State. Ideally a qualified interpreter is in the courtroom with the litigant who needs the interpreter but often that is not feasible because of geography and the availability of interpreters in the myriad of languages required. While telephone interpretation through Language Line is often adequate at times it poses serious problems particularly with obscure dialects or limited equipment.[113]

Judge Rodwin described her experiences with the use of interpreters on telephones:

> When you have an interpreter over the phone … [w]e put it on speakerphone … on the litigants table … then I scream from across the room so that the interpreter can hear … [T]he interpreter … (might be) … someone with limited English … [T]hey don't understand the words I'm using … I remember one occasion where the interpreter just said, "Thank you very much, good-bye."[114]

It is critical that the individuals who are used for interpreter services be fully qualified to interpret in the language and dialect being interpreted, that the courtroom be equipped with appropriate technology so that the court, the attorneys and the litigants can easily communicate with the interpreter. The Subcommittee on Individual Litigants recommends that video links be piloted and telephone links evaluated for effectiveness.[115]

Beyond the need for interpretation in the courtroom, there is a need for interpretation services at various locations throughout the courthouse. In her testimony, Barbara Finkelstein, Executive Director of Legal Services of Hudson Valley urged that the Family Courts have signage in multiple languages advising litigants of their right to interpreters,[116] although the Task Force is aware that there is signage in some courts. See, also, Recommendation 6 of the Subcommittee on Resources for Litigants.[117]

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[111] *Court Interpreting in New York, A Plan of Action: Moving Forward*, New York State Unified Court System (June 2011).

[112] *The Task Force on Family Court Hearing, Third Dep't, December 1, 2012* (testimony of Lillian Moy at 69:10–69:11).

[113] *The Task Force on Family Court, Subcommittee on Resources for Individual Litigants, Final Report* at 9 (July 2012).

[114] *The Task Force on Family Court Hearing, Fourth Dep't, March 29, 2012* (testimony of Lisa Bloch Rodwin at 19:5–19:19).

[115] *The Task Force on Family Court, Subcommittee on Resources for Individual Litigants, Final Report* at 9 (July 2012).

[116] *The Task Force on Family Court Hearing, Second Dep't, March 22, 2012*, (statement of Barbara Finkelstein at 6).

[117] *The Task Force on Family Court, Subcommittee on Resources for Individual Litigants, Final Report* at 9 (July 2012).

RECOMMENDATION 17: ACCESS TO FAMILY COURT FOR THOSE WITH PHYSICAL AND MENTAL DISABILITIES

Persons with physical and mental disabilities have special needs in obtaining access to Family Court. The Task Force recommends that Family Court take all steps necessary to ensure that litigants with disabilities receive full physical access to courthouse facilities and the assistance needed for representation in the court's proceedings. There are other disability issues which arise in Family Court that are beyond the scope of this report, including parental incapacity, support payments, custody, special educational and mental health services. The Task Force believes that these other issues of disability should be the subject of a separate, comprehensive study.

Access to Courthouses and Assistance

The Unified Court System endeavors to make courthouses accessible to those with disabilities. It publishes an informational pamphlet, *justiceworks*, which advises that: "The Unified Court System strives to meet the needs of all New Yorkers. Where possible, facilities are being made accessible to persons with physical and developmental disabilities who enter the courts as litigants, witnesses, victims or defendants."[118] It provides contact numbers for individuals who seek more information,[119] and it defines disability.[120]

In a 2011 report, the Empire Justice Center comprehensively reviewed issues affecting persons with disabilities in Family Court. As to physical access, the report noted that the Federal Americans with Disabilities Act (ADA) applies to courthouses and the report commented that the physical arrangements in most Family Courts aided the disabled. But, it questioned whether other types of assistance could not be provided to enhance access:

> . . . The ADA mandates the provision of reasonable accommodations to persons with disabilities to prevent discrimination. Reasonable accommodations are defined as "reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services."
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> * * *
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> Most courthouses in New York now offer accommodations such as wheelchair ramps and braille signage, but it is difficult to determine whether people with psychiatric and other mental disabilities can effectively request and obtain accommodations that would enable them meaningful access to the court system.
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[118] *justiceworks: A Public Guide to Ensuring Access and Equality in the New York State Courts.* New York State Unified Court System (Undated).

[119] *Id.* at 9.

[120] "A disability is a physical or mental impairment that substantially limits one or more of an individual's major life activities, such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working. An individual is also considered disabled if he or she has a record of a physical and/or mental impairment or is regarded as having such an impairment." *Id.* at 8.

> There are several other types of assistance that could meet the accommodation requirements of the ADA. On-site assistance with petitions, supporting documentation, motions, and compliance with court orders would help all pro se litigants and may make the difference between a dismissal and a successful modification for many parties contending with mental disabilities.[121]

Experiences of Practitioners

Amy E. Schwartz of the Empire Justice Center spoke of the difficulty of representing domestic violence clients who had disabilities:

> . . . when you're representing a victim of domestic violence who is deaf or has a disability or who is from the gay and lesbian community, I mean . . . there are so many other layers, so many other cultural issues, things that . . . make representation different for these clients.[122]

In what may be an unusual circumstance, Mary Grace Ferone of Legal Services of the Hudson Valley testified that she had experienced inappropriate behavior from court personnel directed at disabled persons:

> You have court officers yelling at people with disabilities because they are not moving fast enough. This place is suppose(d) to help me and give me relief and be smarter than I am, and be helpful to me and yet you can't see that I'm walking with two canes. There is no, the level of respect that the Family Court gets from just everyone involved is so low.[123]

Persons with disabilities are often unrepresented. As such, recommendations elsewhere in this report concerning informational and other form of assistance for the unrepresented, also apply to those with disabilities. The recommendation presented here concerns the unique needs of those with disabilities and calls for special services to meet their needs.

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[121] Hassberg, *Pro Se Litigants with Disabilities in Family Court, A Proposal for Procedural and Substantive Legal Assistance* at 2, Empire Justice Center (2011).

[122] *The Task Force on Family Court Hearing, Fourth Dep't, March 29, 2012* (testimony of Amy E. Schwartz at 248:8-248:16).

[123] *The Task Force on Family Court Hearing, Second Dep't, March 22, 2012* (testimony of Mary Grace Ferone at 163:24–164:7).

RECOMMENDATION 18: CIVIL LEGAL SERVICES

There is a direct relationship between the availability of representation for low income litigants and adequate additional funding for civil legal services, as well as, for mandated representation whether by assigned counsel or by institutional providers. Further, to meet the need for representation in the Family Court expanded pro bono representation must be part of the picture.

Legal Services for Low-Income Individuals in Family Court

For litigants in Family Court who are fortunate enough to obtain free representation or assistance, some attorneys provide their services pro bono and others are compensated. Compensated attorneys are supported financially by more than one source.

One is the State's "18-B" system of private attorneys—those attorneys only available where there is a Constitutional or statutory right to counsel.[124] These services may also be provided by public defenders or by contract with local legal aid programs. Another is the network of staffed, non-profit legal services organizations that represent low-income people in civil matters. Funding for civil legal services organizations is derived from multiple sources and has never been equal to the need. Funding for criminal representation, while none would call it sufficient, is nevertheless constitutionally mandated and for that reason less unreliable than funding for civil matters.

Civil Legal Services Organizations Lack Adequate Resources

In 2010, *The Task Force to Expand Access to Civil Legal Services in New York* reported that:

> The Family Court statistics are of particular concern. In 611,768 Family Court matters in which assigned counsel is not provided, approximately 74 percent of the litigants are unrepresented. In child support matters in the Family Court in New York City, 93 percent of the parties are completely unrepresented and another 4 to 5 percent had counsel for only part of the case. Effectively, 97 to 98 percent of New Yorkers dealing with child support issues in New York City do so without full benefit of counsel. In child support matters in Family Court outside of New York City, 86 percent of the parties are unrepresented, and another 9 to 11 percent have counsel for only part of the case. (Citations omitted.)
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The Hon. Kathie E. Davidson, Supervising Judge, Family Court, 9th Judicial District, covering Dutchess, Orange, Putnam, Rockland, and Westchester Counties, observed that:

> . . . we often hear the following questions: "judge, I don't even know why I'm here?", then "I cannot afford to take off from work. Can I just get this over with?"

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[124] For a further discussion of 18-B attorneys, see Recommendation 14.

> These very basic constitutional due process questions, of notice and opportunity to be heard, require the Judge to explain the various legal stages, to the unrepresented litigant in five minutes or less, which many of us take a course in law school to understand. These inquiries do not just begin in the courtroom, but they begin at the inception of the filing of the petition. As a result, it requires the entire court staff from the clerk's office, to explain the legal process to the litigants and to help them understand the petition process. (Citations omitted.)[125]

At a Family Court Task Force hearing, Carla Palumbo, Director of the Civil Division of the Legal Aid Society of Rochester, described the unavailability of counsel in her area:

> . . . in Monroe County, there were 3600 family offense petitions that were filed last year, in 2011. Legal Aid was able to represent 641 people. We turned away almost 400 people, some of them for conflict, but many of them because we just didn't have the resources to do the case.[126]

Pro Bono Representation

Pro bono attorney-volunteers are a vital asset in Family Court. But, realistically, they must be seen as only an adjunct to the system of representation. Only greater funding for civil legal services attorneys and expansion of the right to 18-B counsel will make a significant difference.

The Chief Judge's Task Force commented:

> New York attorneys are already providing extraordinary levels of *pro bono* assistance to try to address the crisis of the unrepresented in our courts, but this assistance is not nearly enough.
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> * * *
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> Private lawyers cannot fill the gap in services as the sheer numbers of needy and unrepresented litigants overwhelm the capacity of volunteer lawyers. (Citations omitted.)[127]

For a further discussion of pro bono counsel in Family Court, see Recommendation 15.

As the Subcommittee on Resources for Individual Litigants of this Task Force stated: "OCA and the Legislature should continue to find opportunities to increase funding for civil legal services state wide. Civil legal services is a known, proven, and effective way to provide counsel for

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[125] *The Task Force to Expand Access to Civil Legal Services in New York, Report to the Chief Judge of the State of New York* at 17 (November 2010).

[126] *The Task Force on Family Court Hearing, Fourth Dep't, March 29, 2012,* (testimony of Carla Palumbo at 115:17–115:23).

[127] *The Task Force to Expand Access to Civil Legal Services in New York, Report to the Chief Judge of the State of New York* at 35 (November 2010).

those who cannot afford private counsel."[128]

Pro bono representation should also be increased, although as is often said "pro bono is not free." Additional funding to support the programs that host pro bono attorneys is essential if the number of pro bono attorneys is to be enlarged.

RECOMMENDATION 19: COURT-ORDERED PSYCHOLOGICAL EVALUATIONS

Procedures for court-ordered psychological evaluations in child custody and child neglect cases and for reviewing and introducing the resultant forensic reports should be more consistent. The reliance on court-ordered evaluations varies enormously throughout the state. In some counties they are routinely ordered in child custody cases, whereas in other counties they are rarely ordered. The quality of the evaluations and procedures governing their introduction and use also vary widely. Several witnesses have suggested the need for promulgated rules and the adoption of standards to ensure at least minimal uniformity.

The Need for Adoption of Standards and Procedures for Court-Ordered Psychological Evaluations

The issues that are raised with regard to standards and procedures for court-ordered psychological evaluations are not new. They certainly have been raised in the context of divorce litigation. Indeed, the 2006 report of the Chief Judge's Matrimonial Commission urged the adoption of statewide standards of minimum qualifications of evaluators, as well as requiring that they have training and periodic review.

During the course of the hearings held by the Task Force there was persuasive testimony delivered about the need for more consistency in the use of court-ordered psychological evaluations and the need for developing standards about the credentials of the experts utilized to provide the evaluations. In her testimony at the December 1, 2011 hearing, Elizabeth Schockmel, a forensic psychologist who has provided psychological evaluations for more than two decades in court-ordered evaluations involving children and families and also provided doctoral-level forensic training to graduate students in psychology and served as a faculty member for training provided by the Third Department's Attorney for Children program, commented about the "inequity that exists statewide in the provision of . . . an . . . indispensable service. The completion of . . . balanced and thorough court-ordered psychological evaluation(s) by . . . talented and qualified professional(s).[129]

Dr. Schockmel went on to describe her experience during the decade of the nineties, serving as director of a forensic team in the Albany Family Court, overseeing the completion of hundreds of evaluations in matters of custody, abuse, neglect, terminations of parental rights and other

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[128] *The Task Force on Family Court, Subcommittee on Resources for Individual Litigants, Final Report* at 90, infra (July 2012).

[129] *The Task Force on Family Court Hearing, Third Dep't, December 1, 2012,* (testimony of Elizabeth Schockmel at 76:22–77:4).

matters coming before the Family Court. The team consisted of doctoral level psychologists who were employees of the Albany County Mental Health Center and the evaluations and expert testimony were provided both to the families and the court as a free service of the county. She testified that the county decision to close the Unit was budget-driven and, as a result, families without resources have been denied access to an important service. Dr. Schockmel spoke of the differences in the allocation of funds for forensic services in New York State's four judicial departments and urged consideration be given to the development of regional assessment centers staffed by forensic clinicians who are state employees. Recognizing that there would be fiscal implications, she suggested that fees could be imposed on a sliding scale. In her view establishing such centers would ensure that: "Evaluators statewide would be similarly qualified, trained and supervised and the resulting product . . . would have a degree of consistency county-to-county that does not presently exist."[130]

In a similar vein, the Subcommittee Report on Court Operations, Cases and Staffing urges that the Office of Court Administration consider developing standards for forensic evaluators to eliminate inconsistency.

Another witness, Nancy Erickson, a lawyer with a master's degree in forensic psychology and a member of the NYSBA Children and the Law Committee, expressed profound skepticism about the utility of forensic custody evaluators in part because there is no requirement that custody evaluators have training in "child abuse, intimate partner violence or other adverse childhood experiences."[131] She also noted that while it is possible for a psychologist to obtain post-graduate training in forensic psychology, very few have done so and that she is aware of fewer than 15 psychologists in all of New York State who are diplomates of the American Board of Forensic Psychology.

Our assumption is that while this pessimistic view of evaluations is not be dismissed, at a minimum efforts must be undertaken to establish standards for forensic evaluators on a consistent, statewide basis.

RECOMMENDATION 20: AVAILABILITY OF KINSHIP GUARDIANSHIP AND KINSHIP FOSTER CARE

There is a need to achieve more uniform availability of kinship guardianship and kinship foster care throughout the State.

In New York State, more than one quarter of a million children are cared for by relatives, principally grandparents but also aunts, uncles or older siblings, termed "kinship" care. Less than five percent of these children are in formal foster care arrangements where financial support and

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[130] *The Task Force on Family Court Hearing, Third Dep't, December 1, 2012,* (testimony of Elizabeth Schockmel at 81:7–81:11).

[131] *The Task Force on Family Court Hearings, 2nd Dept.* (written testimony of Nancy Erickson at 7)

services are available.[132] Often the relatives with whom the informally placed children reside lack the financial resources to raise the children who end up in their care.

While the Family Court Act, Section 1017, mandates that there be a search for relatives when children are removed from parental care, observers report that many local social services agencies place children with relatives without making the relatives aware of the possibility of foster care placement which would result in subsidies for the care of the children as well as a variety of services. This highlights the interlink between Family Court and executive agencies when it comes to making appropriate placements, a division of responsibility that can result in problems with achieving best outcomes.

Informal kinship placements (lacking financial support) are far more prevalent outside New York City. For example, a 2012 report, *Diverting Kinship Children from Foster Care*, by the Empire Justice Center and the Catholic Family Center in Rochester found that, while there were more than 8,000 kinship foster placements in New York City, there were fewer than 1,700 placements from outside New York City. Some counties outside New York City had significant kinship foster care placements (Nassau and Orange Counties) but many had kinship foster care placements of five percent or less (including Erie, Monroe and Onondaga).[133]

The Task Force believes that kinship placements with financial support in many instances can best meet the needs of children; consideration should be given to legislation that would facilitate greater use of this option.

TECHNOLOGY

RECOMMENDATION 21: PAPERLESS COURTS

The "Paperless Court" should be expanded statewide. Paperless courts are far more efficient and reliable. OCA has been encouraging and assisting this development, which is still in its infancy. Expansion, with the goal of eventual statewide implementation, is one possible Task Force recommendation.

Family Courts across New York State face a common problem: too many files, too much time spent trying to locate them. Further, the Clerk's Office must deal with daily with volumes of paper that needs to filed, copied, sorted and mailed.

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[132] *The Task Force on Family Court Hearing, Third Dep't, December 1, 2012,* (testimony of Susan Antos at 55:15–55:22).

[133] *Diverting Kinship Children from Foster Care*, NYS Kinship Navigator, Catholic Family Center, Rochester, NY; Empire Justice Center at 1 (June 26, 2012).

However, beginning in 2008 Cortland County Family Court and Westchester County Family Courts began the process of becoming paperless courts.[134] To become paperless, the Family Court Clerk's Office began scanning all original documents and creating digital documents that are stored in the Universal Case Management System (UCMS).[135] New York State Family Courts currently use UCMS, a computer-based tool, to oversee all proceedings.[136] Although access to UCMS in each Court is focused on their specific pending matters, each UCMS user has access to all cases across the state.

Once the paper document is scanned and saved as a digital document, the digital document becomes the original document and the paper is eventually destroyed.[137] Storing documents digitally now replaces the microfilm/microfiche storage of documents.[138]

The creation of digital files in UCMS increases efficiency in a Family Court Clerk's Office tremendously.[139] Once a file is scanned and saved as digital documents in UCMS, anyone in the Family Court Clerk's office is able to review an entire file at any time.[140] Use of the file is not limited to the employee who possesses the paper file.[141] Employees do not need to track down a

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[134] Testimony of Laurie Case, Cortland County Family Court Chief Clerk, *New York State Bar Association Task Force on Family Court Public Hearing* (Dec.11, 2011) and Testimony of James McAllister, Chief Clerk, Westchester County Family Court *New York State Bar Association Task Force on Family Court Public Hearing* (Jan.11, 2012).

[135] Testimony of Laurie Case, Cortland County Family Court Chief Clerk, *New York State Bar Association Task Force on Family Court Public Hearing* (Dec.11, 2011) and Testimony of James McAllister, Chief Clerk, Westchester County Family Court *New York State Bar Association Task Force on Family Court Public Hearing* (Jan.11, 2012).

[136] Carter, *Technology Subcommittee Report*, N.Y.ST. B.A. TASK FORCE ON FAMILY COURT, July 12, 2012.

[137] Testimony of Laurie Case, Cortland County Family Court Chief Clerk, *New York State Bar Association Task Force on Family Court Public Hearing* (Dec.11, 2011) and Testimony of James McAllister, Chief Clerk, Westchester County Family Court *New York State Bar Association Task Force on Family Court Public Hearing* (Jan.11, 2012).

[138] Testimony of James McAllister, Chief Clerk, Westchester County Family Court *New York State Bar Association Task Force on Family Court Public Hearing* (Jan. 11, 2012).

[139] Testimony of Laurie Case, Cortland County Family Court Chief Clerk, *New York State Bar Association Task Force on Family Court Public Hearing* (Dec.11, 2011) and Testimony of James McAllister, Chief Clerk, Westchester County Family Court *New York State Bar Association Task Force on Family Court Public Hearing* (Jan.11, 2012).

[140] Testimony of Laurie Case, Cortland County Family Court Chief Clerk, *New York State Bar Association Task Force on Family Court Public Hearing* (Dec.11, 2011) and Testimony of James McAllister, Chief Clerk, Westchester County Family Court *New York State Bar Association Task Force on Family Court Public Hearing* (Jan.11, 2012).

[141] Testimony of Laurie Case, Cortland County Family Court Chief Clerk, *New York State Bar Association Task Force on Family Court Public Hearing* (Dec.11, 2011) and Testimony of James McAllister, Chief Clerk, Westchester County Family Court *New York State Bar Association Task Force on Family Court Public Hearing* (Jan.11, 2012).

paper file to answer an attorney or litigant's question.[142] Finally, no time is wasted searching for misplaced files or gathering and organizing the Court's calendar.[143]

Further, orders, notices and other document can be sent quickly to attorneys and litigants, if they choose, by email. All can receive the information faster and without hassle.

The success in Cortland County Family Court and Westchester County Family Courts paved the way for other counties to follow. Many counties have already received the equipment to begin scanning and are on their way to becoming a paperless court.

RECOMMENDATION 22: E-FILING

Another technological improvement which has great potential is electronic filing. The Legislature has just authorized a pilot project in six counties to be selected by the Office of Court Administration, involving filings in child protective and delinquency proceedings. Ultimately, the Legislature should authorize the court system to implement e-filing in all cases in every county with a presumption that unrepresented litigants would not opt-in.

To achieve further efficiency, the Family Court Clerk's Office should endeavor to receive filings electronically.

New York State Courts began using e-filing on a very limited basis in 1999.[144] In fact, when e-filing began it was allowed "for a small class of cases in a limited number of venues."[145] However, over the years the Legislature has allowed the expansion of e-filing.[146]

E-filing came to Family Courts in February 2010. At that time, "the New York City Family Court and New York City Administration for Children's Services announced a pilot program for the electronic sharing of all abuse and neglect petitions filed in Family Court, marking the first

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[142] Testimony of Laurie Case, Cortland County Family Court Chief Clerk, *New York State Bar Association Task Force on Family Court Public Hearing* (Dec.11, 2011) and Testimony of James McAllister, Chief Clerk, Westchester County Family Court *New York State Bar Association Task Force on Family Court Public Hearing* (Jan.11, 2012). .

[143] Testimony of Laurie Case, Cortland County Family Court Chief Clerk, *New York State Bar Association Task Force on Family Court Public Hearing* (Dec.11, 2011) and Testimony of James McAllister, Chief Clerk, Westchester County Family Court *New York State Bar Association Task Force on Family Court Public Hearing* (Jan.11, 2012).

[144] Report of the Chief Administrative Judge to the Governor, the Chief Judge, and the Legislature, *Electronic Filing in Family Court Article Three and Article Ten Proceedings* (April 2012) at 5.

[145] Report of the Chief Administrative Judge to the Governor, the Chief Judge, and the Legislature, *Electronic Filing in Family Court Article Three and Article Ten Proceedings* (April 2012) at 5.

[146] Report of the Chief Administrative Judge to the Governor, the Chief Judge, and the Legislature, *Electronic Filing in Family Court Article Three and Article Ten Proceedings* (April 2012) at 5-7.

cooperative effort of its kind to be undertaken in a large urban jurisdiction nationwide.[147] As many as 12,000 petitions have been filed using the e-filing system, as well as many Permanency Hearing Reports.[148]

Recently, the New York State Legislature expanded e-filing to Family Courts. In July 2012, Governor Cuomo signed Chapter 184 of the Laws of 2012 allowing the Chief Administrative Judge to promulgate rules to expand e-filing to all Family Courts.[149] Specifically, the Chief Administrative Judge may promulgate rules to allow consensual e-filing in Family Courts for both "(1) the origination of proceedings within such court and (2) the filing and service of papers in pending proceedings."[150]

The legislation also allows the Chief Administrative Judge to allow up to six counties to create mandatory e-filing programs for juvenile delinquency proceedings commenced pursuant to Article 3 of the Family Court Act and neglect and/or abuse actions commenced pursuant to Article 10 of the Family Court Act.[151] However, before e-filing can become mandatory, all agencies or persons involved consent to the arrangement.[152] For example, the child protective agency and the Article 3 presentment agencies must consent to a mandatory e-filing program, as must the local bar.[153] Finally, there must be exceptions for attorneys or agencies who do not have the technology available to engage in e-filing.[154]

Once e-filing is expanded to more family courts, it seems that its efficiency and usefulness will become apparent to litigants and attorneys alike. The speed in which a Court can receive and process a pleading will allow the staff to process the filing faster and the new filing will get before a judge faster. This is especially important in certain applications made pursuant to Article 3 and Article 10 of the Family Court Act.

However, the need for speedier processing of new filings is not limited to Article 3 and Article 10 actions. For example, the faster a Court can process an emergency application made for

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[147] *Subcommittee on Court Operations, Cases and Staffing Report and Recommendations,* N.Y.ST. B.A. TASK FORCE ON FAMILY COURT, July 12, 2012 (citing Report of the Chief Administrative Judge to the Governor, the Chief Judge, and the Legislature, *Electronic Filing in Family Court Article Three and Article Ten Proceedings (April 2012).*

[148] *Subcommittee on Court Operations, Cases and Staffing Report and Recommendations,* N.Y.ST. B.A. TASK FORCE ON FAMILY COURT, July 12, 2012 (citing Report of the Chief Administrative Judge to the Governor, the Chief Judge, and the Legislature, *Electronic Filing in Family Court Article Three and Article Ten Proceedings (April 2012).*

[149] 2012 N.Y. LAWS 184.

[150] 2012 N.Y. LAWS 184.

[151] 2012 N.Y. LAWS 184.

[152] 2012 N.Y. LAWS 184.

[153] 2012 N.Y. LAWS 184.

[154] 2012 N.Y. LAWS 184.

Temporary Order of Protection pursuant to Article 8 of the Family Court Act, the faster the matter can be heard by a Judge.

Finally, e-filing neatly fits with many counties' Family Court goal of becoming paperless: less paper in means less paper to process.

RECOMMENDATION 23: USE OF VIDEO TECHNOLOGY

The use of video technology should be explored. The Family Court appears to have an excellent statewide video technology system. The system might be expanded to encompass non-substantive appearances, pre-trial conferences, and translator and interpreter services.

Video conferencing is neither new nor unavailable in the courts of New York. But it has not achieved its full potential. Witnesses before the Task Force offered a picture of some of the current uses and possibilities for video conferencing.

James M. McAllister the Family Court Clerk for Westchester County stated:

> Finally, our judges have been called upon from time to time to use videoconferencing to assist with emergency applications in another one of our three court locations. . . . The universal access to all the files without having to concern ourselves with where a physical paper file resides allows any judge to handle any matter regardless of what building they work out of.[155]

Catherine M. Miklitsch, Task Force member and Support Magistrate at the Rockland County Family Court, reported that the use of video conferencing in interstate and international support proceedings was an invaluable tool.[156]

Ms. Miklitsch also addressed the use of video conferencing for interpretation services:

> . . . in some cases what we have done is actually had the interpreter video so everybody is in the courtroom but the interpreter is in the video. That saves. That person may be working as a full-time interpreter in one of the court systems. We are lucky New York City has so many interpreters so that saves cost so they don't have to travel to another county and they can interpret from the location they are in while obviously try to fit us in with their own schedule.[157]

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[155] *The Task Force on Family Court Hearing, First Dep't, January 11, 2012* (testimony of James M. McAllister at 87:2–87:14).

[156] *The Task Force on Family Court Hearing, Second Dep't, March 22, 2012* (testimony of Catherine M. Miklitsch at 121:21–123:6).

[157] *Id.* (testimony of Catherine M. Miklitsch at 117:24–118:11)

Progress in the use of video conferencing in the remote use of interpreters was the subject of a recent report prepared for the Unified Court System:

> Improvements have also been made in the provision of remote interpreting services. While on-site interpreting is generally preferred, in appropriate situations, telephone or video conference interpreting services, delivered by court interpreters who have met the UCS' language skills testing standards and training requirements, are suitable alternative methods to achieve the same goal.

The UCS began a statewide program for remote interpreting in mid-2005. The use of remote interpreting services has grown exponentially, from twelve cases in 2005 to more than 300 in both 2009 and 2010. Many times, the remote interpreter is a UCS employee (staff interpreter), or a per diem who is paid by the court that requests the interpreter, at the standard half- or full-day rate, instead of incurring an interpreter's travel expenses to their (often distant) location, or being faced with delaying a case because they cannot find an interpreter. In addition to the cost factor, remote interpreting through the UCS program ensures that the courts are using interpreters who have met the established testing standards and training requirements. For many courts that do not have a sufficient population from which to draw qualified interpreters, or whose geographic location requires extensive travel time, remote interpreting has become an invaluable tool for meeting the interpreting needs, and for providing access to justice to all, regardless of what language the person may speak.[158]

Laurie Case, the Chief Clerk of the Cortland County Family Court, reported that her court uses video conferencing, but only one set of equipment is available. This requires going to the courtroom where it is located or moving it around. It is nevertheless quite useful. She cited an example:

> Our support magistrate . . . she travels to several counties . . . when she has a first appearance that she needs to do an arraignment in a support matter, her first appearance, she's done it right from that video and they are sitting in Otsego, say, and she is in Cortland and she's done that. She won't do it hearing wise, but she has done it that way for first appearance.[159]

Judge Lisa Bloch Rodman of the Erie County Family Court described the advantages of video conferencing at the Family Justice Center in Buffalo:

> The Family Justice Center . . . is a one-stop shop for victims of domestic violence to meet with a social worker, to get safety planning, to meet with law-enforcement personnel and file charges if they so choose.

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[158] *Court Interpreting in New York, A Plan of Action: Moving Forward* at 6, New York State Unified Court System (June 2011)

[159] *The Task Force on Family Court Hearing, Third Dep't, December 1, 2012,* (testimony of Laurie Case at 141:8–141:20).

> If they want to get an Order of Protection from the Justice Center, there is a video link to a court attorney referee, and they can get an Order of Protection while they sit in the Justice Center with an advocate sitting right next door to them.[160]

A legal services organization's mobile legal office now operates in New York City; it is essentially a van with consultation spaces, and importantly, video conferencing facilities that enable remote conferencing with judges in emergency situations. The "Mobile Legal Help Center," is a project of the New York Legal Assistance Group (NYLAG):

Created through a partnership between NYLAG and the New York State Courts Access to Justice Program, and funded in part by the David Berg Foundation, the 40-foot vehicle helps facilitate convenient provision of advice, legal counseling, and direct representation. Two of the three conference rooms have video capability for remote emergency court proceedings in cases such as unlawful eviction and domestic violence.[161]

In Family Court, opportunities exist for a substantial increase in the use of video conferencing in established settings as well as in new, innovative areas.

RAISING THE BAR

RECOMMENDATION 24: TRAINING

Family Court judges, quasi-judicial staff, and court attorneys must have expertise in the wide breadth of law relevant to Family Court including juvenile delinquency, child protective, custody and visitation, foster care/permanency and family violence. They should also be conversant in social science concepts and familiar with current thought in child and human development. In order to keep current, these professionals must have access to quality continuing legal education opportunities on the entire spectrum of applicable law. Family Court judges and others legal professionals in Family Court need time outside of court to attend trainings. In the face of tighter budgets, most programming is offered in a webinar format. Family Court judges need opportunities to exchange ideas with their peers at trainings.

Family Court Act Section 141 requires that Family Court judges "should also be familiar with areas of learning and practice that often are not supplied by the practice of law."

Pursuant to Rule 17.3 of the Rules of the Chief Judge, judges are required to complete at least twelve hours of Continuing Judicial Education (CJE) credit per year. The Judicial Institute, a

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[160] *The Task Force on Family Court Hearing, Fourth Dep't, March 29, 2012,* (testimony of Lisa Bloch Rodwin at 23:20–24:7).

[161] *Press Release,* New York Legal Assistance Group (January 9, 2012). See also: *Wall Street Journal* (December 15, 2011).

facility opened by the Office of Court Administration on the campus of Pace Law School in White Plains, New York and run in a collaboration with the law school, has CJE programming through summer educational programming, either at in-person seminars or live broadcasts; live broadcast Lunch and Learn programs; and periodic half-day, day-long or multi-day special programs. Live broadcasts may be viewed from the judge's personal computer and/or at group viewing sites located in various courthouses throughout the state. Live broadcast programs are also taped for later viewing and posted on a password-protected website which is accessible both inside and outside the court system. Generally, Family Law programming includes updates on new Family Court legislation and court rules, JD/PINS and child welfare. In addition, the Judicial Institute works in collaboration with the Family Violence Task Force to offer a domestic violence seminar each year. This program is offered to Family and Criminal judges as required by statute.

Rule 17.4 of the Rules of the Chief Judge requires training in domestic violence issues.[162]

The Judicial Institute also provides educational programming for all newly appointed and elected judges through the mandatory New Judge's Seminar. The seminar is generally held during the first week of January of each year and runs for three to five days. It focuses on helping judges transition to their new role as judge and emphasizes the teaching of skill sets unique to judging. In addition, traditional substantive topics for Family Court judges are taught, including custody/visitation, domestic violence, child welfare, juvenile delinquency/PINS and child support. Faculty includes current and retired Family Court judges and court attorney/referees.

The Judicial Institute works with the Chief Administrative Judge's Office to provide mandatory educational programming for Judicial Hearing Officers. In addition, broadcast and online programming offered by the Judicial Institute for Family Court judges is available to JHOs.

Attorneys are required to complete a minimum of twenty-four hours of Continuing Legal Education credit every two years, including four hours of ethics, and the Judicial Institute provides CLE programming to court attorneys and court attorney/referees. This programming is generally offered through a Legal Update program, either at in-person seminars or live broadcasts. In addition, the CJE broadcasts and the "Lunch and Learn" programs are available to court attorneys and court attorney referees, viewed either as live broadcasts or online.

Finally, support magistrates (newly appointed as well as experienced support magistrates) are offered educational programs three to four times per year, either through in-person programs (generally in conjunction with live Legal Update programs), live broadcasts or online programs.

The Office of Court Administration has done an admirable job providing quality legal education

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[162] "Each judge or justice in a court that exercises criminal jurisdiction, including town and village justices, each judge of the Family Court, and each justice of the Supreme Court who regularly handles matrimonial matters shall attend, every two years, a program approved by the Chief Administrator of the Courts addressing issues relating to domestic violence." Section 17.4 (a)

for its judges and other legal personnel. The Judicial Institute opened in 2003 and is the physical manifestation of the court system's commitment to continuing legal education for its judges and other employees.

The number of child welfare training opportunities offered in the 2011 and 2012 calendar years is large.[163] Training in other practice areas is also provided and should be fully available, covering all areas of Family Court practice. Additional training should be offered to Family Court Supervisors and Administrative Judges to develop their basic management and communication skills. Additional training for every Family Court judge dealing with the practical case management and calendar control skills would be helpful. Presently, the only requirement to be a Family Court judge is ten years of admission to the bar. When newly elected to the Family Court bench, even the most highly experienced family law practitioner, struggles with the demands of the structure and pace of the Family Court bench. Judges could benefit from practical skills training and updates.

Additional training merits additional funding, particularly to replace "Webinars" with in-person events.

One final point concerns the physical and mental well-being of the Family Court judges. It is a fast-paced, stressful occupation. Judges give up many of their former social relationships in order to comply with the ethical requirements of their positions. They spend most of their day every day in a single room, listening to other people's problems. The court system ought to have a sufficient budget to afford a professional person or persons who could attend to the judges in a confidential capacity to assist individuals who may be struggling to address physical or mental health issues including depression, substance misuse or abuse and family problems of their own.

RECOMMENDATION 25: BEST PRACTICES FOR FAMILY COURT

"Best Practices," innovative improvements in Family Court, are found throughout the State. Examples are cited in court and professional publications. Those who study Family Court, including this Task Force's Subcommittees and witnesses at its hearings, applaud existing best practices and recommend new ones. All matters heard in Family Court are vital, not the least of these are domestic violence matters. The Task Force recommends that a facility be established to provide research, evaluation, education, communication, assistance in implementation and recognition of those who have excelled in developing best practices.

Organizations That Further Best Practices

Many organizations, public and private, inside and outside the court system are active in developing projects to improve courts generally and Family Courts in particular. A non-exclusive list, in no particular order, includes:

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[163] See Appendix H.

The New York State Permanent Judicial Commission on Justice for Children, established in 1988, addresses the circumstances of children who are involved with the courts. It describes its work as follows:

> At its inception, the Commission predominantly targeted its efforts toward the youngest children before the courts—securing early intervention, establishing a statewide system of Children's Centers in the Courts, improving court proceedings, promoting the healthy development of children in foster care and focusing on the needs of infants involved in child welfare proceedings. In 1994, the New York State Court of Appeals designated the Commission to implement the New York State Court Improvement Project (CIP), a federally funded project to assess and improve foster care, termination of parental rights and adoption proceedings.
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> In all of these endeavors, we have used a systemic methodology composed of convening stakeholders, conducting research, developing pilot projects, creating written materials and tools, presenting trainings and initiating efforts to change policy and practice. Additionally, all of our efforts are premised on the court's authority under state and federal law and consistent with the legal standards for services to children.
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> Since 2006, the Commission expanded its focus to include older youth involved with the courts, focusing particularly on encouraging child and youth participation in their court proceedings and examining juvenile justice issues, including juvenile probation and issues affecting dually adjudicated youth. In addition, the Commission continues to seek to improve the educational outcomes of children in out of home care.[164]

Another project of the Unified Court System is The Child Welfare Court Improvement Project a federally funded initiative that supports the Family Court's mandate to promote the safety, permanence and well-being of abused and neglected children.[165]

The Center for Court Innovation, a public-private partnership between the New York State Unified Court System and the Fund for the City of New York that, among other activities, works to improve the justice system, aid victims and improve public trust in justice. Areas of concentration include Domestic Violence, Families and Children, Juvenile Justice and Youth Courts.[166] One example is found in their report about the Nassau County Model Custody Part described as "a process evaluation of the Children Come First (CCF) Program, a problem solving

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[164] http://www.nycourts.gov/ip/justiceforchildren. (Last viewed August 11, 2012).

[165] See: www.nycourts.gov/ip/cwcip. (Last visited August 11, 2012).

[166] See: www.courtinnovation.org (Last visited August 11, 2012).

matrimonial court piloted in Nassau County, New York. The program seeks to provide a more effective and child-centered response to high conflict divorce cases involving custody issues."[167]

Children Come First projects are not limited to Nassau County. The Eighth Judicial District under the leadership of Hon. Janice M. Rosa, 8th Judicial District Supervising Judge of Matrimonial Matters has launched a pilot project in Erie County "to assist parents in dealing with conflict after separation in order to protect the needs and interests of the children involved."[168]

The New York State Juvenile Justice Steering Committee, a group of leaders from public agencies, private organizations, the courts and the advocacy community, is a coalition that seeks to transform the State's juvenile justice system "into one of the best in the country."[169]
An additional statewide organization that addresses juvenile justice issues is the New York State Juvenile Justice Advisory Group.[170]

An example of innovation in juvenile justice matters at the county level is the work of the Onondaga County Probation Department which reported in 2010 that it had spent a decade creating successful diversion programs for "chronically disobedient youth who have not committed a crime (called persons in need of supervision, or PINS) and youth under 16 who have been arrested." They reported that evidence-based family interventions and therapies had created "significant cost savings for the community."[171]

Domestic Violence
Domestic violence is implicated in many aspects of Family Court operations and decision-making. Sensitivity to the issue at many levels is key. It should be reflected in considering the physical plant of our courtrooms and waiting areas; the availability of on-site child care facilities and staff; the suitability of court spaces for older, adolescent children; behavior of court personnel including judges; the availability of interpreters and specialized staff. Examples provided for the Task Force at the public hearings include:

> •Litigants in family court share a common waiting area in many courthouses.[172] Some Family Courts offer separate waiting areas for victims of domestic violence or the ability

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[167] *Children Come First, A Process Evaluation of the Nassau County Model Custody Part,* The Center for Court Innovation (December 2008).

[168]See: www.nycourts.gov/courts/8jd/children (Last visited August 11, 2012).

[169] *Safe communities Successful Youth: A Shared Vision for the New York State Juvenile Justice System* (July 2011).

[170] See: e. g., *Tough On Crime, Promoting Public Safety By Doing What Works*, New York State Juvenile Justice Advisory Group (December 2010).

[171] *Juvenile Justice, A Decade of Reform*, Onondaga County Department of Probation (July 1, 2010).

[172]Testimony of Emily Ruben, Brooklyn Office of the Civil Practice of the Legal Aid Society, on January 11, 2012 at the Task Force Public Hearing in First Department; Testimony of Lois Schwaber, Director of Legal Services, Nassau County Coalition Against Domestic Violence and Anita Diamante, Director of the Family Law and Domestic Violence Unit of Suffolk Legal Services, on March 22, 2012 at the Task Force Public Hearing, Second Department

to appear by video link to obtain an order of protection.[173] Other courthouses feature long lines at the point of entry. A victim of domestic abuse may encounter his or her abuser as the line to enter the courthouse snakes toward the security apparatus located at the front door or play "elevator roulette" trying to avoid sharing an elevator with a person he or she fears.[174]

•Litigants are often ashamed to find themselves in court. They are unfamiliar with legalese and the court process. Middle class litigants may not be eligible for counsel at public cost. The family court justice system proves daunting and intimidating. Written or other media materials concerning what to expect in court prove helpful as is the presence of domestic violence advocates.[175]

•The supervision part of "supervised visitation" between children and a parent perpetrator of domestic violence requires specialized training for supervisors which is not widely available. Many communities lack an adequate (or any) provider of supervised visitation.[176]

•Immigrant and non-English-speaking respondents may require translated pleadings, orders of protection[177]and do require language assistance in preparing and filing pleadings.[178]

• The movement toward children in court requires safe and adequate facilities for them at court particularly when they are presenting to testify about domestic violence they have experienced at home.[179] Teenagers who are in foster care have different needs than toddlers.[180]

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[173]Testimony of Hon. Lisa Bloch Rodwin, Erie County Family Court Judge and Carla Palumbo, Director of the Civil Division of The Legal Aid Society of Rochester at the Task Force Public Hearing in Fourth Department on March 29, 2012..

[174]Testimony of Allison O'Malley, Safe Journey, and Amy Schwartz, Empire Justice Center, Task Force Public Hearing in Fourth Department on March 29, 2012.

[175]Testimony of Allison O'Malley, Safe Journey, Task Force Public Hearing in Fourth Department on March 29, 2012.

[176]Testimony of Mary Rothwell Davis, Director of Sanctuary for Families and Karen Simmons, Children's Law Center, on January 11, 2012 Public Hearing in First Department

[177]Testimony of Lillian Moy, Executive Director of Legal Aid Society of Northeastern NY, Inc. at the Task Force Public Hearing, Third Department on December 1, 2011

[178]Testimony of Robert Mangi, Attorney, at the Task Force Public Hearing in the Second Department on March 22, 2012.

[179]Written testimony of Betsy Ruslander, Director of Office of Attorneys for Children Program, Third Department submitted in conjunction with the Task Force Public Hearing, Third Department

[180]Testimony of Hon. Douglas Hoffman, Supervising Family Court Judge New York County on January 11, 2012 at Task Force Public Hearing in First Department; Hon. Kathie Davdison, Supervising Family Court Judge, 9th Judicial District; Jim Purcell, CEO of Council of Family and Child Caring Agencies.

•Adolescents are now seeking Orders of Protection and the different approaches of Family Court judges to handling juvenile litigants show the need for implementing consistent procedures.[181]

• A person who has been subjected to domestic violence may be asked to tell his or her story several times to a perfect stranger. The Court must exercise sensitivity with the litigants.[182]

• Community Advisory panels operate in some communities. They are stakeholder panels which meet with court personnel to collaborate and work to improve aspects of the court system as it intersects with services for clients. Various segments of the community are represented in a stakeholder panel. These community panels assist the court in recognizing how and where improvements may be made in court operations. They may be very helpful in addressing operations concerning domestic violence issues and in identifying areas of inadvertent insensitivity.[183]

A Summary of Certain Best Practices Initiatives

Hon. Sharon S. Townsend, Supreme Court Justice, 8th Judicial District, Erie County and Vice-Dean for Family and Matrimonial Matters of the New York State Judicial Institute, recently summarized best practice initiatives in custody–visitation and juvenile justice, including certain of those mentioned above in the description of organizational activity. Judge Townsend said:

> Children Come First Pilot Project: This pilot program was developed to place the emphasis on children early in the court process and provide a framework for resolving parenting disputes expeditiously through appropriate dispute resolution processes, to encourage parents to manage their conflicts with one another in responsible fashion and to develop their own parenting plans to allow children to have a meaningful, safe relationship with both parents. Social workers conduct early case screening which provides parents with information on alternative dispute resolution options, linking children and parents to appropriate services, including, but not limited to counseling services, financial resources, health care resources and domestic violence services in appropriate cases.

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[181]Testimony of Amy Barasch , Executive Direction of NYS Office for the Prevention of Domestic Violence on December 1, 2011 at the Task Force Public Hearing, Third Department concerning the lack of predictability for adolescent petitioners in court. Some Family Courts assign Guardians Ad Litem for adolescents while other courts use Attorneys for Child and others, parents.

[182] Testimony of Carla Palumbo, Director of the Civil Division of The Legal Aid Society of Rochester at the Task Force Public Hearing in Fourth Department on March 29, 2012.

[183]"*Effective Intervention in Domestic Violence and Child Maltreatment Cases: Guidelines for Policy and Practice*", a publication of The National Council of Juvenile and Family Court Judges Family Violence Department, 1999 includes recommendations for community collaborations involving child welfare agencies, domestic violence programs, community members and the courts to enhance cultural sensitivity and promote awareness of community resources and information about the role of the court.

Parenting Coordinators handle the most highly conflicted cases involving parenting issues. This program established a court roster of trained professionals who work with families to insure that parental conflict is minimized on children in cases where the parties are unable or unwilling to work effectively to parent their children.

Originally Children Come First was active in Nassau, Tompkins and Kings Counties but due to the workforce reductions last year during the budget crisis, staff was either transferred or laid off although there are still some referrals to parent coordination (although not a roster), mediation and settlement conferencing in those counties . . .

Family Courts in the 7th Judicial District refer cases to Community Dispute Resolution Centers for early mediation and the 4th Judicial District courts still use a "social worker" to "mediate" custody cases in both Supreme and Family Court. The Community Dispute Resolution Centers continue to be a resource to upstate Family Courts to resolve Custody/Visitation cases despite the cuts.

In the areas of PINS Diversion and Juvenile Delinquency, positive results have been achieved with the support of an emerging continuum of community services that present effective alternatives to residential treatment and other levels of institutional care. This continuum has been funded and developed through collaborative partnerships between some County Departments of Social Services, Mental Health and Probation. The expansion of services has primarily focused on evidence based and emerging practices that have been demonstrated to address the areas of risk that youth in the target population present. Such services include both national evidence based service models such as Multi-Systemic Therapy, Family Functional Therapy, Wraparound Care Coordination, and a Community Monitoring Program and local emerging practice models such as the Shortened Length of Stay Residential Treatment Initiative, and Urgent Access Intensive In-Home Services.

In Nassau and in Monroe Counties, they are increasing the use of probation officers off hours to do risk assessment attendant to the time of arrest to help law enforcement with the initial decision to detain a child or not. Erie County has a model delinquency court and juvenile Treatment Court that has had tremendous impact. Onondaga County has also significantly reduced their numbers of youth in detention and placement over the last few years . . . , as have other counties by implementing these reforms.

The New York State Juvenile Justice Statewide Planning Action Committee is currently working to roll out these reforms on a regional basis and in furtherance of the most recent "Close to Home" initiative that is implemented only in New York City at this time . . .

> Finally, Youth Courts have been implemented in many counties and towns throughout New York State. Former Chief Judge Judith Kaye has championed Youth Courts. They are a viable diversion for low-level first offenders where funding exists to support them . . .[184]

Reports of the Task Force's Subcommittees

Representative of recommendations offered by those who have studied Family Court are those of the Task Force's Subcommittees. These provide recent analysis of best practices and means of achieving them.

The Subcommittee on Resources for Family Court recommended "the formulation of a set of 'Best Practice Standards,' developed jointly by the Supervising Judges, regular Family Court judges and other relevant parties . . . for all areas of Family Court practice implementing consistent, high-quality management procedures statewide and incorporating local practice variations as appropriate." Its specific recommendations included wider use of pre-trial conferencing and advisory committees of agencies and groups that regularly participate in Family Court. [185]

In a general recommendation that accompanied its specific proposals, the Subcommittee on Court Operations, Cases and Staffing recommended the implementation of "Mandatory, normative or simply aspirational standards or best practices for those who are associated with Family Courts . . . accomplished in a collaborative process, involving the bench, bar and client advocates.[186]

The Subcommittee on Resources for Individual Litigants reviewed recent reports and data about best practices to aid unrepresented litigants and recommended greater consistency in determinations of eligibility for assigned counsel and the establishment of a procedure for informing those seeking assigned counsel as to the standards for determinations, their eligibility and their options if denied.[187]

A Witness's Recommendation

The Task Force heard examples of best practices and received recommendations for new best practices. These are discussed in the separate recommendations of this Report although not always labeled as "best practices."

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[184] *E-mail from Sharon S. Townsend to Susan Lindenauer,* (August 1, 2012).

[185] *The Task Force on Family Court, Report of the Subcommittee on Resources for Family Court* at 124, infra (July 2012).

[186] *The Task Force on Family Court, Report of the Subcommittee on Court Operations, Cases and Staffing* at 132, infra (July 2012).

[187] *The Task Force on Family Court, Report of the Subcommittee on Resources for Individual Litigants* at 89-90, infra (July 2012).

Examples of existing best practices were cited by Mindy L. Marranca, Chairperson of the Practice and Procedure Committee of the Erie County Bar, at the Task Force's Fourth Department in Buffalo on March 29, 2012.

Ms. Marranca stated:

> Erie County has been very lucky to be the recipient of many initiatives and pilot projects and programs, the Children Come First program, the mediation program, parent coordination programs. These have gone extremely well and have yielded great results for clients, consumers, and attorneys in Family Court.[188]

She added, however, that budget issues and lack of information sharing and follow-up have hampered best practice initiatives:

> I hear often from attorneys who aren't even aware that the PEACE program, the parenting education program, ended. Well, it ended a long time ago based on state funding cuts, but it's about the dissemination of that information or the follow-up on what is happening with the programs, or we hear of an innovative program in Genesee County, let's say, and then we never hear about what's going to happen again unless someone has taken the initiative to ask about that.
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> OCA and the state system could do a great job educationally to say, "This is what's working, this is the turnout of a program, this is why we decided not to fund this program," so that we as a Bar Association could then either advocate for things and ideas that we think could work for our community and advocate for them to come to our communities or vice versa. And evaluation is certainly important in that.[189]

The many reports, studies and recommendations published in recent years in New York that involve Family Court, and the larger issues of child and family welfare that intersect the court system, are too numerous to list here. They are clear evidence that innovation involving families and courts has long had a home in New York.

The work has been led by dedicated judges, court administrators, bar associations and community groups. And, some of the best work has come out of local, pilot projects. Thus, to continue to support local innovation, it is important to strengthen evaluation and the mechanisms for replication.

Thus, these efforts need support from a central facility in the court system to assist judges and court personnel—who are already stretched to their limits—to develop and implement best

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[188] *The Task Force on Family Court Hearing, Fourth Dep't, March 29, 2012*, (testimony of Mindy Marranca at 147:4–147:10).

[189] *Id.* (Testimony of Mindy Marranca at 147:19–148:14).

practices. Starting with a relatively modest investment, such a facility could help local projects get started, grow and transfer their learning to others.

RECOMMENDATION 26: COLLABORATION

The Task Force heard examples of collaborations that benefitted Family Court and those who are involved in its proceedings. When children and their families are affected by courts and the government, there is generally a significant community interest in assisting them. The volunteerism that underlies these efforts is strong in New York. The Task Force recommends that further collaborative projects should be developed between the bench, bar and the community. In keeping with the recommendation in this report about coordinating and expanding best practices, successful collaborations should be widely communicated.

Examples of Successful and Possible Collaborations

Family Court judges have spearheaded collaborative planning efforts in their communities across New York State for at least the past decade. They invite community stakeholders to meet including social service and mental health departments, lawyers for parents and children, and service providers, public and private. Their aim is to encourage stakeholders to join forces to initiate or expand services or programs necessary for families and children in the community, whether it is in the context of substance abuse, domestic violence or mental illness. These services or programs are created within the community and become available to the Family Court as potential ordered services. The idea of Family Court judges inviting stakeholders to the planning table was promulgated by Judge Judith Kaye's Permanent Judicial Commission on Justice for Children. Its Sharing Success trainings for eight successive years were offered to a Family Court judge from every county in the State along with other community stakeholders. These trainings are an example of both collaboration to accomplish needed services as well as thought provoking continuing education for judges.

In addition, Ronald E. Richter, the Commissioner of the New York City Administration for Children's Services, spoke of the "great collaboration" between New York City Family Court and his agency.[190]

Karen P. Simmons, Executive Director of The Children's Law Center, cited court collaboration with a supervised exchange program.[191]

Prof. Susan Vivian Mangold of SUNY Buffalo Law School called for collaboration between Family Court and law school faculty and students.[192]

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[190] *The Task Force on Family Court Hearing, First Dep't, January 11, 2012*, (testimony of Ronald E. Richter at 202:2–202:5).

[191] *The Task Force on Family Court Hearing, First Dep't, January 11, 2012*, (testimony of Karen P. Simmons at 238:17–239:5).

[192] *The Task Force on Family Court Hearing, Fourth Dep't, March 29, 2012* (testimony of Susan Vivian Mangold at 31:18–34:1).

Carla Palumbo, Director of the Civil Division Legal Aid Society of Rochester, described her organization's collaboration with Alternatives for Battered Women in its representation of the victims of domestic violence to combine legal and support services, a collaboration that dates to 1995.[193]

Also from Rochester, Adele Fine, Supervising Attorney of the Family Court Section of the Monroe County Public Defender's Office, described the multiple collaborative relationships that exist between her office's attorneys, 18-B attorneys and the court:

> Our office is an approved CLE provider, and we provide nuts-and-bolts CLEs to our criminal attorneys. We're going to start, hopefully, doing that this year with our Family Court attorneys, and so we've sort of positioned ourselves to be an attorney training resource not only for our own office and for the conflict defenders but also for the 18-B attorneys in town as well and regionally.
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> The other positive is that having a presence, being named as an organization where people know parent representation is provided, allows us to have a place at various collaboration opportunities, and we have a very active court improvement project team in our county. The Public Defender's office, we have a place at that table. We are present at all the different subcommittee meetings that go on.
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> And so it has given us an opportunity to work with CPS, the department, the judges, gives us some knowledge on a statewide level of what seems to work and what doesn't, and we've actually – in some . . . of the subcommittees in particular, we've done some good work in terms of providing what we think is useful information that was developed collaboratively to meet certain needs, like non-parents who are filing for custody of grandchildren. What do they do in terms of getting financial support?[194]

Mindy L. Marranca, Chairperson of the Practice and Procedure Committee of the Erie County Bar Association, cited various successful programs in Buffalo, such as the Children Come First program, a mediation program and parent coordination programs (described elsewhere in this report) and said that "further collaborations between the Bar and the bench could yield significant initiatives and funding" for additional programs." [195]

Finally, Dennis Hawkins, Executive Director of the Fund for Modern Courts, described a

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[193] *The Task Force on Family Court Hearing, Fourth Dep't, March 29, 2012* (testimony of Carla Palumbo at 113:4–113:15).

[194] *The Task Force on Family Court Hearing, Fourth Dep't, March 29, 2012* (testimony of Adele Fine at 187:15–189:5).

[195] *The Task Force on Family Court Hearing, Fourth Dep't, March 29, 2012* (testimony of Mindy L. Marranca at 147:3–147:16).

collaborative *pro bono* project in New York City that places law firm associates in Family Court in a clinic setting:

> . . . 286 attorneys, pro bono attorneys, are involved in this program, and the program includes 27 law firms and legal departments from the City of New York. It operates in four of the five boroughs, not Staten Island, but all the others. It is not the solution to the problem, but it is a way not to give up and to use some of the legal talent that we have in New York City to assist Family Court litigants. And I suggest also that it could be a model to be used throughout the state, something that we haven't worked on a lot because we wanted to make sure that our support for this particular program, which we call the Family Court Clinic, had success and that we understood how it's administered and how to grow it. [196]

Future Collaborations

The Task Force believes that given the history of fruitful collaborations in the State and the willingness of the bar and community organizations to partner, there are few limits on developing further collaborations. As one example, the Chief Judge's Attorney Emeritus Program can yield new, experienced attorneys to assist on a pro bono basis. What is needed is encouragement, communication about successful models and leadership.

The areas where future projects are needed include more assistance for the unrepresented as a high priority. Also, need exists in areas such as training, simplification of forms, greater assistance for non-native speakers, support services for children and others, spreading best practices, measuring the effectiveness of new projects – perhaps with the aid of law students. These are only examples; more are certainly possible.

Collaboration is alive and well in Family Court. The Task Force urges that the development of more opportunities and the necessary support for them be made available.

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[196] *The Task Force on Family Court Hearing, First Dep't, January 11, 2012*, (testimony of Dennis Hawkins at 225:13–225:5).

IV. SUBCOMMITTEE REPORTS

A. REPORT OF THE SUBCOMMITTEE ON RESOURCES FOR INDIVIDUAL LITIGANTS

Subcommittee on Resources for Individual Litigants
Final Report

Section I: Overview of the subcommittee:

This subcommittee was established to examine what resources are currently available for litigants in Family courts in NYS, both represented by counsel, and unrepresented by counsel and to consider what resources are unavailable but necessary. Specifically, the subcommittee was asked to examine both judicial and non-judicial resources.

The committee at large is comprised of approximately thirty-five members including judges, court employees, private practitioners, legal services providers, academicians, and agencies from diverse geographical areas in the State of New York. The sub-committee is a smaller committee comprised primarily of attorneys in different geographical areas in the state.

The issues were discussed within the sub-committee as well as with the entire committee. Sub-committee meetings were held via telephone conferences.

The kinds of proceedings considered were primarily: custody/visitation, orders of protection, and child support cases. The subcommittee recognizes that whether or not litigants in these proceedings have counsel is often determined by statute and income: The parties in custody/ visitation cases are entitled to assigned counsel based upon their incomes. The Respondents in cases involving orders of protection are entitled to assigned counsel. The parties in child support cases are not entitled to assigned counsel except for Respondents in cases of violation of support orders or enforcement of judgments of divorce.

Section II: Information Gathering

The Resources for Individual Litigants Subcommittee gathered information in a variety of ways. Our Subcommittee Meetings were the forum where information was discussed and shared. Aside from Subcommittee members' own expertise and experiences with New York Family Courts, the Subcommittee Members met with Task Force colleagues who were practitioners and judges and conducted a survey in the Queens, Saratoga, Wayne and Monroe Family Courts. This section will discuss how we gathered information.

A. Subcommittee Meetings

The Resources for Individual Litigants Subcommittee was tasked with thinking about how to make courts more user friendly for individuals without counsel. We decided to address two questions: (1) How to find resources for those individuals who do not have a right to counsel and (2) For those who do have a right to counsel, how were they assigned counsel? What was the standard for indigence that Family Courts across the state were applying?

In order to answer these questions, we knew that we had to gather data. To begin, we reviewed information that already existed. Some of the data, reports and testimony we reviewed include the testimony of Judge Fern Fisher in the transcript of the Second Department's Civil Legal Services Hearing, "Best Practices for Court Help Centers and Programs to Assist Unrepresented Litigants," and "Access to Justice: NY State Courts" by the New York State Courts Access to Justice Program (2010), Study by the Spangenberg Group (2006), "Justice Denied" by Voices of Women Organizing Project and the Human Rights Project of the Urban Justice Center, "Initial Results from the New York Noncustodial Parent EITC" by Elaine Sorenson (2010), The Report to the Chief Judge of the State of New York by the Task Force to Expand Access to Civil Legal Services in New York, "Mediation in Custody and Dependency/Child Neglect Situations" by Nicole Bandura, which was drafted for the Task Force (2010).

With this information as our starting point, facts that we knew we would need to grapple with included:

Considering why the most vulnerable may not ask for help. The Lake Research survey found that many low-income New Yorkers simply did not seek legal help to address legal problems—whether due to fear, intimidation, or lack of knowledge about what to do.[197] Also some private litigants do not realize that they qualify for legal assistance.

Exploring the need for community legal education. The Task Force to Expand Access to Civil Legal Services in New York suggests "…enhanced use of technology, the expanded provision of 'know your rights' community legal education, the increased use of supervised non-lawyer advocates, and partnership and collaborations with non-legal entities that provide services to clients, including social services agencies, medical providers, schools and community based organizations."[198] Educate private litigants in the community of what they should expect at Family Court.

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[197] Task Force to Expand Access to Civil Legal Services in New York. "Report to the Chief Judge of the State of New York." November 23, 2010, pg. 27.

[198] Task Force to Expand Access to Civil Legal Services in New York. "Report to the Chief Judge of the State of New York." November 23, 2010, pg. 6

Paying special attention to "chronic litigants". 42% of Judges across the State had seen an increase during the past two years in chronic low-income unrepresented litigants in their courtrooms.[199]

Acknowledging the need for interpreter services. Many private litigants are immigrants who need access to interpreter services.

Creating additional resources at the Family Court. Family Court Judge Joseph G. Nesser, Monroe County Family Court, remarked that in a custody trial the standard in Family Court is the best interests of the child, but the child's best interests are not going to be served by having litigants represent themselves since they cannot properly prepare and try a case. [200]

In addition to published information, the Subcommittee also discussed mechanisms that it felt would be helpful to unrepresented parties who would be unable to secure counsel, including courthouse terminals for drafting petitions, electronic calendaring including check-in, pre-appearance file screening, increased use of interpreters, courthouse presence by not-for-profit lay advocates and educating/guiding litigants. In order to obtain access to counsel for unrepresented parties, the Subcommittee discussed an expansion of pro bono and increased access to legal services and legal aid. The Subcommittee also discussed alternatives to litigation including mediation, collaborative law and youth courts. The Subcommittee also discussed physical impediments in Family Court including screening lines, inadequate waiting areas, and lack of conferencing space. The Subcommittee recognized that with budget cuts and constraints .many changes were easier suggested than made, however, the issues that were recognized by the Subcommittee informed our questions as we drafted our survey.

The survey was used as a tool to provide direct feedback from the position of the litigant on the thoughts of the Subcommittee and the Task Force of issues in the Family Courts that needed to be strengthened or improved. As anticipated, some of the comments and concerns raised by the Subcommittee and addressed in the studies and materials we read were ultimately confirmed through our surveys as some of the same concerns and issues that were raised by litigants we spoke to in conducting our surveys.

The Subcommittee began formulating questions that we wanted to aid us in data gathering. For assigned counsel cases our questions were:

When is the assignment made and by whom?
What are the criteria for making assignments—if indigence is an issue, how is indigence determined?
When does the assigned attorney first appear?

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[199] Task Force to Expand Access to Civil Legal Services in New York. "Report to the Chief Judge of the State of New York." November 23, 2010, pg. 18

[200] Task Force to Expand Access to Civil Legal Services in New York. "Report to the Chief Judge of the State of New York." November 23, 2010, pg. 17

Does the assigned attorney ever draft the initial petition?
Does the assigned attorney only meet with the client at the courthouse in conjunction with the appearance or offsite (or are there offices at the courthouse?)
Is there a requirement for offsite client contact?
How often do assigned attorneys make motions?
Who gets assignments—an institution? Private attorneys? How? Eligibility? Reassignments?
What is the percentage of assigned cases that go to trial?
What is the rate of dismissal of petitions in assigned counsel cases?

For Pro Se Litigants we formulated questions with the following topics in mind:

Do these cases take longer?
Are there more appearances?
Are there more trials?
What is the default rate? How does .that compare to represented cases?
What is the rate of dismissal of pro se petitions?
Are both sides usually pro se?
Does the court draw the order?
Are the petitions often dismissed for insufficiencies?
Have the litigants ever consulted with an attorney?
Do the litigants give a reason for being pro se?
If a litigant states that he or she cannot afford an attorney, has the person even tried to contact one?
Are sliding fee programs available?
Do the courts ever use NYS County Law Article 18-B appointments?
Do litigants ever use the internet for resources in prosecuting/defending their cases?
Do litigants ever use the OCA website for resources for prosecuting/defending their cases?

With these questions in mind, but also with the reality of keeping a survey short and accessible for those we surveyed, we began speaking to colleagues about the most important questions and framing our survey.

B. Colleagues

In April 2011, we met with Melissa Beck, the CEO of Legal Information for Families Today (LIFT), and also a Subcommittee Member, to discuss a survey that LIFT had previously conducted. LIFT had surveyed all New York City Family Courts, except for Staten Island. Three-hundred responses were gathered. LIFT had a kiosk set up at the court so that people could stop and complete a survey if they chose. LIFT also did surveys in the waiting areas. LIFT's survey focused on representation or lack thereof in different areas including child support, custody and family offense. The survey conducted by LIFT served as an excellent base in creating our own survey. Further, it had proved to be a successful model. Our survey was written by the Subcommittee. The full Task Force was given an opportunity to comment and suggest changes.

C. Survey

Early on in our Subcommittee meetings, we realized that the best way to gather data would be to conduct our own survey.

We began thinking strategically about where we should conduct our survey. We decided that we wanted to survey urban, suburban and rural areas. We ultimately decided to conduct surveys in Queens, Saratoga, Wayne and Monroe. The goal was to get 25 surveys completed in each location for a total of 100 surveys.

We focused on three areas: custody/visitation, domestic violence and support cases, and we limited our surveys to the Family Court Parts that heard cases on these issues. We felt that these areas would give us a good mix of represented and unrepresented litigants to survey. We formulated questions on the survey to address concerns from our discussions. Questions covered litigants' knowledge of their rights, access to technology and open ended questions that allowed general feedback and comments. See a copy of the Survey at Exhibit A.

We obtained permission from the supervising judge of each Family Court where we performed surveys to talk to litigants in the waiting areas. We approached people in waiting areas and asked if they would like to complete the survey. We created a common introduction where we would identify ourselves as a member of the New York State Bar Association Task Force on the Family Court.

Queens. We completed 50 surveys in Queens Family Court in July 2011. Subcommittee Member Jean Clemente brought a group of volunteers who were Summer Associates and interns from Proskauer Rose LLP to conduct surveys in Queens. One individual spoke Spanish and conducted several surveys in Spanish. Generally, the litigants in Queens were receptive to completing the survey. Some litigants preferred to be taken through the survey with the volunteer sitting with them, others preferred to complete the survey and hand it back to the volunteer. Volunteers were sometimes asked if they were lawyers and could help the litigants with his or her case. Litigants expressed dissatisfaction with respect to there not being enough lawyers to help. Generally, volunteers found that litigants knew what their rights were, but were dissatisfied with the waiting period and the amount of times they had returned to Court.

Wayne. The subcommittee completed six surveys in Wayne County Family Court in August, 2011. Wayne County Family Court serves a largely rural county just east of Rochester. There were two judicial officers hearing cases that day—a judge on the Family Court bench and a Support Magistrate. Subcommittee member June Castellano conducted the surveys along with her paralegal Kathleen Hopkins. Generally the litigants were cooperative and willing to participate in the surveys. Some were too busy with their attorneys to participate. Ms. Castellano and her assistant sat with the participants and recorded their answers.

Monroe. The subcommittee completed 26 surveys in Monroe County Family Court over a two day period in August, 2011. Monroe County includes the city of Rochester. Subcommittee members Catherine Miklitsch and June Castellano conducted the surveys along with Ms. Castellano's paralegal. Ms. Miklitsch is a Support Magistrate in Rockland County Family Court. She was able to speak with support litigants as well as those at court for custody and family offense matters. Most persons approached were cooperative. Many participants wanted to express their frustrations with the legal process as they had encountered it. Those sentiments are noted in the survey results.

Saratoga. Task force member John E. Carter, Jr. conducted interviews of litigants in Saratoga County Family Court on two days in July and August, 2011. A Family Court judge and a Support Magistrate held proceedings during both interview periods. Thirteen individuals were interviewed in a hearing room adjacent to the first floor waiting room inside the courthouse. Mr. Carter interviewed two litigants in the same proceeding together while all others were interviewed individually. Approximately one-half of the participants had pending support enforcement matters, the others had custody cases. Mr. Carter approached prospective interviewees in the waiting areas inside the courthouse. He reached out to represented litigants through their attorneys. He approached those who appeared not to have representation directly. Following a brief explanation of the purpose of the interview, approximately two-thirds of the prospective interviewees agreed to participate. In the interview room, interviewees were given a more detailed explanation of the work of the Task Force and the focus of the interview, along with Mr. Carter's contact information in case the litigant had questions or concerns after the interview. The interviews each lasted about half an hour. Participants were uniformly cordial and forthcoming.

Section III: Survey Results

The State Bar tabulated and compiled the results of all the surveys. Please see a copy of the Survey Results at Exhibit B and the Open Ended Survey Responses at Exhibit C.

The subcommittee designed the survey to elicit data from both represented and unrepresented litigants in custody, support, and family offense cases. Questions gauged a participant's stage in his or her litigation, knowledge of legal rights and courtroom procedure, expectations of courts, experiences in court, and ability to secure representation. The Siena Research Institute compiled the survey results. Ninety-two surveys were tabulated.

Over three-quarters of those surveyed did not have an attorney. Of those represented, 65% had free counsel. Monroe County had the highest percentage of those with counsel. Those with child support cases made up close to half of the respondents with almost equal numbers of family offense and custody/visitation matters. Almost half of the participants said their children were unrepresented but that would correlate to the high number of support cases where children do not have counsel.

Respondents were almost equally split between those who were at court for the first time and those who had already been before a judge between two and five times. The largest number of respondents had come to court multiple times. Those who had final orders were represented almost equally to those who had been before a judge more than five times.

The survey explored personal knowledge of the court and legal system. A large number of people believed that individuals have rights in Family Court even if they do not have counsel with the largest percentage of those asserting that belief represented in the more rural counties and a somewhat lower percentage reflected in the New York City area. Some of that differential is reflected in the racial identification data collected that correlated to each question. Thus African-Americans tended to believe less frequently that people without lawyers have rights than their white counterparts answering the survey. (Twenty- one percent of African Americans answered that people do not have rights while 11 percent of whites answered the same way.)

The survey probed how people learned about their rights in Family Court. While there were sizeable numbers who indicated that they relied on friends, family, legal clinics, and court personnel to direct them, close to half of the respondents utilized other sources, with the internet and web-based information being the most used. Many respondents turned to the internet and online resources for legal information and advice about their problems and for referrals.

Survey questions examined individuals' perceptions of their rights inside a courtroom. Almost everyone believed they had a right to have a lawyer to represent them, with the next highest response being a family member or anyone else who can give support. Almost everyone believed they would have a right to an interpreter to assist them if they needed one though the responses varied as to when. For example, most thought an interpreter should be provided inside the courtroom while the responses were lower for outside of the courtroom. While close to 90% of respondents thought they had the right to be treated fairly only 62% said they had a right to object to a statement of the other party or the judge, and those who believed they did not have that right were more apt to be African-American or Hispanic. Most respondents said they had a right to receive a copy of a judge's decision and to appeal that decision if they disagreed with it.

Just over half of the respondents understood they had right to a free attorney if they could not afford to hire one. Less than half knew that those facing contempt for violating child support orders could obtain such free counsel.

Even more striking, less than one quarter of those turned down for free counsel knew why. In this category women demonstrated more knowledge of why they could not get assigned counsel than men.

The survey also gauged understanding of what the courts expect of litigants. Ninety percent answered that they knew they should come to court prepared and behave respectfully toward judges, court staff, and the other party. Eighty- four percent agreed they had to wait until their case is heard even if the time has gone past the scheduled court time. Complaints about waiting times surfaced often in the comments section. Wait times inside the building were more of a

concern than time spent in line getting into the building. Very few respondents knew about courthouse hours and changes made to courthouse hours due to budget cuts. Respondents in the New York City courts commented on overcrowded conditions.

Answers to open-ended questions were thoughtful and elaborated on the questions asked.

Respondents offered suggestions on how to improve court operations. Some suggested that litigants receive more written communication from the courts inside the courtroom. There was frustration that procedures were complicated and hard to follow. There was a belief that if the proceedings were summarized and those summaries handed to litigants at the conclusion of appearances that there would be greater understanding of what happened in court that day.

Those who did not have counsel believed that counsel could make a difference and asked for more availability of attorneys. This echoed the belief expressed by respondents that one has more rights if one has an attorney rather than acting pro se. For those who did not believe they could have an attorney under any circumstance, they requested the ability to represent themselves in court with the understanding that the court would treat them the same as attorneys.

Section IV: Recommendations

1. Family Court should expand information services and assistance for unrepresented litigants. Specific projects that can help accomplish this goal could include:

    a. *An "Education and Information Site" model where an organization staffs a location in the courthouse to provide information, direction, and publications - but not legal advice.* One example of such a model is operated by Legal Information for Families Today (LIFT) in courthouses in New York City. Information could include how to proceed pro se, when and where to file petitions, and referral opportunities. Forms and information should be in various languages, as appropriate.

    b. *A "billboard" of information should be available on a screen as soon as litigants get to the courthouse.* Billboards could include listings of cases by docket numbers, and directions to courtrooms. Billboards could contain a glossary of terms which would also be available as a handout. Bar associations could assist in their design, content, and display.

    c. Videos which explain certain kinds of cases or procedures, including court terminology, could be expanded and shown on a "loop" in waiting rooms. NYSBA has a history of producing public service videos with OCA. The video guide on jury service is one such successful example.

    d. Litigants should be provided with a handout summarizing their rights to access Family Court and what to expect in a court.

2. Targeted pro bono services could be utilized. Pro bono counsel can be situated at courthouses so as to be available to provide advice only, not representation. Local counsel can volunteer to offer individual sessions of at least an hour in length. The advice provided by pro bono services is not intended to be a substitute for representation in court proceedings. These services can be cooperative efforts between the courts and bar associations. Model programs currently exist that should be evaluated for overall effectiveness and measured for their ability to be replicated statewide. In addition, pro bono representation in Family courts should be encouraged and strengthened to highlight the unmet need for counsel by those individuals who do not fit within a category that qualifies for assigned counsel.

3. OCA has a comprehensive website (www.nycourthelp.gov) that could assist many more litigants if its visibility were increased. OCA can utilize its website to promote more "do it yourself" forms that will help non-represented individuals.

4. At the end of a court appearance, court staff could provide unrepresented litigants with a check list of what to do and bring for their next court date. In general, written communication to litigants should be increased and include case specific information and time lines. Communication should be provided in multiple languages.

5. E-filing should be permitted by statute as long as pro se litigants can opt out. Electronic record keeping should be expanded in the Family Court generally.

6. Interpretation services should be expanded and made available at various locations in the courthouse. Technology can be used to offer high quality interpretation. Video links should be piloted and telephone links should be evaluated for effectiveness. Every effort should be made to fully implement in the family courts throughout the state the action plan presented in the OCA Report, *Court Interpreting in New York, A Plan of Action: Moving Forward.*

7. Assigned counsel eligibility determinations need to be examined to address inconsistency in their application statewide. There is no cumulative data to explain what occurs in each of the counties but there is a high likelihood that some litigants are denied for reasons that are difficult to quantify uniformly. Criteria for eligibility should be statewide. Actual determinations may nonetheless need to reflect local nuances. Individual courthouses should offer litigants a way to assess whether or not assigned counsel can be an option for them. So-called "portals" could be established and provide forms or online information to serve this purpose. Litigants could use these portals to review county specific information as well as statewide protocols. Information could include the standard of income which qualifies someone for counsel, as well as what kinds of resources, such as houses or cars, are included or excluded from the determination of eligibility. Litigants need to know why they do not qualify for assigned counsel. If they disagree with a denial, they should be told what options they have to either question the denial or seek

other avenues for free or low cost representation. OCA could generate best practices for courts to consider in these determinations.

8. OCA and the Legislature should continue to find opportunities to increase funding for civil legal services state wide. Furnishing civil legal services is a known, proven, and effective way to provide counsel for those who cannot afford private counsel.

Members of the Subcommittee on Resources for Individual Litigants

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Exhibit A Survey Instrument

New York State Bar Association Task Force on Family Court

SURVEY OF FAMILY COURT LITIGANTS

1. Do you have a lawyer for the Family Court case you are here about today?

☐ Yes ☐ No ☐ I don't know

If yes, are you paying your lawyer or is your lawyer available to you for free?
☐ *I am paying* ☐ *No charge*

2. What kind of case do you have?

☐ Custody or visitation ☐ Child support ☐ Order of protection

3. If your case involves your child, does he or she have a lawyer?

☐ Yes ☐ No ☐ I don't know

4. Which of these sentences describe what is going on in your case? *Please check all that apply.*

☐ I am starting my case today.
☐ I am seeing a judge today for the first time today.
☐ I have a temporary order.
☐ I have been before the judge 2 - 5 times already.
☐ I have been before the judge more than 5 times.
☐ I have a final order.

5. Do people without lawyers have rights in Family Court? *(If you answer no, skip to Question 7.)*

☐ Yes ☐ No ☐ I don't know

6. Can you list any of these rights? *Please list all you can think of below.*

7. Where did you find information about your rights in Family Court? *Please check all that apply.*

- ☐ friends or family
- ☐ court staff
- ☐ judge
- ☐ a lawyer or legal clinic
- ☐ other *(Please explain: _____.)*

8. In the courtroom I have a right to be with: *Please check all that apply.*

- ☐ A friend
- ☐ A family member
- ☐ My child(ren)
- ☐ A lawyer to represent me
- ☐ Anyone else who can give me support
- ☐ None of the above

9. I have a right to have a court interpreter help me: *Please check all that apply.*

- ☐ When I am in front of the judge
- ☐ When I am at the clerk's office to file a petition
- ☐ To translate all legal documents
- ☐ To fill out all court forms
- ☐ None of the above

10. In court, I have the right: *Please check all that apply.*

- ☐ To ask to speak to the judge
- ☐ To ask to show documents to the judge
- ☐ To know when I'm supposed to come back to court
- ☐ To know what I'm supposed to do next for my case
- ☐ To understand what happens in court
- ☐ To be treated fairly
- ☐ To be treated with respect throughout the courthouse
- ☐ To object to a statement of the other party or the judge
- ☐ None of the above

11. I have a right to get a copy of the judge's decision in my case.

☐ True ☐ False ☐ I don't know

12. If I think the judge decided my case incorrectly, I have the right to appeal that decision through the legal system.

☐ True ☐ False ☐ I don't know

13. If you have a custody, visitation, or an order of protection case, do you know you have a right to a free attorney if you can't afford to pay for one?

☐ Yes ☐ No ☐ I don't know

14. If you have an order against you for child support and you have been charged with contempt for violating that order, do you know you have a right to a free attorney if you can't afford to pay for one?

☐ Yes ☐ No ☐ I don't know

15. If you tried to get a free attorney and were turned down, do you know why you were turned down?

☐ Yes ☐ No ☐ I don't know
Please tell us below.

16. The court expects me: *Please check all that apply.*

☐ To come to court prepared
☐ To file documents with the court completely and on time
☐ To comply with the judge's decision, even if I plan to appeal the decision or are in the process of an appeal
☐ To behave respectfully toward judges, court staff, and the other side
☐ To dress appropriately for court
☐ To wait until my case is heard before the judge even if the time has gone past my scheduled court time
☐ None of the above

17. Did you wait on line to enter the courthouse and, if so, for how long?
☐ Yes _____ ☐ No
Do you know how late the court stays open?
☐ Yes ☐ No
Were you informed about changes in court hours or changes since the last time you were here? ☐ Yes ☐ No

18. If you live outside of New York City, please list your county and your town or city

_

If you live within New York City, check off where you live:

- ☐ Bronx
- ☐ Brooklyn
- ☐ Manhattan
- ☐ Queens
- ☐ Staten Island
- ☐ Other *(Please specify:* _____*)*

19. Do you have access to a computer so you can use the internet, or have other ways of getting on the internet?

☐ Yes ☐ No ☐ I don't know

20. How would you describe your race or ethnicity?

- ☐ White/Caucasian
- ☐ Black/African- American
- ☐ Hispanic
- ☐ Asian/Pacific Islander
- ☐ Other *(Please specify:*_____*)*

21. Are you.....

☐ male ☐ female

22. Is there anything else you wish to tell us that may not relate to what we asked but may help us identify other concerns important to litigants?

Thank you for helping us with our survey! Your answers will assist us to make things better for people who have to go to Family Court.

Exhibit B – Compilation of Survey Results follows beginning on the next page.

Do you have a lawyer for the Family Court case you are here about today?																		
		County						Case Type			Internet		Race/Ethnicity				Gender	
	Total	Monroe	Saratoga	Wayne	NYC			Custody	Support	Protection	Yes	No	White	African-American	Hispanic	Asian / Other		Male	Female
Yes	17%	35%	20%	0%	10%			19%	12%	22%	17%	25%	21%	8%	21%	29%		14%	20%
No	78%	54%	80%	100%	88%			69%	88%	74%	79%	63%	74%	83%	79%	71%		83%	75%
I don't know	4%	12%	0%	0%	2%			12%	0%	4%	4%	13%	5%	8%	0%	0%		3%	5%
Refused	0%	0%	0%	0%	0%			0%	0%	0%	0%	0%	0%	0%	0%	0%		0%	0%
If yes, are you paying your lawyer or is your lawyer available to you for free?																			
		County				Attorney		Case Type			Internet		Race/Ethnicity					Gender	
	Total	Monroe	Saratoga	Wayne	NYC	Yes	No	Custody	Support	Protection	Yes	No	White	African-American	Hispanic	Asian / Other		Male	Female
I am paying	12%	10%	0%	0%	20%	13%	0%	0%	20%	20%	13%	0%	25%	0%	0%	0%		0%	15%
No charge	65%	50%	100%	0%	80%	69%	0%	67%	60%	60%	60%	100%	63%	100%	50%	100%		75%	62%
Refused	24%	40%	0%	0%	0%	19%	100%	33%	20%	20%	27%	0%	13%	0%	50%	0%		25%	23%
What kind of case do you have?																			
		County				Attorney					Internet		Race/Ethnicity					Gender	
	Total	Monroe	Saratoga	Wayne	NYC	Yes	No				Yes	No	White	African-American	Hispanic	Asian / Other		Male	Female
Custody or visitation	28%	54%	30%	14%	16%	31%	25%				30%	25%	26%	33%	21%	43%		24%	32%
Child support	46%	23%	60%	86%	49%	31%	51%				43%	50%	55%	38%	32%	43%		52%	40%
Order of protection	25%	23%	10%	0%	33%	31%	24%				26%	25%	18%	25%	47%	14%		24%	27%

Refused	1%	0%	0%	0%	2%	6%	0%				1%	0%	0%	4%	0%	0%	0%	2%
If your case involves your child, does he or she have a lawyer?																		
		County				**Attorney**		**Case Type**			**Internet**		**Race/Ethnicity**				**Gender**	
	Total	**Monroe**	**Saratoga**	**Wayne**	**NYC**	**Yes**	**No**	**Custody**	**Support**	**Protection**	**Yes**	**No**	**White**	**African-American**	**Hispanic**	**Asian / Other**	**Male**	**Female**
Yes	27%	46%	20%	14%	20%	63%	18%	46%	17%	22%	28%	25%	24%	33%	26%	43%	14%	35%
No	47%	42%	20%	57%	53%	19%	54%	35%	62%	35%	46%	50%	39%	54%	47%	43%	48%	45%
I don't know	8%	4%	0%	0%	12%	6%	8%	12%	2%	13%	7%	13%	5%	4%	16%	14%	17%	3%
Refused	18%	8%	60%	29%	14%	13%	19%	8%	19%	30%	19%	13%	32%	8%	11%	0%	21%	17%
Which of these sentences describe what is going on in your case? Please check all that apply.																		
		County				**Attorney**		**Case Type**			**Internet**		**Race/Ethnicity**				**Gender**	
	Total	**Monroe**	**Saratoga**	**Wayne**	**NYC**	**Yes**	**No**	**Custody**	**Support**	**Protection**	**Yes**	**No**	**White**	**African-American**	**Hispanic**	**Asian / Other**	**Male**	**Female**
I am starting my case today.	29%	23%	10%	57%	33%	13%	32%	27%	26%	39%	33%	0%	34%	17%	32%	43%	28%	32%
I am seeing a judge today for the first time today.	14%	8%	10%	29%	16%	13%	14%	15%	10%	22%	16%	0%	18%	0%	32%	0%	10%	17%
I have a temporary order.	11%	19%	0%	0%	10%	19%	10%	15%	5%	17%	10%	25%	11%	21%	5%	0%	10%	12%
I have been before the judge 2 to 5 times already.	32%	50%	30%	14%	24%	50%	29%	46%	26%	26%	27%	63%	26%	42%	21%	43%	28%	32%
I have been before the judge more than 5 times.	18%	23%	30%	14%	14%	6%	21%	12%	29%	9%	16%	38%	21%	25%	5%	14%	17%	18%
I have a final order.	17%	15%	40%	14%	14%	25%	15%	12%	14%	26%	17%	25%	21%	25%	11%	0%	24%	15%
Refused	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%

Do people without lawyers have rights in Family Court?																		
		County				**Attorney**		**Case Type**			**Internet**		**Race/Ethnicity**				**Gender**	
	Total	**Monroe**	**Saratoga**	**Wayne**	**NYC**	**Yes**	**No**	**Custody**	**Support**	**Protection**	**Yes**	**No**	**White**	**African-American**	**Hispanic**	**Asian / Other**	**Male**	**Female**
Yes	72%	73%	100%	86%	63%	63%	75%	58%	76%	78%	70%	75%	87%	67%	47%	57%	66%	73%
No	13%	19%	0%	14%	12%	19%	10%	23%	14%	0%	12%	25%	11%	21%	11%	14%	17%	12%
I don't know	15%	8%	0%	0%	24%	19%	15%	19%	10%	22%	17%	0%	3%	13%	42%	29%	17%	15%
Refused	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%
Where did you find information about your rights in Family Court? Please check all that apply.																		
		County				**Attorney**		**Case Type**			**Internet**		**Race/Ethnicity**				**Gender**	
	Total	**Monroe**	**Saratoga**	**Wayne**	**NYC**	**Yes**	**No**	**Custody**	**Support**	**Protection**	**Yes**	**No**	**White**	**African-American**	**Hispanic**	**Asian / Other**	**Male**	**Female**
Friends or family	27%	23%	60%	14%	24%	38%	25%	35%	19%	35%	28%	13%	32%	13%	42%	14%	31%	25%
Court staff	16%	35%	0%	14%	10%	25%	13%	27%	10%	13%	17%	13%	13%	29%	11%	14%	14%	18%
Judge	12%	15%	20%	0%	10%	13%	11%	15%	14%	4%	14%	0%	13%	13%	16%	0%	21%	8%
A lawyer or legal clinic	28%	50%	30%	29%	16%	38%	22%	46%	21%	22%	30%	25%	39%	29%	5%	43%	28%	30%
Other (please explain)	47%	38%	60%	71%	45%	25%	53%	38%	50%	52%	46%	63%	47%	54%	47%	29%	28%	57%
Refused	7%	4%	0%	0%	10%	0%	8%	8%	10%	0%	5%	13%	5%	0%	5%	14%	14%	2%
In the courtroom I have a right to be with: Please check all that apply.																		
		Count				**Attorney**		**Case Type**			**Internet**		**Race/Ethnicit**				**Gender**	

		y												y				
	Total	Monroe	Saratoga	Wayne	NYC	Yes	No	Custody	Support	Protection	Yes	No	White	African-American	Hispanic	Asian / Other	Male	Female
A friend	37%	65%	50%	14%	22%	56%	32%	54%	24%	43%	37%	38%	39%	25%	32%	71%	17%	47%
A family member	46%	69%	70%	43%	29%	75%	38%	62%	36%	43%	46%	50%	47%	38%	37%	86%	38%	50%
My child(ren)	23%	35%	10%	14%	20%	19%	24%	31%	24%	13%	21%	25%	18%	13%	32%	29%	17%	23%
A lawyer to represent me	82%	85%	90%	86%	78%	94%	78%	81%	83%	78%	81%	88%	79%	88%	74%	100%	79%	83%
Anyone else who can give me support	43%	73%	50%	43%	27%	56%	39%	65%	31%	43%	43%	50%	45%	46%	32%	57%	24%	53%
None of the above	7%	4%	0%	0%	10%	0%	8%	4%	7%	9%	5%	13%	5%	8%	5%	0%	7%	5%
Refused	1%	0%	10%	0%	0%	0%	1%	0%	2%	0%	1%	0%	3%	0%	0%	0%	0%	2%
I have a right to have a court interpreter help me: Please check all that apply.																		
		County				Attorney		Case Type			Internet		Race/Ethnicity				Gender	
	Total	Monroe	Saratoga	Wayne	NYC	Yes	No	Custody	Support	Protection	Yes	No	White	African-American	Hispanic	Asian / Other	Male	Female
When I am in front of the judge	66%	88%	0%	86%	65%	75%	64%	65%	67%	70%	64%	75%	61%	54%	89%	71%	59%	68%
When I am at the clerk's office to file a petition	51%	77%	0%	86%	43%	44%	51%	54%	50%	52%	49%	50%	55%	38%	53%	57%	41%	53%
To translate all legal documents	63%	85%	0%	86%	61%	56%	64%	69%	64%	57%	62%	63%	61%	58%	68%	71%	62%	62%
To fill out all court forms	52%	81%	0%	86%	43%	50%	51%	58%	52%	48%	51%	50%	55%	42%	53%	57%	34%	58%
None of the above	7%	0%	0%	0%	12%	6%	6%	8%	5%	4%	7%	0%	0%	25%	0%	0%	7%	7%
Refused	22%	12%	100%	14%	12%	19%	24%	19%	24%	22%	23%	13%	37%	8%	5%	29%	21%	23%

In court, I have the right: Please check all that apply.																		
		County				**Attorney**		**Case Type**			**Internet**		**Race/Ethnicity**				**Gender**	
	Total	**Monroe**	**Saratoga**	**Wayne**	**NYC**	**Yes**	**No**	**Custody**	**Support**	**Protection**	**Yes**	**No**	**White**	**African-American**	**Hispanic**	**Asian / Other**	**Male**	**Female**
To ask to speak to the judge	77%	88%	90%	71%	69%	94%	74%	81%	74%	78%	77%	75%	82%	63%	74%	100%	76%	77%
To ask to show documents to the judge	79%	92%	100%	86%	67%	75%	79%	92%	81%	65%	79%	75%	89%	71%	68%	71%	76%	80%
To know when I'm supposed to come back to court	87%	100%	100%	86%	78%	94%	85%	92%	86%	83%	89%	63%	95%	79%	79%	86%	72%	93%
To know what I'm supposed to do next for my case	79%	96%	90%	86%	67%	88%	78%	88%	76%	78%	79%	75%	87%	71%	68%	86%	72%	82%
To understand what happens in court	85%	92%	90%	86%	80%	88%	85%	92%	79%	87%	85%	75%	84%	88%	79%	86%	86%	83%
To be treated fairly	87%	92%	100%	86%	82%	88%	86%	88%	86%	87%	86%	88%	87%	92%	79%	86%	79%	90%
To be treated with respect throughout the courthouse	84%	92%	100%	86%	76%	81%	83%	88%	81%	87%	84%	75%	87%	83%	74%	86%	76%	87%
To object to a statement of the other party or the judge	62%	77%	70%	86%	49%	63%	63%	65%	67%	52%	62%	63%	71%	50%	53%	71%	52%	67%
None of the above	1%	0%	0%	14%	0%	0%	1%	0%	2%	0%	1%	0%	3%	0%	0%	0%	0%	2%
Refused	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%
I have a right to get a copy of the judge's decision in my case.																		
		County				**Attorney**		**Case Type**			**Internet**		**Race/Ethnicity**				**Gender**	
	Total	**Monroe**	**Saratoga**	**Wayne**	**NYC**	**Yes**	**No**	**Custody**	**Support**	**Protection**	**Yes**	**No**	**White**	**African-American**	**Hispanic**	**Asian / Other**	**Male**	**Female**
TRUE	92%	92%	100%	86%	92%	81%	94%	92%	90%	100%	93%	100%	92%	92%	100%	86%	97%	92%
FALSE	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%
I don't know	7%	4%	0%	14%	8%	19%	4%	8%	7%	0%	7%	0%	8%	8%	0%	14%	3%	8%

Refused	1%	4%	0%	0%	0%	0%	1%	0%	2%	0%	0%	0%	0%	0%	0%	0%	0%	0%
If I think the judge decided my case incorrectly, I have the right to appeal that decision through the legal system.																		
		County				**Attorney**		**Case Type**			**Internet**		**Race/Ethnicity**				**Gender**	
	Total	**Monroe**	**Saratoga**	**Wayne**	**NYC**	**Yes**	**No**	**Custody**	**Support**	**Protection**	**Yes**	**No**	**White**	**African-American**	**Hispanic**	**Asian / Other**	**Male**	**Female**
TRUE	87%	92%	100%	86%	82%	88%	88%	92%	83%	87%	88%	88%	92%	92%	74%	86%	83%	90%
FALSE	4%	4%	0%	14%	4%	6%	4%	0%	5%	9%	5%	0%	5%	0%	11%	0%	0%	7%
I don't know	5%	0%	0%	0%	10%	0%	6%	8%	7%	0%	5%	13%	3%	8%	11%	0%	10%	3%
Refused	3%	4%	0%	0%	4%	6%	3%	0%	5%	4%	2%	0%	0%	0%	5%	14%	7%	0%
If you have a custody, visitation, or an order of protection case, do you know you have a right to a free attorney if you can't afford to pay for one?																		
		County				**Attorney**		**Case Type**			**Internet**		**Race/Ethnicity**				**Gender**	
	Total	**Monroe**	**Saratoga**	**Wayne**	**NYC**	**Yes**	**No**	**Custody**	**Support**	**Protection**	**Yes**	**No**	**White**	**African-American**	**Hispanic**	**Asian / Other**	**Male**	**Female**
Yes	62%	77%	60%	14%	61%	75%	58%	88%	45%	61%	65%	38%	63%	63%	68%	43%	52%	68%
No	7%	4%	0%	14%	8%	6%	7%	4%	2%	17%	7%	0%	5%	8%	11%	0%	3%	8%
I don't know	14%	4%	0%	14%	22%	0%	17%	8%	17%	17%	12%	25%	5%	17%	21%	29%	21%	10%
Refused	17%	15%	40%	57%	8%	19%	18%	0%	36%	4%	15%	38%	26%	13%	0%	29%	24%	13%
If you have an order against you for child support and you have been charged with contempt for violating that order, do you know you have a right to a free attorney if you can't afford to pay for one?																		
		County				**Attorney**		**Case Type**			**Internet**		**Race/Ethnicity**				**Gender**	
	Total	**Monroe**	**Saratoga**	**Wayne**	**NYC**	**Yes**	**No**	**Custody**	**Support**	**Protection**	**Yes**	**No**	**White**	**African-American**	**Hispanic**	**Asian / Othe**	**Male**	**Female**

																r		
Yes	40%	31%	20%	29%	51 %	63%	35%	35%	40%	43%	43 %	25%	37%	38%	58%	43%	48%	38%
No	11%	4%	10%	29%	12 %	6%	13%	4%	17%	9%	10 %	0%	13%	4%	11%	0%	7%	10%
I don't know	18%	15%	0%	14%	24 %	0%	22%	15%	21%	17%	17 %	38%	8%	38%	21%	14%	28%	15%
Refused	30%	50%	70%	29%	12 %	31%	31%	46%	21%	30%	30 %	38%	42%	21%	11%	43%	17%	37%
If you tried to get a free attorney and were turned down, do you know why you were turned down?																		
		Count y				**Attorney**		**Case Type**			**Internet**		**Race/Ethnicit y**				**Gender**	
	Tot al	**Monro e**	**Sarato ga**	**Wayn e**	**NY C**	**Yes**	**No**	**Custod y**	**Suppo rt**	**Protecti on**	**Yes**	**No**	**Whit e**	**African- Americ an**	**Hispan ic**	**Asian / Othe r**	**Mal e**	**Femal e**
Yes	23%	35%	0%	29%	20 %	19%	24%	35%	19%	17%	23 %	25%	18%	38%	16%	14%	7%	32%
No	20%	12%	50%	0%	20 %	25%	18%	15%	24%	13%	20 %	25%	16%	29%	16%	29%	31%	15%
I don't know	23%	15%	0%	29%	31 %	13%	25%	4%	29%	35%	22 %	25%	16%	13%	58%	0%	28%	20%
Refused	35%	38%	50%	43%	29 %	44%	33%	46%	29%	35%	35 %	25%	50%	21%	11%	57%	34%	33%
The court expects me: Please check all that apply.																		
		Count y				**Attorney**		**Case Type**			**Internet**		**Race/Ethnicit y**				**Gender**	
	Tot al	**Monro e**	**Sarato ga**	**Wayn e**	**NY C**	**Yes**	**No**	**Custod y**	**Suppo rt**	**Protecti on**	**Yes**	**No**	**Whit e**	**African- Americ an**	**Hispan ic**	**Asian / Othe r**	**Mal e**	**Femal e**
To come to court prepared	90%	96%	100%	100%	84 %	100 %	88%	88%	90%	91%	91 %	88%	95%	96%	79%	86%	76%	98%
To file documents with the court completely and on time	85%	96%	100%	100%	73 %	81%	86%	92%	83%	83%	89 %	63%	97%	71%	89%	71%	72%	93%

To comply with the judge's decision, even if I plan to appeal the decision or are in the process of an appeal	85%	96%	100%	100%	73 %	88%	85%	92%	83%	78%	89 %	63%	97%	79%	79%	71%	69%	95%
To behave respectfully toward judges, court staff, and the other side	90%	96%	100%	100%	84 %	94%	89%	96%	90%	83%	94 %	75%	100%	83%	89%	86%	83%	97%
To dress appropriately for court	87%	96%	100%	100%	78 %	94%	85%	96%	86%	78%	91 %	63%	95%	83%	84%	86%	76%	95%
To wait until my case is heard before the judge even if the time has gone past my scheduled court time	84%	92%	100%	100%	73 %	75%	85%	92%	86%	74%	86 %	63%	92%	79%	79%	71%	76%	88%
None of the above	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%
Refused	1%	0%	0%	0%	2%	0%	1%	0%	0%	4%	1%	0%	0%	0%	0%	14%	3%	0%
Did you wait on line to enter the courthouse and, if so, for how long?																		
		County				**Attorney**		**Case Type**			**Internet**		**Race/Ethnicity**				**Gender**	
	Total	**Monroe**	**Saratoga**	**Wayne**	**NYC**	**Yes**	**No**	**Custody**	**Support**	**Protection**	**Yes**	**No**	**White**	**African-American**	**Hispanic**	**Asian / Other**	**Male**	**Female**
Yes	34%	38%	40%	0%	35 %	31%	32%	31%	31%	43%	36 %	25%	29%	29%	47%	57%	48%	28%
No	64%	58%	60%	100%	63 %	69%	65%	69%	64%	57%	64 %	75%	71%	71%	53%	43%	52%	72%
Refused	2%	4%	0%	0%	2%	0%	3%	0%	5%	0%	0%	0%	0%	0%	0%	0%	0%	0%
Do you know how late the court stays open?																		
		County				**Attorney**		**Case Type**			**Internet**		**Race/Ethnicity**				**Gender**	
	Total	**Monroe**	**Saratoga**	**Wayne**	**NYC**	**Yes**	**No**	**Custody**	**Support**	**Protection**	**Yes**	**No**	**White**	**African-American**	**Hispanic**	**Asian / Other**	**Male**	**Female**
Yes	30%	31%	10%	14%	37 %	31%	29%	38%	24%	30%	30 %	50%	24%	42%	37%	29%	28%	33%

No	62%	62%	80%	86%	55 %	69%	61%	54%	67%	65%	65 %	50%	74%	58%	63%	43%	66%	63%
Refused	8%	8%	10%	0%	8%	0%	10%	8%	10%	4%	5%	0%	3%	0%	0%	29%	7%	3%
Were you informed about changes in court hours or changes since the last time you were here?																		
		County				**Attorney**		**Case Type**			**Internet**		**Race/Ethnicity**				**Gender**	
	Total	**Monroe**	**Saratoga**	**Wayne**	**NYC**	**Yes**	**No**	**Custody**	**Support**	**Protection**	**Yes**	**No**	**White**	**African-American**	**Hispanic**	**Asian / Other**	**Male**	**Female**
Yes	11%	12%	20%	0%	10 %	6%	10%	19%	7%	9%	12 %	0%	16%	4%	5%	29%	7%	13%
No	76%	85%	30%	86%	80 %	81%	76%	81%	71%	78%	77 %	100 %	66%	96%	89%	57%	76%	80%
Refused	13%	4%	50%	14%	10 %	13%	14%	0%	21%	13%	11 %	0%	18%	0%	5%	14%	17%	7%

INTENTIONALLY BLANK

EXHIBIT C Responses to Open Ended Survey Questions

Q6. Can you list any of these rights?

No response. [20]

Right to an attorney. [12]

Right to be heard. [9]

Same rights as represented litigants. [8]

Right to self representations. [7]

Right to petition/file claim. [5]

Fair trial. [4]

Right to an appeal. [3]

Speedy trial. [2]

Make objections.

Right to some justice.

Abide by the laws set forth.

Basic rights.

[It's] better to have someone with you who can talk for you. Judge doesn't like people to talk straight up.

Services (programs, assistance, shelter).

View files in court.

Bring information to [the] attention of the court.

Get effective results without paying exorbitant fees.

Ability to say things honestly that an attorney may not.

Can get orders without lawyers.

To ask for an interpreter.

Should be able to speak to judge but not allowed.

Don't think you're fairly heard without attorney.

Q7. Where did you find information about your rights in Family Court?

Online [10]

Experience [3]

No response. [2]

Social worker

Police

Phone

Counselor

Judge Judy

Support unit

Alternatives for Battered Women

Law books.

Law Guardian.

Q15. If you tried to get a free attorney and were turned down, do you know why you were turned down?

Income too high. [7]

I had one attorney since 12 month I cannot afford it because I lose my job after my arrest.

Did not apply for attorney for this matter b/c parties in agreement.

Was supposed to be represented by a conflict defender but no one contacted me.

Given 2 explanations. Jurisdiction and over income. She was only $11.00 over income and stated "what lawyer will represent me for $11.00"

Never asked anyone, but believe it would be based on family support as well.

Because of a conflict.

Q17. Did you wait on line to enter the courthouse and, if so, for how long?

5 minutes of less [13]

10 minutes [3]

30 minutes [2]

2 hours, 15 minutes

4 hours

Q18. If you live outside of New York City, please list your county and your town or city.

Rochester [9]

Greece [2]

Newark [2]

Broadalbin

Clarkson

Clifton Park

Glens Falls

Green Island

Hoosick Falls

North Umberland

Queensbury

Schuylerville

South Glens Falls

Spencerport

Troy

West Henrietta

Westbury

Williamson

Q22. Is there anything else you wish to tell us that may not relate to what we asked but may help us identify other concerns important to litigants?

Should have grandparents rights given back.

1) In underage custody proceedings, attorney for child never met child. 2) Support agency not aggressive about pursuing non-payment.

Courts treat fathers unfairly in custody disputes; "mothers always win in custody cases."

Importance of being treated respectfully

Support waiting rooms for litigants - make litigants feel safer, not second-guess their positions; court officers not always able to present contact if litigants waiting for court.

Why are litigants required to wait 2 1/2 hours for a pro forma appearance on matters with consent of both parties

1) Lack of detailed information about court process (e.g., request of emergency hearing). 2) AFC does not see child or return calls

Successful resolution of custody case by child's attorney

Complex, time-consuming filing process.

1) Have been returning to court for entire life of child (12 years) periodically, each violation takes 3 months to resolve - totally discouraged; may just write the entire matter off. 2) At court appearance unrepresented wait until court has dealt with represented clients 3) Lax enforcement of support orders

1) Process unnecessarily drawn out 2) Website great research tool

Repeated adjournments in court for 3 years without real results; 10 times in front of judge; working 2nd job.

My specific situation- stay at home so I have zero income but my husband makes over 100,000 and that may affect my eligibility for a free lawyer. That is something that should not affect my ability to get a lawyer because I may not have access to his money.

Domestic violence laws should be more defined. The system is broken. My order has been violated 16 times. He can get only one year on a violation.

Coffee would be great

Advocate for people to settle outside the courtroom

Q22. Is there anything else you wish to tell us that may not relate to what we asked but may help us identify other concerns important to litigants? (Continued)

Order of protection served but court had no record of it (1st appearance). Respondent was in jail at time of second appearance. Court did not know so respondent not present in court (2nd appearance). This caused delays in processing case.

Many judges are biased against men in child support and custody cases. It feels like they don't even want to hear what the men have to say.

I was told that I would see the judge without a friend that accompanied me.

Little can be done to change system. Male is automatically "presumed loser".

I think the lawyers wait too late to verify proof. When its proof verify it (stat). Children under 12 years of age don't understand who can take care of their needs. The children have a choice. Verify proof in the beginning.

The court officers need to do a better job. Especially outside the court (in the waiting area).

Wants court to be more efficient with information entered.

I had my house since 23 year now. I'm about to lose it because the court system order temporary spend one years why?

If court appearance is at 9:30 it should be at 9:30am in past have had 9:30 appearance and were not in court until 1pm.

Court could be more organized should be able to meet with your attorney or law guardian before court date.

The victim or domestic has the burden of paying an attorney while the respondent gets an attorney for free if they don't work. It puts more pressure on the victim. It's intimidating.

I'm married 24 years ago with my wife. I had my house 1988 we just married believe 24 year even before 2 years married we brought house on South Carolina we decide to move she ask me to come to my house for 3 days to move after 3 days she change her mind she told me next month after month come here after one year she changed lock on my house she made her daughter call police make arrested me for no reason court.

B. REPORT OF THE SUBCOMMITTEE ON TECHNOLOGY

JOHN E. CARTER, JR.
Chair
Subcommittee on Technology
Final Report

Date: 07/12/12

To: Hon. M. Rita Connerton
Susan B. Lindenauer
Chairs, Task Force on Family Court

From: Jack Carter

Subject: Technology Subcommittee Report

Objective

The objective of the Technology Subcommittee is to frame recommendations to strengthen Family Court's technology resources to better serve the needs of litigants, judges and other constituents of the court.

Summary of Activities

The activities of the Technology Subcommittee have focused on four primary areas: assessing current Family Court technology resources; identifying promising technology initiatives now underway; researching court technology available in other jurisdictions; and exploring emerging technology trends for possible applicability to Family Court.

To accomplish this work, the subcommittee has undertaken the following activities:

1. *Current Family Court technology*—The subcommittee arranged for presentation of a comprehensive briefing by court system officials on existing Family Court technology resources. The briefing was conducted at the headquarters of the Office of Court Administration in New York City. Topics covered during the three-hour session included: case management tools, such as the Universal Case Management System and the Family Drug Court Application; systems to address the needs of litigants and attorneys, such as Do It Yourself Petitions, on-line forms, and e-Courts; and future initiatives, including enhanced on-line attorney services and electronic filing.
2. *Reference materials*--The subcommittee has reviewed and disseminated a wide range of reference materials on court technology to familiarize members with relevant standards and systems. Primary resources for reference materials have included the Unified Court System and the National Center of State Courts.

3. *Fact-gathering*—The subcommittee continues to coordinate with the other Task Force subcommittees to collaborate in their fact-gathering activities. For example, the subcommittee

worked with the Litigant Needs Subcommittee in developing its litigant survey, suggesting inclusion of an item on litigant access to the Internet in the survey instrument. The subcommittee communicates regularly with other subcommittees to discuss ways in which technology might address the substantive issues the subcommittees are exploring. This activity also permits the Technology Subcommittee to assess the technology needs of a broad range of Family Court constituents while avoiding duplication of effort.

In addition, the subcommittee has sought to identify innovative uses of technology that demonstrate significant potential benefits for court system constituents if widely adopted. For example, Family Courts in two counties—Westchester and Cortland—have become "paperless courts." Documents received by these courts are electronically scanned and linked to the Universal Case Management System. The subcommittee contacted the Chief Clerks of both courts to discuss their jurisdictions' experience with this technology. Following these conversations, each Chief Clerk testified on paperless courts at public hearings conducted by the Task Force in New York City and Albany.

4. *Data Analysis*—The subcommittee analyzed data provided by the Office of Court Administration on Family Court dispositions for several years. The subcommittee organized the information by region and identified caseload trends for all types of Family Court proceedings.

Recommendations

Based on the information gathered during subcommittee's activities outlined above, the following recommendations are submitted for consideration by the full Task Force:

1. *Paperless courts*—The Universal Case Management System provides judges and administrators with a robust tool for overseeing proceedings conducted by Family Court. It is of course a primary concern of the courts to determine cases in an orderly and expeditious manner; the UCMS is an essential resource for addressing that concern.

In addition, the UCMS provides a foundation for the development of paperless courts. The advantages of paperless courts appear so numerous and significant as to merit replication throughout the state. Documents scanned and entered in Family Court's Universal Case Management System are thereafter readily available to UCMS users. The considerable time and staff resources spent locating files and documents is dramatically reduced. Since the UCMS is a closed system, access to records is closely controlled, enhancing file security and integrity. The result would seem to be a filing system that is more reliable, improves access to records, saves judges, court staff and litigants time, and maintains, or improves, file security. The transition from paper-based to paperless courts no doubt presents challenges, in terms of both resources and acceptance. However, current users have developed strategies for meeting these challenges successfully.

2. *Electronic filing*—In adopting chapter 543 of the laws of 2011, the Legislature reaffirmed its recognition "...that that use of electronic means to commence judicial proceedings and to file and serve papers in pending proceedings ('e-filing') can be highly beneficial to the state, local governments and the public." The Legislature also expressed an intention "...to lay the

groundwork for an anticipated future introduction of e-filing in ...family court....” Electronic filing appears to be a natural and appropriate adjunct to paperless courts. However, electronic filing, like other technological innovations, requires significant investment of time and resources by practitioners and other users. A recommendation supporting electronic filing should therefore consider measures to minimize that investment, such as “user-friendly” system design and training resources.

3. *Video technology*—Family Court appears to have an excellent, state-wide video technology system that serves a variety of needs, including meetings and training. This system can provide a foundation for exploring extension of video technology to other uses. There are certainly activities in Family Court where the actual presence of all participants is indispensable. Without question, the expanded use of video technology would require careful regard for due process interests of litigants. However, there are also circumstances where use of video technology could offer important advantages. Among the applications that might be considered are: pretrial conferences in matters involving high conflict or domestic violence; parenting time when direct contact is impossible or inconsistent with the child's well-being; interpreting and translation; and non-substantive appearances and hearings where the magistrate or other participant takes part by video.

4. *Enhanced resources for litigants*—The Unified Court System provides a range of useful, technology-based resources for litigants, including those who are self-represented. The Task Force's litigant survey indicates that many Family Court users are able and willing to take advantage of such resources. With so many Family Court litigants unrepresented and the rapidly growing prevalence of mobile Internet access, it would benefit all Family Court users to consider expanded litigant resources such as:

- A dedicated Family Court website, from which all resources for litigants can be accessed;
- Additional information, including both video and written materials, about Family Court generally, as well as specific types of proceedings;
- Expanded litigant access to information about their specific case, including scheduling;
- Exploration of technologies such as hotlines, on-line chat, text messaging, social networking and customer relations management to better inform and communicate with litigants.

5. *Outcome assessment in custody and support proceedings*—By far the largest number of cases Family Court deals with are custody and support proceedings. In addition, perhaps uniquely among legal matters, these cases are often “works in progress.” Litigants may return to court repeatedly over a succession of proceedings, depending in some measure on the extent to which the court's procedures respond to the circumstances underlying the proceeding. Consequently, assessing how well the court's actions “work” is important not only for the well-being of litigants but also for reducing the need for repeated proceedings and appearances. Appropriate technology has an essential role to play in assessing the effectiveness of court procedures. During the last several years Family Court has taken significant steps to improve the administration of child protective matters. Central to the effort has been detailed analysis of the multitude of factors that

bear on case processing, adjusting procedures for more timely case resolution, and tracking the results. Technology has played a key role in this effort. Such an initiative for strengthening case administration should be extended to custody and child support proceedings cases. Since these matters constitute the largest component of Family Court's caseload, deploying technology to improve their administration would enhance court's management capacity in other cases as well.

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C. REPORT OF THE SUBCOMMITTEE ON RESOURCES FOR FAMILY COURT

New York State Bar Association
Task Force on Family Court
Subcommittee on Resources for Family Court

Co-Chairs Celia Curtis, Susan Horn and Tamara Steckler

REPORT and RECOMMENDATIONS

June 2012

I. THE SIGNIFICANT NEED FOR MORE FAMILY COURT JUDGES

A major problem that underlies many of the issues facing this Task Force is that there are too few judges to hear the overwhelming number of cases. While cognizant of the fiscal constraints facing New York and the Judiciary, and the difficulty of advocating for new positions and additional expenditures, we would be remiss not to point this out and recommend action to relieve this problem.

The sheer number of cases makes this problem self-evident. The experiences of many on this Task Force and the testimony given by the wide range of witnesses speaking at the hearings held throughout the state confirm this. The backlog of cases, the lengthy delays in hearing and disposing of cases, the multiple adjournments, and the inability to hear cases consecutively are all in large part a result of having too few judges.

In New York City alone in 2011, there were over 249,459 filings in Family Court, with only 47 Judges to handle those cases. In Family Courts outside of New York City, there were 466,297 filings in 2011. This overwhelming caseload results in a growing backlog, with 81,861 cases pending in New York City Family Courts and 107,121 pending in Family Courts outside of the City at the end of 2011.

No additional judges have been appointed to the Family Court in New York City in two decades and virtually no additional judges have been authorized or elected in the rest of the state in the past decade. The courts are struggling with an extraordinary number of filings and cannot be said adequately to serve the needs of the people of New York, despite nearly heroic efforts to do so.

It is imperative that the Legislature, with the full support of bar associations, citizens groups and others make expansion of the Family Court judiciary a critical priority.

Recommendations

- No additional judges have been authorized or appointed to Family Court in nearly a decade. Legislative approval of new judicial positions is essential.

- Additional Court Attorney Referees and Judicial Hearing Officers should be appointed to assist judges in handling and disposing of cases.

- We recommend that the New York State Bar Association make approval of new judicial positions in Family Court a priority of its legislative agenda.

- Judges from other courts should be reassigned where possible to help with the emergency situation that Family Court faces. While this is a needed and positive step, it is only a short term temporary fix, which may itself create other problems in the courts from which those judges are transferred.

II. MEDIATION

> *Prior to being a lawyer, I was a teacher and I observed the negative impact adversarial custody disputes could have on my students. Yet once I entered the legal profession, I found that I was participating in a process that was often not working on behalf of children.* Susan Patnode, Executive Director, Rural Law Center of New York

No study of the challenges facing Family Court is complete without a discussion of alternative dispute resolution (ADR), particularly mediation. Mediation and other forms of ADR grew rapidly in the last few decades as a result of high divorce rates, frequent conflicts between parting parents, the resulting administrative burden on the courts and, most important, concerns about damaging effects on children and post-divorce family relationships.

Substantial testimony, submissions and other information gathered by New York's comprehensive Matrimonial Commission[201], which was established in 2004 by Chief Judge Judith Kaye, emphasized the benefit of utilizing ADR processes in matrimonial matters involving children.

Testimony at this Task Force's public hearings echoed those sentiments. Indeed, experts nationwide and overseas have evaluated child custody mediation and their conclusions have been consistently positive.

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[201] *Matrimonial Commission Report to the Chief Judge of the State of New York*, Hon. Sondra Miller, Chairperson, NYS Unified Court System (2006).

If used appropriately, family mediation assists parties, including children, in developing their own solutions to custody and other issues. Mediation can have a more positive and longer lasting impact on family relationships—both between children and their non-custodial parent and between divorced spouses—than the adversarial process. Studies have demonstrated that mediation results in higher rates of settled cases and that settlement occurs sooner in the process than it does in those cases that settle under the adversarial process. Resources and interventions provided at the front end of the custody determination process are more likely to result in the parties resolving the case themselves than those provided later in the process.

Mediation focuses parents more on the needs of their children. The cost to the litigants is less. The cost to Family Court is less, and the parties are more satisfied with the outcomes.

As Susan Patnode stated in testimony before this Task Force:

> "[T]he zealous representation model inadvertently add[s] fuel to the fires of a family in crisis. At the conclusion of these [custody dispute] cases, attorneys left the courtroom, satisfied that the process had worked. However, the parents and children carried the bitter residue of the process with them, often affecting the parties' relationships until the children reached adulthood.

While one of the tenets of the "best interest" test is stability, Patnode noted that the adversarial process can create an unstable environment that lasts after final orders are filed. Patnode, who has served as a mediator, believes that mediation works because it gives parents a set of skills for resolving difficult issues and these skills enable parents to address future familial issues after the case is closed.

While a number of Family Courts currently use the services of Community Dispute Resolution Centers' mediators, the level of use, if at all, varies from county to county.

Because funding has been drastically reduced, Patnode suggests that the Office of Court Administration's Alternative Dispute Resolution office could create an attorney-mediator training program for Family Court attorneys who would then serve on mediation panels.

These attorneys would not be unpaid volunteers, but compensated under the 18-B program. This should result in a cost savings since currently 18-B pays for multiple lawyers in custody cases -- one for each parent and one for the child. If Family Court instituted a mediation referral process at intake, and if even fifty percent of those cases were resolved by mediation, followed by a short court appearance to convert agreements to orders, time and money saved could be significant.

Recommendations

- The success of a mediation program is directly related to the quality of the mediators. Strict standards must be implemented regarding selection, training and certification. Pro

bono services without adequate funding to support adherence to the standards would likely lead to sub-par services.

- Children have a vital stake in the custody process and should be afforded the right to participate in mediation, unless very young or otherwise unable to comprehend or assist in the process. In fact, mediation can be a less frightening procedure than a court appearance and may be especially suitable for a child's participation.

- Mediation must be seen as non-threatening to lawyers. Lawyers need to know that their clients' rights will be protected and that clients will not be persuaded to make decisions that are not in their interests or based on a lack of information.

- As mediation is not widely used in New York, community leaders and other involved professionals need to be made aware of mediation as an alternative to litigation. Otherwise, parties in divorce and custody cases may not be receptive to the concept.

- It is important to note that, although there are differing opinions, many feel that there should be no mediation if domestic violence or child abuse/neglect is present. Accordingly, attorney mediators must be well-trained in such matters and vigilant for signs of domestic violence or significant power imbalance between the parties. Careful screening for these issues should be done at intake and repeated later in the process.

III. THE USE OF QUASI-JUDICIAL PERSONNEL

Fundamental improvement of Family Court depends upon a more efficient and effective court process that benefits all parties involved. At the same time, care must be taken to ensure that efficiency is balanced by a process which enables litigants to be engaged, informed and afforded ample opportunity to have their positions heard and thoughtfully considered.

While the volume of matters heard in Family Court often makes it difficult to afford this process to litigants, the court must be a forum in which access to justice has been provided to all.

One way in which the courts address the issue of volume is through the use of Court Attorney Referees, Support Magistrates and Judicial Hearing Officers.

Court Attorney Referees are attorneys who hear, decide and issue orders in cases involving custody, visitation and the extension of foster care placement. Generally, Court Attorney Referees report their recommendations to a Family Court judge unless the parties agree to have the Referee hear and determine the outcome of the cases. Court Attorney Referees must be admitted to the New York State Bar and have two years' service as Associate Court Attorneys or

eight years of relevant legal experience after admission to the bar in New York. The position of Court Attorney Referee is not used uniformly throughout the state.

Support Magistrates hear support cases seeking support for a child or spouse and paternity cases requesting a court order declaring someone to be the father of a child. Support magistrates listen to witnesses, examine evidence and determine the outcome of cases—issuing both orders of support and filiations. The decisions made by support magistrates can be appealed to a Family Court judge. Support Magistrates must be admitted to practice for at least five years and are initially appointed for three years with eligibility for subsequent appointments for five year terms.

Judicial Hearing Officers are former, retired judges, appointed initially for a one year term, and thereafter may be reappointed for additional one year terms, who are assigned to hear matters involving contested paternity, custody and visitation and family offenses. In New York City, they may also be assigned adoptions, permanency hearings and foster care review. Generally, Judicial Hearing Officers report to a Family Court judge who determines the outcome. A Judicial Hearing Officer can be "any person who has served for at least one year as a judge or justice of a court of the Unified Court System…" but neither town nor village justices nor any judge who has been removed from office is eligible. Appointment requires a determination that the candidates have the mental and physical capacity to perform their duties and that their services are necessary to expedite the courts' business.[202]
The use of these quasi-judicial officers allows courts to proceed more expeditiously and give more time to each matter. To enable quasi-judicial officers to best serve litigants, judges and the Family Court itself, certain steps are required in their utilization, support, selection and training.

Recommendations

- Court Attorney Referees are needed in all Family Courts in the State.
- Expansion of the role of support magistrates should be considered.
- To the extent feasible financially, the position of Judicial Hearing Officer should be restored to all Family Courts.
- In order to most effectively utilize quasi-judicial officers, it is essential to staff them in a way that comports with their status in the courthouse, the demands on their time and their safety.

[202] Judiciary Law Section 850 (1).

- The process for application and hiring should be standardized for all quasi-judicial officers. It is worth further consideration as to whether candidates should undergo the same rigorous screening that is required of those who seek judicial appointments. Similarly, much like judicial appointments, in which the reappointment process requests input from various stakeholders, the reappointment of quasi-judicial officers should be held to the same scrutiny.

- Quasi-judicial officers should have a specified amount of prior experience in Family Court.

- Quasi-judicial officers should be well-trained prior to assuming their duties. Their knowledge base should be increased by making available training mandatory during tenure in their positions. There should be a consistent evaluation process for all quasi-judicial offices with a request for input from stakeholders sought on a consistent basis.

IV. AMENDMENT AND EXPANSION OF THE USE OF FAMILY COURT ACT SECTION 255

Professor Merril Sobie has commented that Family Court Act Section 255 is ". . . a unique and in some respects a controversial statute . . . which grants the court authority in certain circumstances to order executive agencies and officials to provide specific services. . . [It] vests authority that is roughly analogous to mandamus."[203]

Often advocates rely on regulations when arguing that certain assistance should be provided to children and families. The question in these circumstances usually becomes whether the court has the authority to order what appears in the regulations pursuant to certain laws and statutes such as Section 255 of the Family Court Act.

As an example, the most pertinent regulations for New York's child protective practice arise under Article 10 of the Family Court Act.[204] These regulations are critical in that they clarify the services to which parties are entitled. Litigants in Family Court often make applications pursuant to Section 255 asking the court to order certain services or provisions provided under the regulations. Section 255 is not limited to Article 10 child protective proceedings. Rather the Section is applicable to all proceedings in Family Court. Social services and other agencies often oppose such applications stating that they do not believe the Family Court has the authority to issue such orders, contending that these applications should be made through initiating Article 78 proceedings.

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[203] Sobie, et al., *New York Family Practice §1.15, Section 255 Special Powers* (West 1996).

[204] See, e. g., 18 N. Y. C. R. R. § 422 et seq.

An order made under Family Court Act § 255 must be "one which is within the legal authority of the person or institution to which it is addressed and one which is required to further the objects of the Family Court Act"[205].

Decisions at the Appellate Division appear to agree that Section 255 should not be interpreted broadly. Taking the position that while the Family Court is entrusted to determine what is in the best interest of a child, it has been held that Family Court does not have authority to review the appropriateness of an agency determination.

An important part of the representation of children and families in Family Court proceedings involves securing appropriate, timely services for clients. Sometimes agencies believe that these services are not necessary or question whether the court has the authority to order them. In other instances, agencies agree that the services sought are necessary but fail to provide them in a timely manner.

Statutory changes should be sought to clarify and strengthen the power of the Family Court under Section 255. At the same time, it is recognized that amendment of Section 255 may not provide the entire solution where needed services are non-existent.

Recommendations

Family Court Act Section 255 should be amended to expand the court's ability to order relevant governmental agencies to provide appropriate services. Section 255 was intended to provide the court with the ability to order necessary services by the Executive Branch. However, in the 50 years since enactment the Section has been severely limited through case law interpretation and legislative amendment. The Task Force is considering the possibility of enlarging its provisions or restoring the Section's originally intended scope.

A more discrete and often particularly contentious issue is the use of Section 255 to issue orders related to the level of care provided to a child. The regulations already state that an agency must provide the least restrictive alternative for children in care, but this is often a topic of controversy between parties, and the court, basing its decision on the evidence presented by the parties, should be able to make this type of order.

Another area that frequently arises is the issue of treatment for children in placement, for example the need for drug treatment, sex offender treatment, mental health treatment, etc. The court should be able to order the type of treatment it deems necessary to properly treat the child and move the family towards permanency.

There is a significant issue as to a court being able to order particular education services under Section 255. This is particularly critical given the number of educational issues that arise as part

[205] See: Matter of Hasani B., 195 AD2d 404, 405; see Matter of Lorie C., 49 NY2d 161, 168.

of family court matters. Courts should be granted broader discretion, to ensure that agencies provide appropriate education services.

V. ROLE OF THE SUPERVISING JUDGE OF THE FAMILY COURTS

The role of Supervising Judge of the Family Courts is an important one: to oversee a system that is responsible for the many complicated, emotional issues that are within the court's jurisdiction.

There are Supervising Family Court Judges in every Judicial District, which report to the Administrative Judges in their respective Judicial District. In addition, there is a statewide Family Court Leadership Team, consisting of the Deputy Administrative Judge for Courts outside New York City, the Administrative Judge of the New York City Family Courts and the Vice-Dean for Family and Matrimonial Matters from the New York State Judicial Institute. New York City also has an Administrative Judge for Family Court. The Task Force is considering the question of whether there is a need for an Administrative Judge for the Family Courts outside of New York City.

Managing the volume and nature of cases in Family Court is time-consuming and resource intensive. Supervising Judges must be properly resourced to ensure that the courts are working effectively.

An important aspect of a Supervising Judge's role is to assist Family Court judges to manage their courts on a day-to-day basis. While judges exercise significant judicial discretion in rendering decisions, consistency in practice and levels of performance are important goals. Supervising Judges are in the position to foster stronger management where needed.

As recommended below, an effective approach would be the formulation of a set of "Best Practice Standards," developed jointly by the Supervising Judges, regular Family Court judges and other relevant parties. Best Practice Standards could serve as a goal for managerial improvements implemented collaboratively.

Recommendations

Best Practice Standards should be formulated for all areas of Family Court practice implementing consistent, high-quality management procedures statewide and incorporating local practice variations as appropriate.

Widespread use of Best Practice Standards offers a means of improving administration in Family Court, ensuring a more orderly and procedurally efficient court and implementing well-defined principles that have been successful in improving the processing of Family Court matters.

An example of a Best Practice Standard that could be implemented more widely than it is currently is the pre-trial conference. Pre-trial conferencing does not affect a judge's ability to

administer justice. It offers an opportunity to streamline a case so that it can proceed to settlement or trial more expeditiously.[206]

Supervising Judges should be a prime force in encouraging the implementation of Best Practice Standards.

To take on the enhanced role as contemplated in these recommendations, Supervising Judges should be trained on supervisory techniques that strengthen their administrative skills.

Additionally, if their supervisory capabilities are to be increased, Supervising Judges need the continued support of the Office of Court Administration to succeed in their augmented role.

In some of the judicial districts there are Family Court advisory committees established by Supervising Judges to bring together representatives of agencies and other groups that regularly appear in or interact with the Family Court. These advisory committees have been very useful in assisting Family Courts in the districts in which they have been established. It is suggested that they be established throughout the Family Court system and that they be expanded to include greater community involvement.

[206] Pre-trial conferencing is an integral part of the New York City Family Court Child Protective Plan and the New York City Strategic Plan and is also utilized in the Court Improvement Model Parts in other Family Courts around the state. They are also mandatory in Kings County in custody and visitation cases.

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D. REPORT OF THE SUBCOMMITTEE ON COURT OPERATIONS, CASE MANAGEMENT AND STAFFING

New York State Bar Association
Task Force on Family Court
Subcommittee on Court Operations, Cases and Staffing

REPORT and RECOMMENDATIONS

June 2012

The Subcommittee on Court Operations, Cases and Staffing of the New York State Bar Association's Task Force on Family Court is co-chaired by Laura Russell, Esq., Nancy Thomson, Esq. and Lucia Whisenand, Esq. Additional members are listed in the Appendix.

The Subcommittee met initially on July 15, 2011 and subsequently in conferences held in-person and by telephone. During late 2011 and early 2012, members of the Subcommittee sat on Task Force panels at hearings held in each of the State's four judicial departments.

The following are the recommendations of the Subcommittee regarding measures to improve the operation, case management and staffing of Family Courts in New York.

I. RESOURCES

Family Courts are a vital resource for New Yorkers. The size of the caseload alone tells the story of the importance of the courts in the lives of New York families. But it is also evidence of the stress under which the courts labor because of the crushing volume of their cases. In New York City alone in 2011, there were over 249,459 filings in Family Court, with only 47 Judges to handle those cases. In Family Courts outside of New York City, there were 466,297 filings in 2011. This overwhelming caseload results in a growing backlog, with 81,861 cases pending in New York City Family Courts and 107,121 pending in Family Courts outside of the City at the end of 2011.

Observers agree that Family Courts need more judges, more support personnel and improved physical plants. Adding these resources requires increased funding at a time when public budgets are strained. Nevertheless, Family Courts must be seen as an essential part of the State's safety

net. The Subcommittee urges that support be increased for these courts. By so doing, children are better protected, caregivers strengthened, and families preserved.

Recommendations:

The number of Family Court judges, Judicial Hearing Officers, referees, mediators and support staff should be increased to the levels necessary to ensure that delays and fragmented trials are significantly reduced if not eliminated entirely.

A number of courthouses are either too cramped or in poor physical condition or both. Courthouse expansion and renovation, where needed, should be a priority. Improving security should be another priority. All court parts should have at least one court officer, and courthouses should have child care centers and separate rooms for domestic violence victims, at a minimum.

Bar associations should become active advocates for additional judges and other personnel in Family Courts as well as for improved court facilities.

Additional pro bono attorneys should be recruited to serve in Family Courts as appropriate, performing services such as screening cases for issues requiring trial, serving as mediators after receiving appropriate training, etc.

Additional resources should also be provided to other Family Court stakeholders to permit all attorneys representing parties to have manageable caseloads.

II. DELAYS, CALENDAR AND CASE MANAGEMENT

Because of inadequate resources, parties, judges, lawyers and court personnel must cope with a system that in too many instances fails to provide speedy justice. Delays in case disposition are not uncommon. Parties and their lawyers must cope not only with delays but trials that start and stop, sometimes repeatedly, because judges are forced to juggle more cases than can reasonably be managed.

Although additional funding is clearly part of the solution, there is no single measure that addresses the problem of delays. Rather, a combination of steps can be taken to improve the management of cases and calendars.

Certain courts have developed procedures to improve case management that could be replicated. In some counties, a judge will conduct a single trial over the course of several days while other judges assist by handling calendar calls. Erie County Family Court plans to hold "engagement conferences" as part of its best practices/Court Improvement Project. Onondaga provides a similar procedure in child protective proceedings. In most boroughs of New York City, judges' court attorneys conduct such conferences.

Recommendations:

Family Courts should institute mandatory scheduling conferences that result in scheduling orders—with dates certain.

Failure to comply with scheduling orders should result in sanctions.

Non-continuous trials should be eliminated to the greatest extent possible.

The use of trial parts, such as are held in Queens County, coupled with screening of cases for issues that require trial, should be expanded to additional jurisdictions.

Consideration should be given to the use of travelling judges to reduce the delay in certain courts.

Consideration should be given to utilization of direct testimony presentation by affidavit in appropriate cases. A pilot program utilizing affidavits for presentation of direct testimony is being conducted in the Manhattan Family Court.

Compliance conferences conducted by court attorneys or court attorney referees should be utilized wherever possible.

In New York City, the Administration for Children's Services conducts "child safety conferences" before filing petitions in court. The result is a substantial reduction in filings. Agencies elsewhere in the State should review the practice and replicate to the extent possible.

The use of additional types of conferences including pre-filing conferences and the engagement conferences used in Erie County, as well as, and mediation approaches, such as permanency mediation, would help free up crowded dockets and should be employed more widely.

The creation of the position of case coordinator should be considered to ensure that cases progress on time, verifying, for example, that if reports are ordered they are completed when required. (Connecticut model)

III. THE USE OF ELECTRONIC TECHNOLOGY

Courts in New York and elsewhere have achieved greater efficiency and cost-savings through the adoption of electronic technologies. According to a recent report by an advisory panel to the court system, "[m]ore than 1.3 million documents have now been e-filed in the New York courts

in approximately 350,000 cases by more than 21,000 registered users of the New York State Courts Electronic Filing System."[207]

The panel noted that: "In February 2010, the New York City Family Court and the New York City Administration for Children's Services (ACS) announced a pilot program for the electronic filing of all abuse and neglect petitions filed in Family Court, marking the first cooperative effort of its kind to be undertaken in a large urban jurisdiction nationally. Approximately 12,000 originating petitions are being filed and shared electronically by ACS and the New York City Family Court."[208] In addition, permanency hearing reports are submitted electronically to the court.

Among other steps, the panel recommended "providing the Chief Administrative Judge with authority to authorize E-Filing in Family Court Article 3 and Article 10 proceedings in up to six counties within the state where child protective and presentment agencies consent to participate in such a program."[209]

Other initiatives in the State have included a requirement that attorneys who belong to 18-B panels in the First and Second Judicial Departments demonstrate that they have access to email and computers; the move by Cortland, Westchester and other courts to paperless courts; the publication of forms on the Internet by the Office of Court Administration; and the use of electronic check-in by the New York City and Westchester Family Courts.

Further implementation of electronic technology must nevertheless be measured against possible computer access problems faced by unrepresented litigants and the costs associated with the technology.

Recommendations:

The further development of electronic technologies in Family Court should be encouraged.

The legislation recently proposed by the Chief Judge to implement the recommendations contained in the recent report of the advisory panel on e-filing should be supported.

Initially E-Filing should be limited to Article Three and Article Ten cases. The inclusion of Article Seven cases, as well as other types of proceedings, should be studied.

In all judicial districts, attorneys who participate in 18-B panels should certify that they have access to computers, the Internet and email, unless they can show a reasonable basis for their inability to have such capacity.

The limited ability of unrepresented litigants to access the technology must be addressed.

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[207] *Electronic Filing in Family Court Article Three and Article Ten Proceedings: A Report to the Governor, Legislature and Chief Judge*, New York State Unified Court System, Spring 2012.
[208] Ibid.
[209] Ibid.

The costs associated with further implementation of electronic technologies should be measured against the other fiscal needs of Family Court.

IV. ALTERNATIVE AND ADDITIONAL RESOLUTION PROCEDURES

Settling cases without using court resources and diverting cases, or certain issues in cases, to alternative resolution mechanisms would reduce the burden upon Family Courts. In a pilot program in Kings County, mediation proved successful. The learning from such projects could enhance the greater use of extra-judicial settlement techniques. However, any alternative procedure must not only provide adequate protection for unrepresented litigants but also ensure that the parties, whether unrepresented or represented, know their rights.

Recommendations:

Appropriate alternative dispute resolution should be employed in all Family Court matters. As many cases as possible should be diverted to alternative or supplemental dispute resolution or other forums including Youth Courts.

Mediators should be knowledgeable in the essentials of family law; and should be trained to recognize signs of domestic violence.

Mediation should not be used in any case where domestic violence is involved and caution should be exercised where parties are unrepresented.

In any mediation involving children, attorneys for the child should be part of the process. Attorneys representing litigants should be, at a minimum, invited to all mediation sessions.

While using caution not to jeopardize Federal funding, consideration should be given to the use of support magistrates to assist parties in preparing stipulations in instances where the parties have agreed upon issues such as visitation.

The "collaborative law" approach to family law issues should be encouraged.

In juvenile delinquency cases, greater use should be made of diversion both pre-court and in post-disposition.

V. STANDARDS AND BEST PRACTICES

Mandatory, normative or simply aspirational standards or best practices for those who are associated with Family Courts are important tools for recognizing the high performance of many and improving the performance of others. Devising standards and best practices is best accomplished in a collaborative process, involving the bench, bar and client advocates.

Recommendations:

"Best Practice" standards for Family Court should be expanded, disseminated by the Office of Court Administration and bar associations and employed by judges, court personnel and attorneys.

Currently, an attorney with ten years of any type of legal experience may become a Family Court Judge. A standard should be adopted that provides that at least five years of Family Court experience should be a consideration with regard to Family Court judges whether elected or appointed.

Except in extreme cases, severe sanctions for delays should be avoided. However, individual attorneys or agencies that are the source of repeated or chronic delays should face sanctions measured by a standard that defines the extent of the disruption caused.

When measured by a performance standard, assigned attorneys who represent children or parents and who chronically cause delays should be placed on probation as to their membership on panels.

Family Court experience should be a consideration for Court attorneys, court attorney referees and Judicial Hearing Officers assigned to Family Courts. Following appointment, formal training in family court law and procedures and domestic violence issues should be required for all. And, an evaluation procedure should be developed and implemented for all of these quasi-judicial personnel.

The question of whether mediators should be licensed after passing standardized tests merits further study.

Attorneys practicing in Family Courts should maintain fluency in the law by availing themselves of Continuing Legal Education courses about family court practice. The courses should include all the matters that come before Family Courts: custody, child protective, foster care, domestic violence, termination of parental rights, persons in need of supervision, juvenile delinquency and others. Family Court Act Section 249-b requires that all attorneys for children receive training, including training in issues related to domestic violence. Additionally, either OCA or each of the four Appellate Divisions requires training for attorneys for the child and for members of the

18-b panels. Likewise, all institutional providers of services under contract with the Office of Court Administration are required to provide training.

Those without formal legal training who work with Family Court cases – social workers, interpreters and others – should be trained in the basics of family law and domestic violence.

Consideration should be given to assessing case dispositions for categories beyond child protective proceedings. The objective should be to look at road blocks or impediments that have a negative impact on timeliness and the ability to conduct continuous hearings.

The Office of Court Administration should consider standards for the appointment of assigned counsel and forensic evaluators, so as to eliminate the inconsistency in the process.

APPENDIX

Members of the Subcommittee on Court Operations, Cases and Staffing

Laura A. Russell, Esq., Co-Chair, Bronx, New York

Nancy Thomson, Esq. Co-Chair, New York City

Lucia B. Whisenand, Esq., Co-Chair, Syracuse, New York

Margaret A. Burt, Esq., Pittsford, New York

Honorable Michael V. Coccoma, Cooperstown, New York (EX OFFICIO)

Celia Marie Curtis, Esq., Harrison, New York

Lawrence T. Dahlke, Esq., Schenectady, New York

Honorable Howard A. Levine, Albany, New York

Honorable Sharon S. Townsend, White Plains, New York

Deanne M. Tripi, Esq., Buffalo, New York

V. TASK FORCE on the FAMILY COURT

FINAL REPORT APPENDICES

Appendix A - Members of the Task Force

Melissa M. Beck, Legal Information for Families Today, New York City

Katherine J. Bestine, Cohen & Lombardo, Buffalo

Stephen G. Brooks, Washington, DC

Margaret A. Burt, Pittsford

Honorable Randal B. Caldwell, Utica

John E. Carter, Jr., Saratoga Springs

June M. Castellano, Law Office of June Castellano, Rochester

Jean Ann Clemente, New York City

Honorable Rita Connerton, Binghamton

Celia Curtis, Harrison

Lawrence T. Dahlke, Schenectady

Honorable Craig Doran, Canandaigua

Cynthia F. Feathers, Glens Falls

Brenda M. Freedman, Niagara County Supreme Court, Williamsville

Ronnie A. Gouz, Berman Bavero Frucco & Gouz, White Plains

Susan R. Horn, Frank H. Hiscock Legal Aid Society, Syracuse

Susan L. Jacobs, Center For Family Representation, New York City

Honorable Howard A. Levine, Whiteman Osterman & Hanna, Albany

Susan B. Lindenauer, New York City

Catherine M. Miklitsch, Rockland County Family Court, New City

Laura A. Russell, Legal Aid Society, Bronx

Merril Sobie, White Plains

Karen Stanislaus, Oneida County

Tamara Steckler, Juvenile Rights Division, The Legal Aid Society, New York City

Chaim Steinberger, New York City

Zenith T. Taylor, Law Offices of Zenith T. Taylor, Forest Hills

Nancy Thomson, New York City Administration for Children's Services, New York City

Honorable Sharon S. Townsend, Supreme Court Justice, 8th Judicial District, Erie County and Vice-Dean for Family and Matrimonial Matters, New York State Judicial Institute, White Plains

Deanne M. Tripi, Palmer Murphy & Tripi, Buffalo

Honorable Elizabeth Marie Walsh, Rensselaer County Family Court, Troy

Lucia B. Whisenand, Syracuse

Ex Officio Members

Honorable Michael V. Coccoma, Cooperstown

Honorable Edwina G. Richardson-Mendelson, New York City Family Courts, New York City

Janet R. Fink, New York State Office of Court Administration, New York City

Appendix B – Hearings, dates, places and witnesses

FIRST DEPARTMENT, NEW YORK COUNTY LAWYERS ASSOCIATION, NEW YORK CITY, JANUARY 11, 2012

Honorable Edwina G. Richardson-Mendelson, Administrative Judge, New York City Family Courts

Honorable Douglas Hoffman, Supervising Judge, New York County Family Court

Honorable Ana Bermudez, Deputy Commissioner for Juvenile Operations, New York City Department of Probation

Honorable Angela Albertus, Deputy Chief Corporation Counsel - Family Court, New York City Law Department

Honorable Kathie E. Davidson, Supervising Judge, Family Court Ninth Judicial District

James McAllister, Family Court Clerk, Westchester County

Kara Finck, Bronx Defenders

Michele Cortese, Center for Family Representation

Melanie Hart, Legal Information for Families Today

James Purcell, Council of Family and Child Caring Agencies

Jane Golden, Council on Children, The New York City Bar Association

George Reed, Jr.

Janette Cortes-Gomez, Bronx Family Bar Association

Ronald E. Richter, Commissioner, New York City Administration for Children's Services

Mary Rothwell Davis, Center for Battered Women's Legal Services, Sanctuary for Families

Dennis Hawkins, The Fund for Modern Courts

Karen P. Simmons, The Children's Law Center

Emily Ruben, The Legal Aid Society, Brooklyn Neighborhood Office

Meridith Sopher, The Legal Aid Society, Juvenile Rights Division

Pamela Sheininger, Court Attorney Referee, New York County Family Court

SECOND DEPARTMENT, NASSAU COUNTY BAR ASSOCIATION, HEMPSTEAD, MARCH 22, 2012

Honorable Conrad Singer and **Honorable Ellen Greenberg,** Nassau County Family Court, Officers of the Association of Judges of the Family Court of the State of New York

Donna England, Treasurer, Suffolk County Bar Association

Robert Mangi, Nassau County Bar Association

Prof. Jane Spinak, Columbia Law School

Lois Schwaeber, Nassau County Coalition Against Domestic Violence

Nancy Erickson, Law Office of Nancy S. Erikson

Catherine M. Miklitsch, Rockland County Family Court

Jeff Blank, Brooklyn Family Defense Project

Anna Maria Diamanti, Legal Services NYC

Mary Grace Ferone, Legal Services of the Hudson Valley

Prof. Melissa Breger, Albany Law School

THIRD DEPARTMENT, NEW YORK STATE BAR ASSOCIATION, ALBANY, DECEMBER 1, 2011

Amy Barasch, Director, NYS Office for the Prevention of Domestic Violence

Honorable Gerard E. Maney, Albany County Family Court

Paul Lupia, Legal Aid Society of Mid-New York, Inc.

Susan Antos, Empire Justice Center

Lillian M. Moy, Legal Aid Society of Northeastern NY, Inc.

Dr. Elizabeth Schockmel, Capital Psychological Associates

Lisa Frisch, The Legal Project, CDWBA

Beatrice Havranek, County Attorney, Ulster County

Laurie Case, Chief Clerk, Cortland County Family Court

FOURTH DEPARTMENT, UNITED STATES COURTHOUSE, BUFFALO, MARCH 29, 2012

Honorable. Lisa Bloch Rodwin, Erie County Family Court

Prof. Susan Vivian Mangold, University at Buffalo Law School

Pamela Neubeck, The Legal Aid Bureau of Buffalo

Keith Morgenheim, Neighborhood Legal Services

Robert Lonski, Aid to Indigent Prisoners Society

Robert M. Elardo, Erie County Bar Association Volunteer Lawyers Project.

Carla Palumbo, The Legal Aid Society of Rochester

Honorable. Margaret O. Szczur, Erie County Family Court

Adele Fine, Office of the Monroe County Public Defender

Allison O'Malley, Safe Journey

Amy E. Schwartz, Empire Justice Center

John J. Aman, Erie County Family Court

Susan Kay Griffith, Hiscock Legal Aid Society

Mindy Marranca, Bar Association of Erie County

Appendix C – Consultations

In-person meetings attended by either or both Co-Chairs of the Task Force included the following:

Honorable Ann Pfau, Chief Administrative Judge

Honorable Fern Fisher, Deputy Administrative Judge- New York City Courts

Honorable Michael V. Coccoma, Deputy Administrative Judge- Courts outside New York City

Honorable Edwina Richardson-Mendelson, Administrative Judge of the New York City Family Courts

Presiding Justices of each of the four Judicial Departments:

Honorable Anthony V. Cardona – Third Department

Honorable Thomas E. Mercure (Acting Presiding Justice)– Third Department

Honorable Karen K. Peters – Third Department

Honorable A. Gail Prudenti – Second Department

Honorable Henry J. Scudder – Fourth Department

Honorable Luis A. Gonzalez – First Department

Meeting with the Supervising Family Court Judges in the Third Department hosted by the Honorable Thomas Mercure

Meeting with the Supervising Family Court Judges outside New York City hosted by the Honorable Michael V. Coccoma

Presentations to the Task Force were provided by:

New York State Office of Court Administration

Ronald Younkins, Chief of Operations
Chester Mount, Director of Court Research and Technology
Frank Woods, Assistant Coordinator, Office of Alternative Dispute Resolution and Court Improvement
Daniel Weitz, Coordinator, Office of Alternative Dispute Resolution and Court Improvement
Peter Passidomo, Chief Clerk, NYC Family Court

New York State Permanent Judicial Commission on Justice for Children

Kathleen DeCataldo, Executive Director

Appendix D – Research Memoranda Prepared by Ms. Celia Curtis

D-I. The use of quasi-judicial personnel in Family Court

Celia Curtis
March 2011

Introduction

The idea that family court confronts complex and critical problems is not new. Nor is the reality that the court, despite the best efforts by its judges and other personnel, is overworked and under-resourced. Indeed, in New York, family court calendars have been overburdened since the Court's 1962 inception.[210] Over the years, the well-documented problem has escalated. The addition of statutorily mandated proceedings, the significant number of self-represented parties and the generally multi-faceted and difficult nature of family court cases put great demands on the system. Moreover, the continuing jurisdiction of the court necessitates a large volume of modification, enforcement and extension hearings. In 2009, 742,365 new family court cases were filed, a new high and thirty-six percent greater than all civil and criminal filings in Supreme Court statewide. A typical judge handling child protective cases in the New York City Family Court now hears 2,100 cases per year—up from 1,600 in 2005.

Across the country, court systems' annual reports, family court task forces and other judicial reporters uniformly seek additional judicial resources for their courts.[211] Increases, however, have been at a snail's pace. In nearly fifty years, the number of New York City Family Court judges, for example, has increased by less than one-third. In the counties outside New York City, the pattern is the same. In the last decade the state created a total of only four Family Court judgeships, one each in Clinton, Monroe, Oneida, and Orange Counties.[212]

What has been apparent for a long time is that if the courts, at least in the urban areas, relied solely on judges to adjudicate, the result would be debilitating gridlock, with catastrophic results for families. Instead, family courts throughout the country have sought to alleviate judicial delays through, among other stopgap measures, the addition of quasi-judicial, or subordinate judicial personnel. In New York and elsewhere, court administrators have appointed non-judges to preside over certain "easier" cases, but the end result has generally been disjointed. Unable to step back and take a holistic approach to staffing because of constant budget constraints, a somewhat dizzying array of magistrates, masters, commissioners, referees, hearing officers,

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[210] Paul Crowell, *More Aides Asked for Family Court, Need for Probation Workers and Judges Reported*, N.Y. TIMES, Jan. 3, 1964, at 26; Martin Tolchin, *Experts Wonder if Family Court is Doing Its Job, Tangle of Problems Creates an Overloaded Calendar*, N.Y. TIMES, JAN. 18, 1964, at 24 (noting a Judicial Conference report praising the court's "splendid record of achievement," but finding that the court was understaffed); Peter Kihss, *Reforms Ordered for Family Court, Appellate Divisions' Ruling Seeks to End 'Fragmented' Approach to Problems*, N.Y. TIMES, Sep. 16, 1969, at 1.

[211] *E.g.*, In the Name of Justice: Report on the California Courts 18, Judicial Council of California, January 1, 2007 – June 30, 2008 (revised June 1, 2009) http://www.courtinfo.ca.gov/reference/documents/2008ar.pdf.

[212] *Kids and Families Still Can't Wait; The Urgent Case for New Family Court Judgeships*, Report Prepared for the New York State Senate Judiciary Committee, Oct. 30, 2009, at 11.

hearing examiners, auditors and so on have been added to personnel lists.[213] Adding to the complication, in most states, New York included, there is not simply one type of quasi-judicial position; there exist those sanctioned by the state constitutions, those added by state and federal statutes and those which are non-statutory "in-practice" positions. Furthermore, the combinations of personnel and their roles and duties may vary from area to area within the same state. This lack of uniformity makes it difficult for court administrators and policy makers to assess the effectiveness of the positions.

New York's Quasi-Judicial Personnel

Initially, only judges could hear cases in New York's Family Court. This changed with the addition by Congress of Title IV-D to the Social Security Act in 1975.[214] The new law required every state to provide child support enforcement services to recipients of Aid to Families with Dependent Children at no charge and to assist non-welfare families in child support collections for a nominal fee. The federal government committed resources to pay most of the cost of running the programs so long as the states provided the specific child support enforcement services mandated by the statute.

In response, New York created the quasi-judicial position of hearing examiner, now called support magistrate, to hear and determine support proceedings. Support magistrates are full-time employees who are appointed by the chief administrator of the courts for an initial three year term, with possible reappointment for five year terms.[215] They must be attorneys admitted in New York for at least three years and they must be "knowledgeable with respect to the family court and federal and state support law and programs."[216] Support magistrates can hear, determine and grant any relief in spousal and child support cases, paternity proceedings, and cases in which support is sought for a child who is in an authorized residential placement.[217] Support magistrates are not empowered to hear or determine any section 455 issues (suspension of orders of commitment), nor can they hear "issues of contested paternity involving claims of equitable estoppel, custody, visitation[,] including visitation as a defense, and orders of protection or exclusive possession of the home. . . ."[218] When such issues arise in a proceeding before a support magistrate, he or she is empowered to make a temporary order of support, but must refer the proceeding to a judge.[219] Once the particular issue is determined by the judge, the judge may either also make a final determination of support, or may refer the proceeding back to the support magistrate for that or any other matter within the authority of the support magistrate.[220] Thus, the same family seeking to establish custody or visitation along with child support must appear before at least two different adjudicatory officials – and probably make multiple appearances before one or more of them. Even a couple seeking simply to enter a

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[213] *See* Swezy v. Bart-Swezy, 866 So.2d 1248 (Fla. Dist. Ct. App. 2004) (Farmer, C.J. concurring)("It hardly matters whether that official is called 'General Master,' 'Support Enforcement Officer,' 'Über Richter' or any other title the inventive minds of lawyers, Judges or court administrators may divine.").

[214] Pub. L. No. 93-647 (1975) (codified as amended at 42 U.S.C. §§ 651-669(b) (2006)).

[215] N.Y. FAM. CT. ACT §439 (f).

[216] *Id.*

[217] *Id.* (a).

[218] *Id.*

[219] *Id.* (c).

[220] *Id.*

stipulation regarding child support and one other issue must appear before both a support magistrate and a judge or referee on two different days – again, at least in urban areas – with a corresponding waste of court hours as well as their own time and the possibility of multiple and occasionally conflicting court orders.

There are currently forty support magistrates in New York City and a fairly evenly distributed eighty-eight outside of New York City.[221]

Referee/Court Attorney Referee

Referee is a designation applied to an attorney in good standing admitted to practice in New York who has been appointed by the court to hear and report any issue of fact required to be decided by the court[222] or, with the consent of the parties, hear and determine any issue referred.[223] In certain limited circumstances, a compulsory referral to hear and determine may be made.[224]

Family Court referees are known by their unofficial title of court attorney referees (separate and distinct from court attorneys), but their responsibilities are the same as that of a referee as defined in CPLR Articles 42 and 43 (which are utilized in Supreme Court in matrimonial cases). In other words, a court-attorney referee is a "referee," as that word is used in the CPLR; there is no difference and the title "court attorney-referee" is unofficial. The proceedings that may be referred to court attorney-referees are totally opened-ended. Their prevalent caseload is child custody and Article 10-A permanency hearings. They rarely, if ever, hear juvenile delinquency, PINS, child neglect, or termination of parental rights cases.

Of the seventy-two court attorney-referees statewide, forty-five are utilized in New York City, with the remaining twenty-seven spread over the Fifth, Seventh, Eighth, Ninth and Tenth Judicial Districts (five, three, five, four and ten, respectively).[225] The Third, Fourth and Sixth Judicial Districts do not utilize court attorney-referees.[226]

Judicial Hearing Officer

In 1983, the Judiciary Law, the CPLR, the CPL and the Retirement and Social Security Law were amended to provide for the designation of judicial hearing officers (JHOs).[227] Article 22 was added to the Judiciary Law,[228] and in regard to civil actions, the CPLR was amended to incorporate judicial hearing officers into all of the provisions relating to referees.[229] Judicial hearing officers are retired judges who, upon application, may hold the referee position.[230] Since

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[221] 2010 Task Force on Family Court, OCA Data Compilation, III.
[222] N.Y. C.P.L.R. 4212. A reference to hear and report, which requires that a judge make the final decision, may be made with or without consent of the parties, if there are "exceptional conditions." *Id.*
[223] N.Y. C.P.L.R. 4317 (a).
[224] N.Y. C.P.L.R. 4317(b).
[225] 2010 Task Force on Family Court, OCA Data Compilation, III.
[226] *Id.*
[227] Schanback v. Schanback, 519 N.Y.S.2d 819, 822 (App. Div. 1987).
[228] *See* N.Y. JUD. LAW § 850, et seq.
[229] *Schanback*, 519 N.Y.S.2d at 822. *See* N.Y. C.P.L.R. 105, 3104, 4301, 4312, 4313, 4315, 4321, 7804, 8003.
[230] N.Y. JUD. LAW §850 (1).

the Family Court Act does not contain any provisions concerning the use of judicial hearing officers, the CPLR governs to the extent that it is appropriate for Family Court proceedings.[231] Currently, there are seventy-eight JHOs approved to handle assignments in Family Court.[232] Of those, sixty-two accept assignments in various districts outside New York City, while eighteen are available in New York City.[233] (The use of JHOs may be suspended commencing April 1 because of the budgetary crisis occurring in the state.)

In effect, over the years, New York has established four different quasi-judicial positions, a scenario that is confusing to the bar and the public. New York is not alone in this conundrum. Nationwide, quasi-judicial officers are widely utilized to expedite certain types of hearings in the way that they are used in New York[234] and they seem to have been added in the same piecemeal manner. For this report, seven other states were examined: California, Colorado, Delaware, Florida, Illinois, Massachusetts and New Jersey.

Child Support Officials

Because the federal government provides funding for the child support services it mandates under Title IV-D of the Social Security Act, a number of states have chosen to create a discreet quasi-judicial position for that purpose, presumably to keep costs segregated and make reimbursement simpler. Thus, the support magistrate[235] is empowered to hear only matters pertaining to the establishment, enforcement or modification of child support (or spousal support if a child is involved). Likewise, the support magistrates generally do not hear contested paternity cases, as in New York. However, three of the four states studied do not employ this stand-alone support magistrate model.

California, for example, has empowered its Child Support Commissioners with added responsibilities.[236] As in New York, the child support officials' primary duties are to establish, enforce or modify child or spousal support, but in addition they are authorized to join issues regarding custody, visitation and protective orders, upon application of any party.[237] After joinder, the commissioner may "[r]efer the parents for mediation of disputed custody or visitation issues[,][238] accept stipulated agreements regarding these matters,[239] or refer contested issues to a non-federally funded commissioner, who may hear and decide the matter if the parties so stipulate.[240] Importantly, the California Child Support Commissioner may retain and hear contested custody, visitation and restraining order issues so long as the court has "adopted procedures to segregate the costs of hearing Title IV-D child support issues from the costs of

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[231] N.Y. FAM. CT. ACT § 165(a).
[232] 2010 Task Force on Family Court, OCA Data Compilation, IV.
[233] *Id.*
[234] *See generally*, National Center for State Courts, Judicial Administration Resource Guide, http://www.ncsc.org/topics/judicial-officers/judicial-administration/resource-guide.aspx (listing publications concerning quasi-judicial officers).
[235] Referred to as "Commissioners" (California), "Support Enforcement Hearing Officers" (Florida), "Administrative Hearing Officers" (Illinois), "Child Support Hearing Officers" (Massachusetts, New Jersey).
[236] CAL. FAM. CODE §4251.
[237] *Id.* (e).
[238] *Id.* (e)(1).
[239] *Id.* (e)(2).
[240] *Id.* (e)(3). *See also* CAL. CIV. PROC. §259.

hearing other issues . . . ."[241] In California, then, there are cases involving custody and visitation along with child support in which the parties never appear before a judge. Recall that in New York, when such issues arise, the Support Magistrate is always directed to make a temporary order and refer the matter to a judge.

Two other states have adopted an administrative scheme in response to the federal child support mandate rather than one that relies more heavily on the courts. These states do not, therefore, seem to have the same concerns about restricting the non-judge officials' authority and/or ensuring that there are procedures to segregate the costs of "extra" duties. In Colorado and Delaware, the District Court Magistrates and Commissioners, respectively, hear child support cases along with custody and other matters. Unlike California, there is no mention of segregating the costs of hearing Title IV-D cases from other cases. That does not mean that these states do not receive the federal reimbursement for the portion of the District Court Magistrates' or Commissioners' time spent on Title IV-D support; however, that is not clearly defined legislatively. At any rate, the bulk of the costs of implementing the federally mandated expedited child support systems in these states are spent on administrative agencies rather than judicial systems. For instance, Colorado's Child Support Enforcement Act[242] establishes "a single and separate agency within the [state] department to administer or supervise the administration of such program in accordance with Title IV-D of the federal 'Social Security Act.'"[243] Delaware's statute establishes a Division of Child Support Enforcement within its Department of Health and Social Services.[244] These departments are authorized to provide all services required by Title IV-D, including parent locator services, determination of paternity, establishment of child support and medical support obligations, review and adjustment of child support orders, enforcement of child support, spousal support and medical support orders, and collection and disbursement of child support payments.[245] Under Title IV-D of the Social Security Act, states were required to have effective programs for the enforcement of child support and establishment of parentage – which form that took was left in the hands of the individual states.[246]

The remaining states examined for this report – Florida, Illinois, Massachusetts and New Jersey – furnish limited power upon their respective child support officials, compelling the same inefficient back and forth between the support official and the judge as is required in New York. In a further restriction, in Illinois and New Jersey, the so-called Hearing Officers may only make recommendations to the judge even though they only hear uncontested support and paternity matters. The judge must go through the legal formality of ratifying the recommendations.

Referees, Masters, Special Masters, Commissioners, etc.[247]

Nationally, there are distinct differences in the roles and responsibilities of the referees, masters, magistrates, commissioners and other appointed subordinate judicial officials documented in this

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[241] CAL. FAM. CODE §4251 (e)(3).
[242] COLO. REV. STAT. §26-13-101 et seq.
[243] *Id.* §26-13-103.
[244] DEL. CODE ANN. tit. 13, §2201.
[245] *Id.* §2203 (a); *see also* COLO. REV. STAT. §26-13-104.
[246] S. REP. NO. 93-1356 P.L. 93-647, SOCIAL SERVICES AMENDMENTS OF 1974.
[247] *See infra* Appendix for a list and more complete explanation of these positions in the states studied for this report.

report. For example, in some instances, an order of a subordinate official is an enforceable order of the court. In others, the findings and recommendations of the official are without effect unless they are approved by a judge. Some officials need not be lawyers; others must have been licensed to practice in a particular state for at least five years. Some are part-time; some are full-time. Some are required to take oaths of office; some are not.

The variations reflect both the specific work being done – the part-time referee appointed to report on findings of fact will have less authority than, say, the commissioner sitting as a temporary judge, who has the same power to render decisions as a constitutional judge – and, to a lesser degree, the philosophy of the state in which the particular court is housed. For example, in New Jersey, references to masters may be made only when all parties consent or under "extraordinary circumstances." Under Illinois' 1962 amended constitution, "masters in chancery and other fee officers" were abolished. (Associate judges were added eight years later, probably in recognition of the need for some sort of reprieve for judges.) In addition, the sometimes seemingly arbitrary differences in matters over which the quasi-judicial personnel may preside reflect past litigation that was remedied legislatively or through rulemaking.[248] Regardless of these distinctions, their widespread use points to a need for these officials, who have a tremendous impact on the pace of the courts' dockets.

Other Innovations

Without exception, the states in this report, New York included, have sought to manage their family courts or divisions through innovations and pilot programs. A few examples follow.[249] California currently has two relevant pilot projects, one in San Mateo County[250] and the other in Santa Clara County.[251] In San Mateo, a Family Law Evaluator, an attorney licensed in California, is appointed in cases where at least one party is unrepresented by counsel to assist with hearings on motions for temporary child support, temporary spousal support and temporary maintenance of health insurance. Before the hearing, the Family Law Evaluator meets with the parties and depending on the locality, this meeting may be automatic and mandatory.[252] The Evaluator's tasks include preparing formulaic support schedules, drafting stipulations, reviewing paperwork, advising the court as to whether or not the matter is ready to proceed and ultimately, making recommendations to the court.[253] Thereafter, the Evaluator prepares the formal order consistent with the court's announced oral order. If contested custody or visitation is at issue, the court sets those issues aside for mediation, after which, if necessary, separate hearings are scheduled.[254] Upon its inception, the program was estimated to serve 2,200 litigants and save

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[248] E.g., State v. Wilson, 545 A.2d 1178 (Del.,1988) (directing the Family Court to remedy various inconsistencies between the Delaware statute and the Court Rules regarding masters by adopting rules consistent with the opinion).

[249] For more examples of family court innovations, see AFCC (Association of Family and Conciliation Courts) Court Services Task Force Exemplary Practices Sub-Committee, *Exemplary Family Court Programs and Practices, Profiles of Innovative and Accountable Court-Connected Programs*, May 2005, http://www.afccnet.org/pdfs/Exemplary%20Practices.pdf; Judicial Council of California, *Innovations in the California Courts*, 2009, http://www.courts.ca.gov/xbcr/cc/innovations09.pdf.

[250] *Id.* §20010-20026.

[251] *Id.* §20030-20043.

[252] *See id.* §20014.

[253] *Id.* §20012.

[254] *Id.* §20019.

sixty-five days of court time per year, in addition to the time and wages saved by the litigants themselves.[255]

Under the 2009 Santa Clara project, an Attorney-Mediator (AM) is hired to assist the court in resolving child and spousal support disputes, to develop community outreach programs and to undertake other duties as assigned by the court. The Santa Clara project applies to all hearings for both temporary and permanent child or spousal support, health insurance, custody or visitation in proceedings for dissolution of marriage, annulment or legal separation.[256] The program applies to all litigants, including those represented by counsel, although priority is given to those without representation. The duties of the Attorney-Mediator may include, but are not limited to, meeting with litigants to mediate issues of child support, spousal support, and maintenance of health insurance, and like the Family Law Evaluator in San Mateo, preparing formulaic support schedules and drafting stipulations. If the parties are unable to resolve their issues, the AM reviews the paperwork and advises the court as to whether the matter is ready to proceed.

Thereafter, the AM will prepare formal orders consistent with the court's announced order in cases in which both parties are unrepresented. Alternatively, the AM may serve as a special master (unless he or she has served as a mediator in that case). This program is estimated to serve 4,000 litigants and save twenty-two days of court time per year. In addition, there are additional savings in cases involving child support obligations which the district attorney's office was required to handle.[257]
Florida's First Judicial Circuit has established the Family Law Self-Help Program to assist pro se parties in family proceedings. The Program employs a case manager to ensure that the court system is used effectively and efficiently, that the judges receive the information needed to make a ruling and that the users of the court are aware of the proper requirements for the procedure in front of the Court.[258] Florida has also developed a Dependency Court Information System (FDCIS), which is a web-based case management system that assists judges, magistrates, and court staff with meeting federal and state mandates for dependency cases. FDCIS presents data in an easy-to-read fashion, organizes workload, and provides individual case information as well as aggregate caseload, county, circuit, and statewide information. The goal is to organize court proceedings in order to achieve more positive outcomes for abused and neglected children.[259]

In New Jersey, the Family Practice Division coordinates a Juvenile Conference Committee program which is composed of six to nine member panels of trained volunteers who hear the cases of minor juvenile offenders.[260] The committees serve as an "arm of the court" in hearing the specific matters referred to it. They are charged with providing balanced attention to the protection of the community, the imposition of accountability for offenses committed, fostering interaction and dialogue between the offender, victim and community, and the development of

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[255] *Id.* §20026.
[256] *Id.* §20031.
[257] *See id.* §20043(2).
[258] http://www.firstjudicialcircuit.org.
[259] Florida State Courts, Family Courts, http://www.flcourts.org/gen_public/family/familycourts.shtml.
[260] Juvenile Conference Committees, http://www.judiciary.state.nj.us/family/fam-01.htm. Juvenile Conference Committees are authorized under N.J.STAT.ANN. 2A:4A-75 and N.J. CT. R. 5:25.

competencies to enable the juvenile offender to become a responsible and productive member of the community.[261]

Appearance before the committee is voluntary as is compliance with its recommendations.[262] Over 2,300 volunteers handle more than 10,000 juvenile delinquency cases each year.[263] During court year 2007, 8077 complaints were diverted to Juvenile Conference Committees, representing 13.2% of the total juvenile delinquency caseload statewide.[264]

Proposal

Regardless of the specific permutations of quasi-judicial personnel utilized by the courts, the overwhelming truth is that they are a large part of the landscape in family law. While laudable in the sense that dockets move more quickly than they otherwise would without the positions, a closer look at the New York system reveals a puzzle that may be indecipherable to many users of the courts. The initial confusion is caused by the fact that four different titles are in existence in addition to "judge." This is magnified by the inability of each respective official to hear and determine related matters involving the same family. For example, the support magistrates may determine child support and uncontested paternity, but cannot determine or enforce custody and visitation. Referees may, upon consent, conduct custody trials, but do not hear child support cases (although there is not a statutory bar). Although referees and support magistrates determine important family issues, including custody and child support respectively, as presently structured, they cannot hear even preliminary issues in delinquency or child protective cases. The result is inefficiency and fragmentation. A family litigating multiple problems must appear before several differently titled "judges" sequentially. Further, the court cannot allocate resources logically and cannot reallocate to meet changing needs and conditions.

A better system would be one created in a holistic manner, in which subordinate judicial personnel could hear, upon consent, all matters pertaining to a particular family. This would be much more productive, would adhere to "best practices" recommendations for "one family, one judge," and would not, at least initially, require additional financial resources. One approach would be to create a uniform and flexible quasi-judicial position, akin to the federal magistrate position. Indeed, New York should try to come as close to the federal model as is possible given the realities of changing a firmly entrenched system and the concern over reimbursement by the federal government for the mandated child support services.

The establishment of a Family Court Magistrate, as proposed by the New York State Bar Association, [265] would represent a step in the direction of the uniformity and flexibility posited by the federal magistrate while not jeopardizing the federal reimbursement. The position integrates the four present non-judge adjudicating positions, but, at least initially, keeps them in separate parts. That is, the present support magistrate (to be called Family Court Magistrate)

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[261] N.J. Ct. R. 5:25-1(c).
[262] *Id.* (d).
[263] New Jersey Family Division Overview, http://www.judiciary.state.nj.us/family/fam-07.htm.
[264] New Jersey Family Division, Juvenile Conference Committees, http://www.judiciary.state.nj.us/family/fam-01.htm.
[265] The Family Court Magistrate position was proposed by the New York State Bar Association Committee on Children and the Law in November, 2003.

would continue to hear and determine support and paternity cases in the present child support parts, but the Court would have the discretion to reassign the magistrate from a child support part to a custody or permanency hearing part. Similarly, the Court could assign a court attorney-referee (again, designated a Family Court Magistrate) from a custody or permanency part to a child support part. In addition to the obvious potential daily efficiencies of this approach, the number of child support or custody parts could easily expand or contract to meet changing needs over time or to cover unforeseen contingencies.

Another improvement would be to empower the current New York support magistrates with the type of powers that California has given to its Child Support Commissioners. The support commissioner could, if necessary, join issues regarding custody, visitation and protective orders. Those cases would not then need to be referred back and forth between the judge and the magistrate, alleviating the judges' burdens as well as the expenses of the parties. While it is clear that the federal government program does not envision funding services aimed at other issues between parents, such as custody and visitation, the California system has been successful insofar as it has been able to segregate the costs of hearing Title IV-D child support issues from the costs of hearing other issues to the satisfaction of the federal government. Either approach – the Family Court Magistrate position or the California Commissioner-type position would enable the Family Court to better manage increasing caseloads with limited resources.

APPENDIX

CALIFORNIA

In California, the fifty-eight countywide Superior Courts are the trial courts.[266] Within each superior court, there are family law and juvenile dependency and delinquency divisions.[267] In addition, California also utilizes what it calls "subordinate judicial officers," namely commissioners, referees and hearing officers.[268] These officers are authorized by article VI, section 22 of the California Constitution, appointed by the court[269] and, with the exception of juvenile referees and hearing officers, must have been "admitted to practice law in California for at least 10 years or, on a finding of good cause by the presiding judge, for at least 5 years."[270]

Commissioners

The term "subordinate judicial officers" does not encompass the federally funded child support commissioners employed in California. Like their counterparts in New York, called support magistrates, these "commissioners" hear Title IV-D child support cases filed by local child support agencies.[271] That is, their primary duty is to hear cases in which they establish, modify or enforce child or spousal support and establish paternity.[272] Unlike their New York counterparts, however, California's child support commissioners are empowered to join, upon application of any party, issues concerning custody, visitation, and protection orders in the action.[273] Thereafter, he or she shall "(1) [r]efer the parents for mediation of disputed custody or visitation issues . . ., (2) [a]ccept stipulated agreements concerning custody, visitation, and protective orders . . . (3) [r]efer contested issues of custody, visitation, and protective orders to a judge or to another commissioner for hearing."[274] Importantly, a child support commissioner "may hear contested custody, visitation, and restraining order issues . . . if the court has adopted procedures to segregate the costs of hearing Title IV-D child support issues from the costs of hearing other issues pursuant to applicable federal requirements."[275] The New York support magistrate, in contrast, "shall not be empowered to hear, determine and grant any relief with respect to . . . issues of custody, visitation . . ., and orders of protection . . . which shall be referred to a judge . . . ."[276] In fact, in any proceedings involving these issues, the support magistrate is directed to make a temporary order of support and refer the matter to a judge. After

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[266] *See* California State Courts, http://www.courtinfo.ca.gov/courts.

[267] This may not be true in every county. Barbara A. Babb reported in *Reevaluating Where We Stand: A Comprehensive Survey of America's Family Justice Systems*, 46 FAM. CT. REV. 230, 233 (2008), that California has such divisions only in selected areas of the state. However, her study was conducted in 2006. At any rate, it is consistently true of the larger courts.

[268] California also has a range of statutorily available temporary judges. *See infra* pp. 22-23.

[269] In some instances, they are elected by the judges of the court. *See* Los Angeles Superior Court, http://www.lasuperiorcourt.org/aboutcourt/ui/admin.aspx (commissioners)).

[270] CAL. R. CT. 10.701.

[271] CAL. FAM. CODE §4251.

[272] In both California and New York, the child support commissioners/magistrates are empowered to order genetic testing in contested paternity cases. CAL. FAM. CODE §4251 (d)(6), N.Y. FAM. CT. ACT §439 (a). In New York, contested paternity cases involving claims of equitable estoppel may not be resolved by a support magistrate. It seems that this is not so in California.

[273] *Id.* (e).

[274] *Id.* (e)(1-3).

[275] *Id.* (e)(3).

[276] N.Y. FAM. CT. ACT §439 (a).

the judge makes a determination, he or she either also makes the final determination of the issue of support, or "immediately refer[s] the proceeding [back] to a support magistrate for further proceedings regarding child support or other matters within the authority of the support magistrate."[277]

The non-federally funded commissioners in California (also called hearing officers)[278] can hear child support and paternity actions as well,[279] but are also empowered, subject to the supervision of the court, to "[t]ake proof and make and report findings thereon as to any matter of fact upon which information is required by the court."[280] In addition, they may "[h]ear and report findings and conclusions to the court for approval, rejection, or change, all preliminary matters including motions or petitions for the custody and support of children, the allowance of temporary spousal support, costs and attorneys' fees, and issues of fact in contempt proceedings in proceedings for support, dissolution of marriage, nullity of marriage, or legal separation."[281] This type of commissioner may sit as a temporary judge, with all the attendant powers, if the parties so stipulate.[282] This can happen if the presiding judge determines that it is necessary for the effective administration of justice because of a shortage of judges.[283] Stipulations to temporary judges are fairly routine, but if one or both parties refuse, the judge may still refer the matter to make findings and report back.[284]

Referees

The trial court may refer any or all issues in an action or proceeding to a referee, also known as a "special master,"[285] for hearing, determination and report back to the court, provided that the parties have agreed in an agreement filed with the clerk or judge or entered in the minutes or docket.[286] A reference is most commonly used "where complicated accounts can more

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[277] *Id.* (c).

[278] This is basically the California equivalent of a New York court attorney-referee.

[279] CAL. CIV. PROC. §259 (f).

[280] *Id.* (b).

[281] *Id.* (e).

[282] *Id* (d). While a child support commissioner acts, by definition, as a temporary judge (unless an objection is made by the local child support agency or another party) on the matters within his or her authority, the regular court commissioner acts as a temporary judge only when appointed for that purpose, on stipulation of the parties. *Id.*

[283] CAL. R. CT. 10.700.

[284] CAL. CIV. PROC. §259 (b), (f).

[285] *See In re* Marriage of Petropoulos, 110 Cal.Rptr.2d 111 (Cal. Ct. App. 6th Dist. 2001). "The title given to the appointee in family law cases appears to be, in part, geographically based. In Northern California the appointee appears to be most often designated a Special Master, while in Southern California the appointee is called a Referee. The latter term apparently comes from the statutory language empowering the court to make a "reference" either by agreement of the parties pursuant to Code of Civil Procedure section 638 or on its own motion pursuant to Code of Civil Procedure section 639. In the family law context, the title of Special Master may more accurately describe the function the appointee is to perform, especially when the reference is made by agreement of the parties. The ordinary party in marital dissolution cases might envision a referee as someone with a striped shirt and whistle around his or her neck to be blown when a foul is committed, rather than someone empowered to decide the result of the game or to make recommendations to that end to the trial court." *Id.* at 484 fn.4.

[286] CAL. CIV. PROC. §638 (a).

conveniently be examined or taken outside of court, and to resolve discovery disputes or certain types of family law issues."[287] When the reference is with the consent of the parties, the result stands as a finding of the court.[288]

When the parties do not consent, the court may still, upon the written motion of any party, or of its own motion, appoint a referee, but in such cases, the authority of the referee or special master is limited to resolving specific questions of fact. [289] In addition, in these cases, the referee's findings are advisory only; they are not binding unless the trial court adopts them.[290] Nevertheless, the findings of the referee hold great weight.[291]

Referees in Juvenile Court

Juvenile Court jurisdiction extends to dependency (abuse, neglect or abandonment), delinquency (by children under the age of 18), status offenses and traffic/minor offenses.[292] Referees are used in Juvenile Court and may be appointed under California Government Code §71622 to perform subordinate judicial duties. "A referee shall hear such cases as are assigned to him or her by the presiding judge of the juvenile court, with the same powers as a judge of the juvenile court, except that a referee shall not conduct any hearing to which the state or federal constitutional prohibitions against double jeopardy apply unless all of the parties thereto stipulate in writing that the referee may act in the capacity of a temporary judge . . . ."[293] (This presumably applies only to juvenile delinquency hearings.) The parties may stipulate that the referee is acting as a temporary judge with the same powers as a juvenile court judge only if the referee is an attorney admitted to practice in California.[294] Even if the referee is not acting as a temporary judge, all orders issued by referees become immediately effective and continue in full force and effect until vacated or modified upon rehearing by order of a juvenile court judge,[295] except for orders removing minors from their homes, which require the express approval of a juvenile court judge[296] or any order the presiding judge of the juvenile court requires to be expressly approved.[297] Although a party may petition for rehearing of any referee's order by a juvenile court judge, the judge may deny rehearing if the proceedings before the referee were officially transcribed.[298] When the referee is not acting as a temporary judge, he or she must inform the child and parent or guardian of the right to seek review by a juvenile court judge.[299] Where a referee sits as a temporary judge, his or her orders become final in the same manner as orders made by a judge.[300]

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[287] *Petropoulos*, 110 Cal. Rptr.2d at 122, citing Jovine v. FHP, Inc., 76 Cal.Rptr.2d 322, 334 (Cal. Ct. App. 2d Dist. 1998).
[288] *Jovine*, 76 Cal. Rptr. 2d at 333.
[289] *See* CAL. CIV. PROC. §639.
[290] *Id.*
[291] *Petropoulos,* 110 Cal. Rptr.2d at 122.
[292] CAL. WELF. & INST. §300.
[293] *Id.* § 248.
[294] CAL. R. CT. 5.536.
[295] CAL. WELF. & INST. §250.
[296] *Id.* §249.
[297] CAL. R. CT. 5.540.
[298] CAL. WELF. & INST. §252.
[299] CAL. R. CT. 5.538.
[300] CAL. WELF. & INST. §250.

Hearing Officers in Juvenile Court

As provided in California Welfare and Institutions Code §255, the court may appoint as subordinate judicial officers juvenile hearing officers, who may be probation officers or assistant or deputy probation officers. When a hearing officer is appointed pursuant to this section, the juvenile court shall be known as the Informal Juvenile and Traffic Court.[301] Subject to the orders of the juvenile court, a juvenile hearing officer may hear and dispose of any case in which a minor under the age of 18 years is charged with any of a variety of violations or misdemeanors, such as traffic violations, evasion of fares on a public transportation system, defacing property, etc.[302]

Temporary Judges

As stated in Cal. Rule of Court 10.700, subordinate judicial officials may be appointed as temporary judges, with the same power to render decisions as a constitutional judge.[303] In addition, there are two other types of temporary judges in California: court-appointed temporary judges (governed by Cal. R. Ct. 2.810-2.819) and those requested by the parties (governed by Cal. R. Ct. 2-830-2.835). The "court-appointed temporary judges" are appointed from a panel of experienced attorneys for various functions in the trial courts (e.g., family law, small claims, traffic) if the court needs judicial assistance that it cannot provide using its full-time judicial officers. Court appointment and service of an attorney as a temporary judge do not establish an employment relationship between the court and the attorney (i.e., they are volunteers). "Temporary judges requested by the parties" include both privately compensated attorneys and attorneys serving pro bono at the parties' request.

Judge Pro Tempore

Finally, California utilizes retired judges, who are appointed by the Presiding Judge of a particular county, to sit temporarily on a given court usually in a permanent judge's absence.

COLORADO

The district courts are the trial courts in Colorado.[304] All district courts in each of the twenty-two jurisdictions are of general jurisdiction except that in the City and County of Denver, there is a separate Probate Court and a separate Juvenile Court (the only juvenile court in the state). The Denver Juvenile Court handles all juvenile cases, including both delinquency and dependency and neglect.

Colorado does not have a family court, but there are family law divisions in selected areas of the state. As an example, the Family Court of the Nineteenth Judicial District consists of two divisions – the Domestic Relations Division, including the Best Practice Court,[305] and the

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[301] CAL. WELF. & INST. §255.

[302] *Id.* §256.

[303] *See* Kajima Engineering and Construction, Inc. v. Pacific Bell, 127 Cal.Rptr.2d 464, 467 (Cal.App. 4th Dist., 2002).

[304] General information about the Colorado court system is taken from The Colorado State Judicial Branch, http://www.courts.state.co.us.

[305] The National Council of Juvenile and Family Court Judges and the Colorado Court Improvement Program designated the Nineteenth Judicial District as a Model Court site on Dec. 23, 2007. This designation allowed the District to implement pilot practices and programs.

Juvenile Division. Wherever possible, Family Court cases involving the same family are handled by one judicial officer.

The Domestic Relations Division of the Family Court deals with cases involving divorce, legal separation, child custody, visitation, annulment, child support and maintenance. The Juvenile Division deals with issues relating to child abuse and neglect, paternity, juvenile delinquency, truancy, child support, relinquishment and adoption.

Colorado uses elected and appointed judges and magistrates in each judicial district. District court judges are attorneys licensed to practice law in Colorado for at least five years.[306] They hold office initially for at least two years (for e.g., if they are appointed to fill a vacancy) and if retained by the voters, for successive six year terms.[307] In addition, the court has the discretion to appoint retired judges,[308] masters, referees, auditors and examiners.

District Court Magistrates

District court magistrates must be attorneys in good standing admitted to practice in Colorado and may be appointed, subject to the approval of the Chief Justice,[309] to perform a variety of functions. A separate statute authorizing the use of family court magistrates was repealed in 2004, but magistrates continue to conduct proceedings in family law cases under the general district court magistrate statute.

A district court magistrate is empowered, without consent, to preside over all proceedings under Title 14 (Domestic Matters), except that in contested hearings which result in permanent orders concerning property division, maintenance, child support or child custody, consent is necessary.[310] In addition, magistrates may determine, without consent, child support orders filed pursuant to Child Support Enforcement Act[311] and may preside over all motions to modify permanent orders concerning property division, maintenance, child support or custody.[312] In juvenile court cases, magistrates may, without consent, conduct preliminary, advisement, detention and temporary custody hearings, as well as hearings regarding paternity and support.[313] In matters regarding contested paternity or support, consent by all parties is required.[314] In these ways, the Colorado magistrate position resembles the New York State Bar Association Family Court Magistrate proposal.[315]

When a magistrate has presided over a matter where consent was not necessary, he or she must include a written notice in any corresponding order or judgment that the proceeding did not

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[306] COLO. CONST. art. VI, §11.
[307] *Id.* §§ 20, 10.
[308] Retired judges, *infra* p. 25, are appointed by the Chief Justice of Colorado's Supreme Court pursuant to COLO. REV. STAT. §13-3-111 (1).
[309] COLO. REV. STAT. §13-5-201 (1).
[310] C.R.M. 6(b)(1)(A), (2).
[311] C.R.M. 6(A), (C). For the Child Support Enforcement Act, see COLO. REV. STAT. § 26-13-101 et. seq.
[312] C.R.M. 6(b)(B), (C).
[313] COLO. REV. STAT. §19-1-108.
[314] *Id.*
[315] *See supra* text p. 15.

require consent and that any appeal must be taken within fifteen days.[316] Any order or judgment entered with consent of the parties is appealable pursuant to the Colorado Rules of Appellate Procedure in the same manner as an order or judgment of a district court.

Although magistrates may perform functions that judges also perform, a magistrate is at all times subject to the direction and supervision of the chief judge or presiding judge[317] and no magistrate may preside in any trial by jury.[318]

Appointed Judges

In any civil action except juvenile delinquency hearings, the Chief Justice may appoint a retired or resigned judge of any court of record in Colorado to hear the action so long as a joint request has been made by the parties and agreement is reached that one or more of the parties will pay the compensation of the selected justice or judge.[319] The appointed judge has the same authority as a full-time sitting judge and orders, decrees, verdicts and judgments entered by him or her have the same force and effect and are enforced or appealed in the same manner as any other order, decree, verdict, or judgment.[320]

To be eligible to serve as an Appointed Judge, a person must have served as a judge in one of the requisite courts (Supreme, Court of Appeals, District, Probate, Juvenile or County Courts) for at least six years. He or she must also be currently licensed to practice law in Colorado.[321]

Masters

Pursuant to Colorado Rule of Civil Procedure 53, the court may assign a portion of a case to a master to (1) report to the court on particular issues; (2) perform particular acts; or (3) receive and report evidence only.[322] The rule indicates that a reference is only proper in jury cases when the issue is "complicated," and in non-jury cases, except in matters of account, when "some exceptional condition" requires it.[323] In family law cases, masters have been appointed to complete time-consuming tasks, such as dividing extensive personal property, complex accountings or managing the discovery process in particularly difficult pro se cases.[324] These tasks are usually unrelated to children.[325]

Rule 53 provides that the word "master" includes a referee, an auditor and an examiner.[326] Regardless of the title used, if the appointee performs the functions of a master, then he is governed by the rule.[327]

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[316] C.R.M. 7 (a), (b).

[317] C.R.M. 1. *See also* C.R.M. 7 (2), stating that "[t]he chief judge shall designate one or more district judges to review orders or judgments of district court magistrates entered when consent is not necessary."

[318] COLO. REV. STAT. §13-5-201 (3).

[319] COLO. REV. STAT. §13-3-111 (1); COLO. R. CIV. PROC. 122 (a)(1).

[320] COLO. REV. STAT. §§13-3-111 (4), (5); COLO. R. CIV. PROC. 122 (a)(2).

[321] COLO. R. CIV. PROC. 122 (b).

[322] *Id.* (c).

[323] COLO. R. CIV. PROC. 53 (a), (b).

[324] 34 Colo. Lawyer 95, *Privatizing Family Law Adjudications: Issues and Procedures*, August, 2005.

[325] *Id.*

[326] COLO. R. CIV. PROC. 53 (a).

[327] *In re* Marriage of Smith, 641 P.2d 301 (Colo. Ct. App. 1981).

Masters are private adjudicators. They are paid either by the parties or with "any fund or subject matter of the action, which is in the custody and control of the court as the court may direct."[328]

In non-jury actions, the court accepts the master's finding of fact unless clearly erroneous. Any party may serve written objections within ten days after being served with notice of the filing of the report and may apply to the court for action upon objections to the report as prescribed in Colorado Rules of Civil Procedure 6 (d). The court may, after a hearing, adopt, modify, reject in whole or in part or may receive further evidence or may remand the findings with instructions.[329]

DELAWARE

Delaware has had a statewide family court since 1971.[330] The Court is composed of seventeen judges of equal judicial authority, who are appointed for twelve year terms by the Governor with the consent of a majority of the Senate.[331] Appointees must have been admitted to the practice of law in Delaware for not less than five years and "shall be selected because of their knowledge of the law and interest in and understanding of family and child problems."[332] The Governor designates a chief judge.[333]

In addition to the judges, Delaware utilizes masters and commissioners in the family court.

Masters

A master, appointed by the chief judge, "shall be a suitable person who has been a resident of the State for at least 5 years immediately preceding the appointment."[334] Masters serve at the pleasure of the Chief Judge and may hear any matters as he or she directs.[335] The Chief Judge determines whether a particular hearing is heard initially by a master or a judge, except for certain matters, which must be heard by a judge.[336] The findings and recommendations of a master become the judgment of the Court unless they are disapproved in writing by the Chief Judge or an application for a review de novo is made within fifteen days from the announcing of the master's decision.[337] Every written order by a master must delineate this information to the parties.[338] If the time for requesting a review de novo expires without a request, the judgment derived from the master's order has the "same force and effect as any other judgment of the Court, except it shall not be subject to appeal."[339]

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[328] Colo. R. Civ. Proc. 53 (a).
[329] *Id.* (d).
[330] DEL. CODE ANN. tit. 10, §§901-902.
[331] *Id.* §906 (a)(b).
[332] *Id.* (c).
[333] *Id.* (f).
[334] *Id.* §913 (a).
[335] DEL. CT. R. 53 (a).
[336] DEL. CODE ANN. tit. 10, §913 (b). "A master shall not conduct adult bail and juvenile detention hearings or any hearings involving charges against juveniles which are classified as felonies when committed by an adult." Commissioners are empowered in these two ways. §915 (c)(6), (7).
[337] DEL. CT. R. 53 (b)(2). *See also* A. L. W. v. J. H. W., 416 A.2d 708 (Del. 1980): "[The master] may only make findings and recommendations which, by operation of law under the Statute, ripen into a judgment of the Court, (a) if a hearing is not requested by a party, or (b) the Chief Judge does not disapprove such findings and recommendations."
[338] *Id.* (c).
[339] DEL. CODE ANN. tit. 10, §913 (f).

Commissioners

While the masters' powers are somewhat circumscribed, the authority of the commissioners in Delaware is quite broad. Commissioners in the Family Court are appointed by the Governor, with Senate consent. They hold four year terms initially and must be Delaware residents for at least five years immediately preceding their appointment. Upon reappointment, a commissioner may hold office for six years.

While a master need not be an attorney, a commissioner must be "duly admitted to practice before the highest court of any State of the United States."[340] Masters are appointed at the discretion of the Chief Judge, but commissioners are statutorily required, with not less than five in total and at least one assigned to each county.[341]
Unlike masters, commissioners take an oath of office.[342] They hear child support cases and may conduct bail and juvenile detention hearings. In addition, they are empowered to conduct all delinquency and criminal proceedings, including, but not limited to, amenability hearings, arraignments, preliminary hearings, case review and trials. They can accept pleas, enter sentences or dispositions, including incarceration for criminal felonies and may impose sanctions, including incarceration for civil contempt.[343]

A commissioner's order is an enforceable order of the Court. However, any party (except one in default of appearance) may appeal a final order of a commissioner to a judge of the Court within thirty days. In those cases, a judge makes a de novo determination of those portions of the Commissioner's order to which objection is made and either accepts, rejects or modifies the order of the Commissioner. The judge may also receive further evidence or recommit the matter to the Commissioner with instruction.[344] This is a bit different from a de novo review of a master's order. In those cases, the matter is placed on the calendar of the Court and "treated for all purposes as if it had not been referred to a Master."[345] "[U]nless stipulated by the parties[,] the Court shall not admit evidence that there has been a proceeding before a Master, the nature of the Master's written order, nor any other matter concerning the conduct or outcome of the Master's proceeding . . . ."[346]

Child Support Official

Delaware has taken a different tack vis a vis the federally mandated and funded child support position. Instead of establishing a judicial official, the Delaware statute establishes a Division of Child Support Enforcement within its Department of Health and Social Services,[347] which it authorizes to provide all services required by Title IV-D, including parent locator services, determination of paternity, establishment of child support and medical support obligations, review and adjustment of child support orders, enforcement of child support, spousal support and

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[340] *Id.* §915 (a).
[341] *Id.* Note that there are three counties in Delaware, the fewest of any U.S. state.
[342] *Id.* (b).
[343] *Id.* (b)(6-12).
[344] *Id.* (d), (d)(1).
[345] *Id.* §913 (e).
[346] *Id.*
[347] DEL. CODE ANN. tit. 13, §2201.

medical support orders, and collection and disbursement of child support payments.[348] Further, the statute authorizes the Division to order genetic testing, obtain access to financial and other information of any putative fathers or obligor or obligee of support and place liens without a court order.[349] In effect, the Delaware system relies on the courts to a much lesser degree and at the back end of cases.

FLORIDA

Since 1991, a series of Florida Supreme Court opinions have established family court divisions in all twenty of Florida's circuit (trial) courts.[350] The 2001 opinion[351] allows for the circuits to adopt either the traditional calendar assignment or the one judge/one family method. In addition to the federally funded child support enforcement judicial officer, Florida utilizes magistrates and special magistrates in its family court divisions to improve judicial availability.

Support Enforcement Hearing Officers

Florida's version of the federal funded child support enforcement position is called the "Support Enforcement Hearing Officer."[352] Hearing officers are appointed by the chief judge in each judicial circuit, are members of the Florida Bar (unless waived by the chief justice) and serve at the pleasure of the chief judge and a majority of the circuit judges in that circuit.[353] The hearing officer has limited powers, like New York and unlike California. The Florida rule confers subject matter jurisdiction for proceedings concerning "the establishment, enforcement, or modification of child support."[354] Hearing officers are charged with "evaluat[ing] the evidence and mak[ing] a recommendation to the court."[355] Like most of the other states in this analysis, aside from California and Colorado, the officers do not have the authority to hear contested paternity cases.[356]

General Magistrates

Every general magistrate "shall perform all of the duties that pertain to the office . . . under the direction of the court except those duties related to domestic, repeat, dating, and sexual violence."[357] No matter may be heard by a general magistrate without consent.[358] The general magistrate must file a report that includes findings of fact and conclusions of law, together with recommendations.[359]

Special Magistrates

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[348] *Id.* §2203 (a).
[349] *Id.* §§ 2205, 2215.
[350] *In re* Report of the Comm'n on Family Courts, 588 So. 2d 586 (Fla. 1991); *In re* Report of the Comm'n on Family Courts, 633 So. 2d 14, 16 (Fla. 1994); *In re* Report of the Comm'n on Family Courts, 646 So. 2d 178, 179 (Fla. 1994); *In re* Report of the Family Court Steering Comm., 794 So. 2d 518 (Fla. 2001).
[351] *In re* Report of the Family Court Steering Committee, 794 So. 2d 518 (Fla. 2001).
[352] FLA. FAM. L.R.P. RULE 12.491.
[353] *Id.* (c).
[354] *Id.* (b)(1).
[355] *Id.* (e)(4).
[356] *Id.* (e).
[357] FLA. FAM. L.R.P. RULE 12.490 (c).
[358] FLA. FAM. L.R.P. RULE 12.490 (b)(1).
[359] *Id.* (e).

Special magistrates are also available to the court for any particular service required in a family law matter except those involving domestic, repeat, dating, and sexual violence.[360] No reference may be made to a special magistrate without the consent of all parties, except that "upon good cause shown and without consent of the parties, the court may appoint an attorney as a special magistrate to preside over depositions and rule upon objections."[361] Unlike general magistrates, special magistrates are not necessarily required to be members of the bar ("upon a showing that the appointment is advisable") nor are they required to take an oath.[362]

ILLINOIS

The Illinois constitution was amended in 1962 to, among other things, restructure the Illinois court system. The Judicial Article of the Illinois Constitution provided in part:

> All justice of the peace courts, police magistrate courts, city, village, and incorporated town courts, municipal courts, county courts, probate courts, the Superior Court of Cook County, the Criminal Court of Cook County and the Municipal Court of Chicago, are abolished and all their jurisdiction, judicial functions, powers and duties are transferred to the respective circuit courts, and until otherwise provided, by law, non-judicial functions vested by law in county courts or the judges thereof, are transferred to the circuit courts . . . .[363]

Under the "new" constitution, judicial power is vested only in the supreme, appellate and circuit courts, making for a unified state system that does not contemplate local courts[364] or courts of limited jurisdiction.[365] The 1962 constitutional reform also abolished "masters in chancery and other fee officers" in the judicial system.[366] The constitution was amended again in 1970 to provide for associate judges, a position that is similar to the old office of magistrate.

Illinois has twenty-three judicial circuits, each having one chief judge who assigns cases to both the circuit judges, who are elected to six year terms and to associate judges, who are appointed to four year terms by circuit judges pursuant to Illinois Supreme Court rules. With the exception of hearing officers for child support, these judges comprise the judicial personnel.

Approximately twelve judicial circuits have family court divisions. As an example, Illinois' largest county established the Juvenile Justice and Child Protection Department, with each division headed by a presiding judge.[367] Illinois Appellate Courts have referred to such divisions as matters of administrative convenience.[368]

Associate Judges

The chief judge of each circuit assigns associate judges to hear and determine any matters except for criminal felony cases.[369] Based upon a showing of need, the Illinois Supreme Court may

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[360] FLA. FAM. L.R.P. RULE 12.492. Magistrates and special magistrates were originally governed under FLA. STAT. ANN. §1.490, but are now governed under the family law rules of procedure. 26 Fla. Jur. 2d Family Law §1108.

[361] FLA. FAM. L.R.P. RULE 12.492 (b).

[362] *Id.* (a).

[363] Jerrick v. State, 28 Ill. Ct. Cl. 67 (1971).

[364] Ampersand, Inc. v. Finley, 338 N.E.2d 15, 18 (Ill. 1975).

[365] *In re* Marriage of Isaacs, 632 N.E.2d 228, 232 (Ill. App. Ct. 1994).

[366] Mullaney, Wells & Co. v. Savage, 282 N.E.2d 536 (Ill. App. Ct. 1972).

[367] State of Illinois Circuit Court of Cook County, http://www.cookcountycourt.net/about/index.html.

[368] *In re* Marriage of Peshek, 412 N.E.2d 698, 704 (Ill. App. Ct. 1980).

[369] ILL. CT. R. 295. The associate judges may conduct proceedings other than the trial in such cases. *Id.* (Comment).

authorize the chief judge of a circuit to make temporary assignments of associate judges to hear felony cases, however.[370]

Administrative Hearing Officers

Administrative Hearing Officers are hired to hear child support and parentage matters and as in New Jersey, make recommendations.[371] Administrative hearing officers must be licensed to practice law in Illinois and have actively practiced for a minimum of three years.[372] They may be hired on a full-time or part-time basis.[373] They take an oath of office similar to a judicial oath.[374]

Hearing officers in Illinois have the authority to preside over uncontested temporary and final child support and medical support agreements, enforcement or modification of those agreements and uncontested paternity proceedings.[375] A hearing officer makes recommendations regarding orders, however, even if the parties have, for example, reached a voluntary agreement regarding child support or parentage.[376] Other domestic relations matters, such as visitation, custody, distribution of property, petitions for support for non-minor children and educational expenses and spousal maintenance if the custodial parent is not a participant in the IV-D program, must be transferred for a judicial hearing.[377] If provided for in the specific plan that each judicial district is required to have, the expedited support system "may be available in prejudgment proceedings for dissolution of marriage, declaration of invalidity of marriage and legal separation."[378]

Upon receipt of any recommended order by the hearing officer, the court may enter the recommended order, refer the matter back to the hearing officer for further proceedings or hold additional hearings itself.[379] If the parties do not agree with the hearing officers recommended order, one or both may file a written objection within fourteen days and the court must hold a hearing on the objections and enter an appropriate order.[380] No part of the hearing officer's recommendation will be made part of the record unless both parties so stipulate.[381]

MASSACHUSETTS

Massachusetts has a statewide family court,[382] as well as a statewide juvenile court.[383] There is a division of the Probate and Family Court for each of Massachusetts's fourteen counties.[384] Each division is administratively headed by a First Justice who is designated by the

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[370] *Id.*
[371] *See* 750 ILL. COMP. STAT. 25/3 (a).
[372] ILL. S. CT. R. 100.2 (a), (b).
[373] *Id.* (c).
[374] *Id.* (d).
[375] 750 ILL. COMP. STAT. 25/6, ILL. S. CT. R. 100.3.
[376] 750 ILL. COMP. STAT. 25/6.
[377] 750 ILL. COMP. STAT. 25/7 (c).
[378] 750 ILL. COMP. STAT. 25/7 (c); ILL. S. CT. R. 100.3 (b).
[379] 750 ILL. COMP. STAT. 25/10 (b).
[380] *Id.* (b).
[381] *Id.* 25/7 (f)(1).
[382] MASS. GEN. LAWS ch. 211B §1.
[383] *Id.*
[384] *Id.* ch. 217 §1.

Chief Justice. The Probate and Family Court has jurisdiction over divorce, paternity, child support, custody, visitation, adoption, termination of parental rights, and abuse prevention (in addition to the probate matters it oversees).[385]

The Juvenile Court Department has jurisdiction over delinquency, children in need of services, care and protection petitions, adult contributing to a delinquency of a minor cases, adoption, guardianship, termination of parental rights proceedings, and youthful offender cases.[386] There are eleven divisions of the juvenile court with sessions in more than forty locations.[387]

In addition to the federally funded Child Support Hearing Officers, Massachusetts employs masters and special masters.

Child Support Hearing Officers

Child support officers, appointed by the Chief Administrative Justice and subject to annual reappointment, may hear motions or complaints regarding child support or spousal support where there are children involved or motions or complaints seeking to enforce a child or spousal support order.[388] As in most of the other states examined, the power of the child support hearing officers is limited to child support cases. Any other issue raised in a motion or complaint must be heard by a justice of the appropriate court in a separate proceeding,[389] except that a child support hearing officer may, again, like most of the other states, accept acknowledgments of paternity and order blood tests without the approval of any justice of any court.[390]

The judge must approve the order of the child support hearing officer unless he or she makes written findings that the hearing officer committed an error of law, that the decision is not supported by substantial evidence, or that it constitutes an abuse of discretion.[391] Within three business days of the hearing officer's decision, any party may seek reconsideration of that decision to a justice. The reconsideration hearing may consist of the presentation of evidence and argument to the justice, who may alter the decision of the hearing officer only on written findings.[392] Within thirty days, a party may appeal the hearing officers' decision.[393]

Masters

A master is an attorney who is appointed by the court to hear evidence and report to the court on findings of fact, upon consent of all the parties.[394] Prior to appointment of a master, the court must inquire whether the parties can agree upon a master and if they can, the court will appoint

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[385] The Massachusetts Court System, Probate and Family Court Department, http://www.mass.gov/courts/courtsandjudges/courts/probateandfamilycourt/welcome.html.
[386] The Massachusetts Court System, Juvenile Court Department, http://www.mass.gov/courts/courtsandjudges/courts/juvenilecourt/index.html.
[387] *Id.*
[388] MASS. GEN. LAWS ANN. ch. 221B §4.
[389] *Id.*
[390] *Id.* §6.
[391] *Id.* §7(A).
[392] *Id.* §8.
[393] *Id.* §10.
[394] MASS. R. DOM. REL. P. 53 (a)(i).

that person or another suitable person.[395] Any party may object to the appointment of the master selected by the court by filing a written objection within five days of the notice of appointment.[396]

The master's report, which must be filed with the clerk of the court within thirty days of the close of the evidence, sets forth his general finding upon each issue within the order of reference and must clearly delineate the subsidiary findings upon which the general findings are based.[397] The court must accept the master's subsidiary findings of fact unless they are "clearly erroneous, mutually inconsistent, unwarranted by the evidence before the master as a matter of law or are otherwise tainted by error of law."[398] The court may make findings which are not inconsistent with the master's findings, based either on evidence presented to the court or evidence before the master which was recorded.[399]

At least ten days before filing the report, the master must submit a draft to the parties' counsel, who may submit suggested amendments.[400] Written objections may be served by any party within ten days after service of notice of the filing of the report.[401] Thereafter, the court may adopt the report, strike it in whole or in part, modify it or recommit it to the master with instructions.[402]

Although masters are widely used (as evidenced by their presence on each judicial districts staff lists), the Massachusetts Supreme Judicial Court and the Appeals Courts has frowned upon their use in certain instances.[403]

Special Master

Massachusetts allows for the appointment of a special master to control and oversee discovery in domestic relations actions.[404] Prior to appointment, the court may inquire whether the parties can agree upon a special master and may appoint the person agreed upon or another suitable person.[405] The fees and costs of the special master are to be shared equally by the parties unless the special master determines that a different allocation of the fees and costs is appropriate.[406]

NEW JERSEY

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[395] *Id.* (a)(ii).
[396] *Id.* (b)(4).
[397] *Id.* (g)(1).
[398] *Id.* (h)(1).
[399] *Id.*
[400] *Id.* (g)(1), (g)(2).
[401] *Id.* (h)(2).
[402] *Id.* (h)(4).
[403] *See* Adoption of Jenna, 604 N.E.2d 1325 (Mass. App. Ct.,1992) ("Given the nature of the inquiry and the attendant procedures, we believe it would be more consonant with legislative intent if the evidence is heard and the facts are required to be determined by a judge rather than a master.")

[404] MASS. R. DOM. REL. P. 26 (j).
[405] *Id.*
[406] *Id.*

According to their website, the structure of New Jersey's court system is among the simplest in the nation in that there are only a few basic types of courts in the state: municipal courts, Tax Court, state Superior Court, which includes the trial courts, an Appellate Division and the New Jersey Supreme Court. [407]

The Superior Court has three divisions. The Appellate Division is an intermediate appellate court while the Law and Chancery Divisions function as trial courts. Each division is in turn divided into various parts. The Chancery Division consists of the General Equity,[408] Probate and Family Parts. The Family Part was created when the State Constitution was amended in 1983 and coincided with the elimination of the juvenile and domestic relations courts in each county.[409] It has the distinction of being the only division mandated by the constitution. The Governor nominates and appoints, with the advice and consent of the Senate, the judges of the Superior Court,[410] who must have been admitted to the practice of law in New Jersey for at least ten years.[411] Each justice or judge holds his or her respective office for an initial term of seven years, and upon reappointment holds office during good behavior.[412]

Child Support Hearing Officer

Child Support Hearing Officers, added in 1985, hear matters concerning the establishment, modification, and enforcement of Title IV-D child support as well as those concerning uncontested paternity.[413] Unlike in New York, New Jersey Child Support Hearing Officers hear and make recommendations upon which the court then enters orders, even when the matters are uncontested.[414] Advanced written and oral notice must be given to the parties that their case will be heard by a Hearing Officer.[415] If a party objects to a hearing officer's recommendation, he or she is entitled to an immediate hearing before a judge.[416] Appeals are heard de novo.[417]

Masters

The New Jersey courts do not seem to utilize other quasi-judicial personnel to any great degree. Masters exist, but references to them may only be made, upon approval by the Assignment Judge, when all parties consent or under extraordinary circumstances.[418] When an order of reference is made, the court may direct the master to report only upon particular issues or to do

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[407] General information about the New Jersey court system is taken from http://www.judiciary.state.nj.us/nj_overview.htm.

[408] The General Equity Part handles civil cases where primarily, equitable relief is sought. In most vicinages only one judge is assigned to the General Equity Part.

[409] *See* N.J. CONST. art. VI, § 3, para. 3: "The Superior Court shall be divided into an Appellate Division, a Law Division, and a Chancery Division, which shall include a family part."

[410] *Id.* Art. VI, § 6, para. 1.

[411] *Id.* Para. 2.

[412] *Id.* Para. 3.

[413] N.J. STAT. ANN. § 5:25-3 (b).

[414] This applies also to temporary orders and the ordering of genetic paternity tests. For the latter, there must be a clear, articulable reason before a test is ordered and this reason must appear on the record. This is in contrast to New York and California, where the support magistrate/commissioner may simply order the paternity test pursuant to their respective statutes.

[415] *Id.* (b)(8).

[416] *Id.*

[417] *Id.* (d)(2).

[418] N.J. CT. R. § 4:41-1.

particular acts or to receive and report evidence only. Subject to such specifications and limitations, the master has and shall exercise the power to regulate all proceedings in every hearing, to pass upon the admissibility of the evidence and to do all acts necessary or proper for the efficient performance of the duties directed by the order.[419]

The master must file a report within ten days including any findings of fact and conclusions of law required by the order.[420] In non-jury actions, "the court shall accept the master's findings of fact unless contrary to the weight of the evidence."[421] Any party may object within ten days after being served with notice of the filing of the report and the court, after hearing on the motion, may adopt, modify or reject the report in whole or in part, receive further evidence, or recommit with instructions.[422]

Juvenile Court Referees

In addition to the Juvenile Conference Committees, discussed above, the judge of the Family Part may with the approval of the Chief Justice appoint a referee.[423] The recommendations of the referee shall be without effect unless approved by the court and incorporated in an appropriate order or judgment of the court.[424] The cases referred to referees are usually those that are too complex for a diversion program, but not severe enough for a court hearing.[425]

Domestic Violence Hearing Officers

Domestic Violence Hearing Officers may be appointed by the Judiciary to handle and make recommendations in matters under the Prevention of Domestic Violence Act.[426]

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[419] *Id.* -3.
[420] *Id.* -5(a).
[421] *Id.* -5(b).
[422] *Id.*
[423] N.J. CT. R. 5:25-2.
[424] *Id.*
[425] http://www.judiciary.state.nj.us/family/index.htm.
[426] N.J. STAT. ANN. § 2C:25-17 et seq.

D-II. California's Child Support Commissioner and Family Law Facilitator Program

Prepared by: Celia Curtis
July 2011

In 1993, the Governor's Child Support Task Force was created in response to a crisis in the child support system, which had created an enormous backlog in paternity and child support cases in California in the late 1980s and early 1990s.[427] The Task Force was charged with studying and making recommendations for the establishment of an expedited child support process that would enable California to process an increasing number of cases in an efficient, cost-effective and accessible way. Membership included family law judges and commissioners, private and public attorneys, representatives of the Judicial Council (the equivalent of New York's Office of Court Administration) and the California Department of Social Services, and members of groups representing fathers, mothers, and children.

Among other items, the Task Force made three recommendations that are noteworthy for the NYSBA's Task Force for the Family Court. First, it recognized that California was not properly utilizing federal funding for child support enforcement. At the time, in most of its counties, title IV-D cases were being sent to judges. However, to receive federal funding, the presiding officer in an expedited child support case cannot be a judge.[428] Realizing that funding was available not only for the salaries of the hearing officers (commissioners), but for the salaries of the corresponding support staff, such as clerks and bailiffs, and equipment, supplies and other overhead, the Task Force recommended instituting a Child Support Commissioner position.

Second, in an effort to improve the experience of the large number of unrepresented litigants in California Family Court (thereby resulting in a greater likelihood that those parties will comply with court orders), and in view of the fact that it, too, would qualify for federal reimbursement, the group recommended establishing Child Support Information and Assistance Centers in each county to provide education, information, assistance and referrals for parents.

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[427] Between 1991 and 1995, child support cases handled by district attorneys' offices grew from 1.1 million to 2.2 million. This resulted from the confluence of a depressed economy, an increase in welfare recipients and a corresponding increase in title IV-D child support cases, increased federal standards for child support cases which shortened timeframes for paternity and child support orders, lack of automation and lack of adequate staff in the courts. It was estimated that roughly half of all title IV-D cases had not been filed with the courts. California Department of Social Services, Child Support Management Information System Report (CSMIS), 1993-94.

[428] California Department of Social Services, Child Support Court Task Force Report (1995) 14, 26. *See also* 45 C.F.R. § 304.21. Federal financial participation (FFP) for judges, their support staff and overhead costs is prohibited by federal regulation. However, FFP is available for court clerk costs associated with processing IV-D cases regardless of whether the case is heard by a judge or a commissioner so long as the clerk has entered into a plan of cooperation with a IV-D agency.

The idea for these centers came from the experiences of two successful pilot projects in San Mateo and Santa Clara counties.[429]

Finally, through its public hearings, the Task Force saw a consistent desire among parents to resolve all of their child-related concerns at one time. Greater integration, therefore, was seen as a way to reduce parental frustration with the courts as well as a logical avenue to increase efficiency. Since California law makes visitation timeshare a critical component of the child support guideline, the Task Force recommended that the California Department of Social Services ask the federal Office of Child Support Enforcement to expand the use of Title IV-D funds to assist parents in resolving custody and visitation issues connected with their child support cases.[430]

In response to the Task Force recommendations, the California Legislature enacted AB 1058, the Child Support Commissioner (CSC) and Family Law Facilitator (FLF) Program in 1996.[431] The law mandates that all actions filed by the local child support agency regarding child and spousal support or paternity be referred to a child support commissioner and not a judge. It also requires that each of California's fifty-eight counties maintain an Office of the Family Law Facilitator to "provide litigants with free education, information, and assistance with child support issues,"[432] the idea being that "when parents come better prepared to their hearings, judicial officers can process more cases in the time allotted."[433]

There are two significant aspects of this legislation. First, the child support commissioners are authorized to make determinations regarding custody, visitation and restraining orders.[434] As explained in an earlier paper for this Task Force, the child support commissioners are authorized to join issues regarding custody, visitation and protective orders, upon application of any party. After joinder, the commissioner may "[r]efer the parents for mediation of disputed custody or visitation issues[,]accept stipulated agreements regarding these matters, or refer contested issues to a judge or to a non-federally funded commissioner, who may hear and decide the matter if the parties so stipulate.[435] Moreover, the California child support commissioner may retain and hear contested custody, visitation and restraining order issues so

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[429] For a description of these pilot programs, see NYSBA Task Force on Family Court, Quasi-Judicial Officials in Family Court, March 2011, 10-12.

[430] California Department of Social Services, Child Support Court Task Force Report (1995).

[431] Assemb. B. 1058 (Stats. 1996, ch. 957). *See* CAL. FAM. CODE §4251.

[432] The Office of the Family Law Facilitator in each county is staffed by an experienced family law attorney, who is appointed by the superior court of each county. The basic duties of the FLF is to make educational materials available, distribute court forms, assist in completing forms, prepare child support calculations and provide referrals to the local child support agency, family court services and other community agencies. Urban counties may have multiple facilitators who are assisted by paralegals, administrative staff, court clerks, and law students, while in rural settings, two counties may share one facilitator with part-time or no support staff. Judicial Council of California, Administrative Office of the Courts, California's Child Support Commissioner System: An Evaluation of the First Two Years of the Program, May 2000. For an explanation of the Family Law Facilitator Program as explained to family court users, see http://www.occourts.org/directory/family/facilitator.html.

[433] AB 1058 Program Overview (on file), 1.

[434] However, the federal government does not reimburse for that portion of the commissioners' time that is spent on these issues. (The request made by California was denied.)

[435] CAL. FAM. CODE §4251.

long as the court has "adopted procedures to segregate the costs of hearing Title IV-D child support issues from the costs of hearing other issues . . . ."[436] A typical situation is one in which a non-custodial parent will file a request for a downward modification in child support based upon a change in his/her financial circumstances and at the same time want to increase his/her timeshare with the minor child(ren). Another common scenario is at the establishment stage—where the agency may bring a parentage action and request for child support and the non-custodial parent wishes to establish court-ordered visitation with the child. The commissioners are statutorily authorized to hear these other issues using the existing IV-D case as a vehicle to resolve the other issues. Another situation is one in which a child support commissioner only has a partial FTE to cover Title IV-D cases due to a small caseload in a jurisdiction that does not warrant a full-time commissioner. In some of these cases, the court has additional calendars that it assigns to the child support commissioner so it can offer full-time employment. These additional case-types may not have any relationship to the title IV-D families/caseload.[437]

Second, according to the Judicial Council, two-thirds of the funding for seventy-two commissioners (fifty-two full-time equivalent positions) *and* 122 facilitators (fifty full-time equivalent positions) and their support staffs originates with the federal government.[438] Many of the facilitators also assist with non-child support issues, primarily custody and visitation.

The CSC and FLF program is set up as a reimbursement grant, which means that all expenses are incurred and paid by the court before submission for reimbursement by the Administrative Office of the Courts. Standard mandatory reporting forms, which include program summary sheets, time sheets, contractor activity logs (some personnel are employees and others are contracted), payroll summary sheets and operating expense recap sheets[439] are prepared and submitted by the twentieth day of each month. The sheets have built in formulas which calculate the total reimbursement amounts. For example, allowable direct costs are reimbursable at sixty-six percent. These are expenses that can be easily identified and are specifically incurred for the purpose of the AB 1058 program, such as salaries, overtime wages, fringe benefits, travel expenses (for grant related travel), pre-approved training and/or conferences, contractual services (services and costs necessary to complete grant objectives that are not available through the court), rent, materials and office supplies, minor remodeling (with approval of the Administrative Office of the Courts program manager) and equipment purchases. Allowable indirect costs, those benefiting a cost objective, but not easily assignable to a cost center, are reimbursed up to a maximum of twenty percent.[440] Unallowable costs are those not

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[436] CAL. FAM. CODE §4251 (e)(3).

[437] E-mail from Michael L. Wright, Supervising Attorney/Program Manager, Center for Families, Children & the Courts, Judicial Council of California--Administrative Office of the Courts (June 22, 2011, 7:56 PM) (on file).

[438] Judicial Council of California, Fact Sheet, Child Support Commissioner and Family Law Facilitator Program, July 2010. The funding is sixty-six percent federal title IV-D funds and thirty-four percent state general funds. *See* AB 1058 Program Overview, 1.

[439] Expenses which are fully reimbursable include: an annual AB 1058 training conference; contract court interpreter fees—title IV-D cases only, contract court reporter fees—title IV-D cases only, bailiff hours—in alignment with the commissioner's reimbursable title IV-D hours; payments to contract facilitators or commissioners and agency temporary help—hours worked on title IV-D only. Items which are partially reimbursable include: office supplies, facilities charges, rented equipment—copy machines and copy charges, communications charges—telephone and Internet service. Note that these are partial lists.

[440] AB 1058 Program Overview 4.

permitted under California Rules of Court 10.810 and the Code of Federal Regulations. They include the cost of counsel for indigent defendants, judges' salaries, the salaries of judges' support staff, bottled water,[441] and time spent on matters of custody, visitation and domestic violence.[442]

Court employees and contracted personnel, such as contracted CSCs or FLFs, court reporters, interpreters, security personnel and agency temporary staff must charge their time to their respective programs (CSC or FLF). The log must account for 100 percent of their time, regardless of whether it is reimbursable or not. The categories for the Child Support Commissioners (and staff) are Title IV-D hours, other hours (those spent on all other issues, such as domestic violence, custody and visitation) and benefit hours (paid leave hours). The Family Law Facilitators (and staff) have an additional reporting category: outreach hours. Outreach hours are those hours spent working on child and spousal support, paternity and health insurance matters for persons who have not yet applied for title IV-D services. This category of hours grew out of a federal audit, with the only condition being that California provide these services in a group setting (i.e., workshops). Reimbursable activities that may be included in outreach hours include providing information and referral services, distributing court forms and explaining court processes.[443]

When completing the spreadsheets, the employees divvy up their program and non-program hours and the calculations are automatic. So, for example, if a Child Support Commissioner were to spend ninety percent of his time on title IV-D matters and ten percent on custody and visitation matters, ninety percent times sixty-six percent federal reimbursement would yield a sixty percent total reimbursement rate. Operating expenses are calculated in a similar way.[444] If, for example, a court purchases a piece of equipment for $2,000 and the CSC program represents ten percent of the total expenses of that court, then $132 ($200 times sixty-six percent) would be billed for reimbursement by the federal government.

According to the federal Office of Child Support Enforcement, any state, including New York, has the option of allowing IV-D employees to perform non-IV-D functions as long as there is an approved cost allocation plan that meets the requirements outlined at 45 C.F.R. 304.15 and Subpart E of 45 C.F.R. part 95.[445]

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[441] The uproar over the amount of money a particular county was discovered spending on bottled water during difficult economic times spurred the AOC to ban the purchase unless the court can show they do not have access to potable water. According to Michael L. Wright, Supervising Attorney/Program Manager, Center for Families, Children & the Courts, Judicial Council of California--Administrative Office of the Courts, "The public did not respond well to the "Perrier scandal." E-mail from Michael Wright (July 26, 5:27 PM (on file).

[442] AB 1058 Program Overview 4.

[443] AB 1058 Program Overview 5.

[444] This should probably already be happening in New York.

[445] E-mail from Yvette Riddick, Director, Division of Policy, Office of Child Support Enforcement, U.S. Department of Health and Human Services (June 21, 2011, 11:45 AM) (on file).

APPENDIX

[Code of Federal Regulations]
[Title 45, Volume 2]
[Revised as of October 1, 2010]
From the U.S. Government Printing Office via GPO Access
[CITE: 45CFR304.15]

[Page 281]

TITLE 45--PUBLIC WELFARE

CHAPTER III--OFFICE OF CHILD SUPPORT ENFORCEMENT (CHILD SUPPORT ENFORCEMENT PROGRAM), ADMINISTRATION FOR CHILDREN AND FAMILIES,

PART 304_FEDERAL FINANCIAL PARTICIPATION--Table of Contents

Sec. 304.15 Cost allocation.

A State agency in support of its claims under title IV-D of the Social Security Act must have an approved cost allocation plan on file with the Department in accordance with the requirements contained in Subpart E of 45 CFR part 95. Subpart E also sets forth the effect on FFP if the requirements contained in that subpart are not met.

[47 FR 17509, Apr. 23, 1982]

[Code of Federal Regulations]
[Title 45, Volume 1]
[Revised as of October 1, 2010]
From the U.S. Government Printing Office via GPO Access
[CITE: 45CFR95]

[Page 483-486]

TITLE 45--PUBLIC WELFARE

SUBTITLE A--DEPARTMENT OF HEALTH AND HUMAN SERVICES

PART 95_GENERAL ADMINISTRATION_GRANT PROGRAMS (PUBLIC ASSISTANCE, MEDICAL

Subpart E_Cost Allocation Plans

Source: 47 FR 17509, Apr. 23, 1982, unless otherwise noted.

Sec. 95.501 Purpose.

This subpart establishes requirements for:
(a) Preparation, submission, and approval of State agency cost allocation plans for public assistance programs; and
(b) Adherence to approved cost allocation plans in computing claims for Federal financial participation.

Sec. 95.503 Scope.

This subpart applies to all State agency costs applicable to awards made under titles I, IV-A, IV-B, IV-C, IV-D, IV-E, X, XIV, XVI (AABD), XIX, and XXI, of the Social Security Act, and under the Refugee Act of 1980, title IV, Chapter 2 of the Immigration and Nationality Act (8 U.S.C. 1521 et seq.), and under title V of Pub. L. 96-422, the Refugee Education Assistance Act of 1980.

[65 FR 33633, May 24, 2000]

Sec. 95.505 Definitions.

As used in this subpart:

State agency costs include all costs incurred by or allocable to the State agency except expenditures for financial assistance, medical vendor payments, and payments for services and goods provided directly to program recipients such as day care services, family planning services or household items as provided for under the approved State program plan.

Cost allocation plan means a narrative description of the procedures that the State agency will use in identifying, measuring, and allocating all State agency costs incurred in support of all programs administered or supervised by the State agency.

FFP or Federal financial participation means the Federal Government's share of expenditures made by a State agency under any of the programs cited in Sec. 95.503.

Operating Divisions means the Department of Health and Human Services (HHS) organizational components responsible for administering public assistance programs. These components are the Social Security Administration, Office of Human Development Services, Office of Child Support Enforcement,Centers for Medicare & Medicaid Services, and Office of Refugee Resettlement.

Public assistance programs means the programs cited in Sec. 95.503.

State means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Northern Mariana Islands, and Guam.

State agency means the State agency administering or supervising the administration of the State plan for any program cited in Sec. 95.503. A State agency may be an organizational part of a larger State department that also contains other components and agencies. Where that occurs, the expression State agency refers to the specific component or agency within the State department that is directly responsible for the administration of, or supervising the administration of, one or more programs identified in Sec. 95.503.

[[Page 484]]

State Plan means a comprehensive written commitment by the State agency to administer or supervise the administration of any of the public assistance programs cited in Sec. 95.503 in accordance with all Federal requirements.

Sec. 95.507 Plan requirements.

(a) The State shall submit a cost allocation plan for the State agency as required below to the Director, Division of Cost Allocation (DCA), in the approporiate HHS Regional Office. The plan shall:

(1) Describe the procedures used to identify, measure, and allocate all costs to each of the programs operated by the State agency;

(2) Conform to the accounting principles and standards prescribed in Office of Management and Budget Circular A-87, and other pertinent Department regulations and instructions;

(3) Be compatible with the State plan for public assistance programs described in 45 CFR Chapter II, III and XIII, and 42 CFR Chapter IV Subchapters C and D; and

(4) Contain sufficient information in such detail to permit the Director, Division of Cost Allocation, after consulting with the Operating Divisions, to make an informed judgment on the correctness and fairness of the State's procedures for identifying, measuring, and allocating all costs to each of the programs operated by the State agency.

(b) The cost allocation plan shall contain the following information:

(1) An organizational chart showing the placement of each unit whose costs are charged to the programs operated by the State agency.

(2) A listing of all Federal and all non-Federal programs performed, administered, or serviced by these organizational units.

(3) A description of the activities performed by each organizational unit and, where not self-explanatory an explanation of the benefits provided to Federal programs.

(4) The procedures used to identify, measure, and allocate all costs to each benefiting program and activity (including activities subject to different rates of FFP).

(5) The estimated cost impact resulting from the proposed changes to a previously approved plan. These estimated costs are required solely to permit an evaluation of the procedures used for identifying, measuring, and allocating costs. Therefore, approval of the cost allocation plan shall not constitute approval of these estimated costs for use in calculating claims for FFP. Where it is impractical to obtain this data, an alternative approach should then be negotiated with the Director,DCA, prior to submission of the cost allocation plan.

(6) A statement stipulating that wherever costs are claimed for services provided by a governmental agency outside the State agency, that they will be supported by a written agreement that includes, at a minimum (i) the specific service(s) being purchased, (ii) the basis upon which the billing will be made by the provider agency (e.g. time reports, number of homes inspected, etc.) and (iii) a stipulation that the billing will be based on the actual cost incurred. This statement would not be required if the costs involved are specifically addressed in a State-wide cost allocation plan, local-wide cost allocation plan, or an umbrella/department cost allocation plan.

(7) If the public assistance programs are administered by local government agencies under a State supervised system, the overall State agency cost allocation plan shall also include a cost allocation plan for the local agencies. It shall be developed in accordance with the requirements set forth above. More than one local agency plan shall be submitted if the accounting systems or other conditions at the local agencies preclude an equitable allocation of costs by the submission of a single plan for all local agencies. Prior to submitting multiple plans for local agencies, the State should consult with the Director, DCA. Where more

than one local agency plan is submitted, the State shall identify the specific local agencies covered by each plan.

(8) A certification by a duly authorized official of the State stating:

(i) That the information contained in the proposed cost allocation plan was prepared in conformance with Office of Management and Budget Circular A-87.

[[Page 485]]

(ii) That the costs are accorded consistent treatment through the application of generally accepted accounting principles appropriate to the circumstances.

(iii) That an adequate accounting and statistical system exists to support claims that will be made under the cost allocation plan; and

(iv) That the information provided in support of the proposed cost allocation plan is accurate.

(9) Other information as is necessary to establish the validity of the procedures used to identify, measure, and allocate costs to all programs being operated by the State agency.

[47 FR 17509, Apr. 23, 1982, as amended at 65 FR 33633, May 24, 2000]

Sec. 95.509 Cost allocation plan amendments and certifications.

(a) The State shall promptly amend the cost allocation plan and submit the amended plan to the Director, DCA if any of the following events occur:

(1) The procedures shown in the existing cost allocation plan become outdated because of organizational changes, changes in Federal law or regulations, or significant changes in program levels, affecting the validity of the approved cost allocation procedures.

(2) A material defect is discovered in the cost allocation plan by the Director, DCA or the State.

(3) The State plan for public assistance programs is amended so as to affect the allocation of costs.

(4) Other changes occur which make the allocation basis or procedures in the approval cost allocation plan invalid.

(b) If a State has not submitted a plan or plan amendment during a given State fiscal year, an annual statement shall be submitted to the Director, DCA certifying that its approved cost allocation plan is not outdated. This statement shall be submitted within 60 days after the end of that fiscal year.

Sec. 95.511 Approval of the cost allocation plan or plan amendment.

(a) The Director, DCA, after consulting with the affected Operating Divisions, shall notify the State in writing of his/her findings. This notification will be made within 60 days after receipt of the proposed plan or amendment and shall either: (1) Advise the State that the plan or plan amendment is approved or disapproved, (2) advise the State of the changes required to make the plan or amendment acceptable, or (3) request the State to provide additional information needed to evaluate the proposed plan or amendment. If the DCA cannot make a determination within the 60-day period, it shall so advise the State.

(b) For purpose of this subpart, State agency cost allocation plans which have been approved by an authorized official of the Department of HHS prior to the effective date of this regulation are considered approved until such time as a new plan or plan amendment is required by Sec. 95.509(a).

Sec. 95.515 Effective date of a cost allocation plan amendment.

As a general rule, the effective date of a cost allocation plan amendment shall be the first day of the calendar quarter following the date of the event that required the amendment (See Sec. 95.509). However, the effective date of the amendment may be earlier or later under the following conditions:

(a) An earlier date is needed to avoid a significant inequity to either the State or the Federal Government.

(b) The information provided by the State which was used to approve a previous plan or plan amendment is later found to be materially incomplete or inaccurate, or the previously approved plan is later found to violate a Federal statute or regulation. In either situation, the effective date of any required modification to the plan will be the same as the effective date of the plan or plan amendment that contained the defect.

(c) It is impractical for the State to implement the amendment on the first day of the next calendar quarter. In these instances, a later date may be established by agreement between the State and the DCA.

[[Page 486]]

Sec. 95.517 Claims for Federal financial participation.

(a) A State must claim FFP for costs associated with a program only in accordance with its approved cost allocation plan. However, if a State has submitted a plan or plan amendment for a State agency, it may, at its option claim FFP based on the proposed plan or plan amendment, unless otherwise advised by the DCA. However, where a State has claimed costs based on a proposed plan or plan amendment the State, if necessary, shall retroactively adjust its claims in accordance with the plan or amendment as subsequently approved by the Director, DCA. The State may also continue to claim FFP under its existing approved cost allocation plan for all costs not affected by the proposed amendment.

Sec. 95.519 Cost disallowance.

If costs under a Public Assistance program are not claimed in accordance with the approved cost allocation plan (except as otherwise provided in Sec. 95.517), or if the State failed to submit an amended cost allocation plan as required by Sec. 95.509, the costs improperly claimed will be disallowed.

(a)(1) If the issue affects the program(s) of only one Operating Division and does not affect the programs of other Operating Divisions or Federal departments, that Operating Division will determine the amount of the disallowance and will also inform the State of its opportunity for reconsideration of the determination in accordance with the Operating Division's procedures. Prior to issuing the notification, however, the Operating Division shall consult with the DCA to ensure

that the issue does not affect the programs of other Operating Divisions or Federal departments.

(2) If the State wishes to request a reconsideration of the Operating Division's determination, it must submit the request in accordance with the Operating Division's procedures.

(b) If the issue affects the programs of more than one Operating Division, or Federal department or the State, the Director, DCA, after consulting with the Operating Divisions, shall determine the amount inappropriately claimed under each program. The Director, DCA will notify the State of this determination, of the dollar affect of the determination on the claims made under each program, and will inform the State of its opportunity for appeal of the determination under 45 CFR part 16. The State will subsequently be notified by the appropriate Operating Division as to the disposition of the funds in question.

[47 FR 17509, Apr. 23, 1982, as amended at 62 FR 38218, July 17, 1997]

Appendix E – Mediation in Custody and Dependency/Child Neglect Situations

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I. Custody

The states reviewed for mediation statutes or rules consisted of: California, Pennsylvania, New Jersey, Connecticut, and Florida. Some states have well-established statutory guidelines, while others have no set statutory guidelines.

a. California

The California Family Code requires mediation for all custody and visitation issues, including obtaining or modifying temporary and permanent orders. (Cal. Fam. Code § 3170(a) (West 2010); *See In re Marriage of Slayton*, 86 Cal.App.4th 653 (Cal. Ct. App. 2001)). If a stepparent or grandparent petitions for visitation, the court may set the matter for mediation. (Cal. Fam. Code §3171 (West 2010)). A natural or adoptive parent who is not a party to the proceeding is not required to participate in the mediation, but failure to do so waives that parent's right to object to a settlement reached by the other parties during mediation, or to require a hearing on the matter. (*Id.*) Mediation will not be denied to a party on the basis that paternity is at issue. (Cal. Fam. Code §3172 (West 2010)).

Mediation cases are governed by the uniform standards of practice. (Cal. Fam. Code §3162 (West 2010)). A mediator's report is evidence to be weighed with all other evidence. (*Id.* at 659). Mediators have the authority, as long as it is consistent with local court rules, to submit recommendations to the Court as to custody or visitation with the child. (Cal. Fam. Code §383 (West 2010)). A mediator has the authority to recommend restraining orders be issued pending the determination of a controversy. (*Id.*)

Mediation agreements are restricted to the resolution of issues related to parenting plans, custody, visitation, or a combination of these issues. (Cal. Fam. Code §3178 (West 2010)). In situations where a stepparent or grandparent seeks visitation, the agreement is limited to issues of visitation. A Court can modify custody and visitation agreements reached in a mediation proceeding at any time. (Cal. Fam. Code §3179 (West 2010)).

If there is a protective order in effect or there is a history of domestic violence between the parties, the mediator appointed may meet with the parties separately and at separate times, if requested by the party alleging domestic violence. (Cal. Fam. Code §3181 (West 2010)). A mediator has the authority to exclude a domestic violence support person from mediation proceedings as well as counsel. (Cal. Fam. Code §3182 (West 2010)).

A mediator may be a member of the professional staff of California's Family Conciliation Court, probation department, or mental health services agency, or the court may designate any other person or agency. (Cal. Fam. Code §3164 (West 2010)). The superior court must make a mediator available to the parties to a custody or visitation dispute (a family conciliation court is not required). (Cal. Fam. Code §3160 (West 2010)). The Court approves who the mediator will be in a case. The Court must insure that the mediator is informed about, any restraining orders or safety-related issues affecting any party or child named in the proceedings to allow compliance with relevant law or court rules before mediation begins. (Cal. Rules of Court, Rule 5.210).

The superior court exercises the jurisdiction conferred by the Family Conciliation Court Law. (Cal. Fam. Code §1810 (West 2010)). California's Family Conciliation Court has jurisdiction in controversies that exist between spouses, or relating to child custody or visitation between parents regardless of their marital status, and the controversy may result in dissolution of the marriage, nullity of the marriage, or legal separation of the parties, or in the disruption of the household, and there is a minor child of the spouses or parents or of either of them whose welfare might be affected thereby. (Cal. Fam. Code §1830 (West 2010)). The purposes of this Court are to protect the rights of children and to promote the public welfare by preserving, promoting, and protecting family life and the institution of matrimony, and to provide means for the reconciliation of spouses and the amicable settlement of domestic and family controversies. (Cal. Fam. Code §1800 (West 2010)). This Court is equivalent to the matrimonial departments in New York courts.

The qualifications for a mediator shall be in accord with the minimum qualifications required of a counselor of the Family Conciliation Court. (Cal. Fam. Code §3164 (West 2010)). These qualifications include: "(a) A master's degree in psychology, social work, marriage, family and child counseling, or other behavioral science substantially related to marriage and family interpersonal relationships; (b) At least two years of experience in counseling or psychotherapy, or both, preferably in a setting related to the responsibility of the family conciliation court and with the ethnic population to be served; (c) Knowledge of the court system of California and the procedures used in family law cases; (d) Knowledge of other resources in the community that clients can be referred to for assistance; (e) Knowledge of adult psychopathology and the psychology of families; (f) Knowledge of child development, child abuse, clinical issues relating to children, the effects of divorce on children, the effects of domestic violence on children, and child custody research sufficient to enable a counselor to assess the mental health needs of children; (g) Training in domestic violence issues; and (h) The family conciliation court may substitute additional experience for a portion of the education, or additional education for a portion of the experience, required under subdivision (a)". (Cal. Fam. Code §1815 (West 2010)).

In each county in which a family conciliation court is established, the superior court may appoint one supervising counselor of conciliation and one secretary to assist the family conciliation court in disposing of its business and carrying out its functions. (Cal. Fam. Code §1814(a) (West 2010)). The supervising counselor of conciliation has the power to do all of the following: (a) hold conciliation conferences with parties to, and hearings in, proceedings under the part, and make recommendations concerning the proceedings to the judge of the family conciliation court; (b) provide supervision in connection with the exercise of the counselor's

jurisdiction as the judge of the family conciliation court may direct; (c) cause reports to be made, statistics to be compiled, and records to be kept as the judge of the family conciliation court may direct; (d) hold hearings in all family conciliation court cases as may be required by the judge of the family conciliation court, and make investigations as may be required by the court to carry out the intent of this part; (e) make recommendations relating to marriages where one or both parties are underage; (f) make investigations, reports, and recommendations like the authority of a probation officer; (g) act as domestic relations cases investigator; and (h) conduct mediation of child custody and visitation disputes. (Cal. Fam. Code §1814(b) (West 2010)).

The mediator has the authority to recommend to the Court why it is in the best interests of the minor child to have counsel be appointed to represent the minor child. (Cal. Fam. Code §3184 (West 2010)). The minor child's counsel may interview mediators prior to being assigned to the dispute. (Cal. Fam. Code §3151 (West 2010)). Statutory guidelines do not specifically state if the child may be allowed to participate in the custody mediation. However, the mediator may interview the child alone or together with other interested parties. If the mediator interviews the child, the mediator must: (a) inform the child in an age-appropriate way of the mediator's obligation to disclose suspected child abuse and neglect and the local policies concerning disclosure of the child's statements to the court; and (b) with parental consent, coordinate interview and information exchange among agency or private professionals to reduce the number of interviews a child might experience. (Cal.Rules of Court, Rule 5.210(e)(3)(a)&(b)).

Overall, the county courts have great authority and discretion to develop local rules to respond to requests for a change of mediators or to general problems relating to mediation. (Cal. Fam. Code §3163 (West 2010)). There is no direct cost to either party for the use of mediation services. In order to support the mediation services and the Family Conciliation Court, the board of supervisors in any county has the authority to increase the fees for issuing a marriage license or a marriage certificate; the county then distributes said moneys to pay the exclusive costs of maintaining the court and mediation. (Cal. Gov't. Code §26840.3 (West 2006)).

The statutory guidelines do not provide a timeline or time limit on how long the mediation process shall take. The Court rules allow for the mediator to give extensions of time to allow the parties to gather additional information if the mediator determines that such information will help the discussion proceed in a fair and orderly manner or facilitate an agreement. (Cal. Rules of Court, Rule 5.210). Statutory guidelines do not specifically state if mediators can testify. It would seem that this is a ruling to be determined by the local courts. In Imperial County, mediators are not allowed to testify concerning any aspect of the mediation process. (Local Rules for the Imperial County Superior Court, Rule 5.5). The mediator may, consistent with local court rules, submit a recommendation to the court as to the custody of or visitation with the child, or recommend that restraining orders be issued, pending determination of the controversy, to protect the well-being of the child involved in the controversy. (Cal. Fam. Code §3183 (West 2010)). Once a mediator makes a ruling the process may or may not be over. The parties have the right to return to mediation to resolve any and all future custody or visitation disputes. (*Id*).

All mediation hearings or conferences shall be held in private and the court shall exclude all persons except the officers of the court, the parties, their counsel, and witnesses. (Cal. Fam.

Code §1818 (West 2010)). All communications, verbal or written, from parties to the judge, commissioner, or counselor in a proceeding under this part shall be deemed to be official information acquired in confidence by a public employee in the course of his or her duty and not open, or officially disclosed, to the public prior to the time the claim of privilege is made. (*Id*; Cal.Evid.Code § 1040 (West 2010)). Any court selected by the Judicial Council with over 1,000 family law case filings may voluntarily adopt a confidential mediation program that provides for all of the following: (a) the mediator may not make a recommendation as to custody or visitation to anyone other than the disputing parties, except as otherwise provided in this section; (b) if total or partial agreement is reached in mediation, the mediator may report this fact to the court. If both parties consent in writing, where there is a partial agreement, the mediator may report to the court a description of the issues still in dispute, without specific reference to either party; and (c) the mediator may not inform the court of the reasons why it would be in the best interest of the minor child to have counsel appointed. (Cal. Fam. Code §3188 (West 2010)).

b. Pennsylvania

In Pennsylvania, the county courts may establish mediation programs for custody actions. (23 Pa.C.S.A. §3901). The mediation programs established by the county courts are in correlation with divorce proceedings. Each county court may adopt local rules for the administration of the mediation program, the qualifications of mediators, confidentiality, and any other matter related the mediation process. For example, in Berks County, the county court shall refer all actions for custody, partial custody, and visitation of minor children to a Custody Master for purposes of a conciliation conference. (B.R.C.P. No. 1915.26). Under local mediation rules, the Custody Master shall attempt to mediate the differences between the parties, encourage amicable resolution of those differences and may recommend mediation. (*Id.*). While each county has the authority to establish its own mediation programs, the Pennsylvania Supreme Court must monitor the mediation programs and establish procedures for the evaluation of the effectiveness of each program. (23 Pa.C.S.A. §3903).

If a mediation program is established, that county court may order parties to attend an orientation session to explain the process to the parties. The orientation session is the initial means of educating the parties on the mediation process and their potential, continued participation in mediation. (Pa.R.C.P. No. 1940.2). The orientation sessions may be mandated by the court and may be structured to include either group or individual sessions. The parties must consent to mediation. If a party or a child is or has been the subject of domestic violence or child abuse at any time during the pendency of a divorce or custody action or within twenty-four (24) months preceding he filing of a divorce or custody action, the court cannot order the parties to attend an orientation session or mediation. (*Id.*). Mediators are required to terminate mediation when he/she finds that the parties are inappropriate for mediation or continuing the mediation process. (Pa.R.C.P. No. 1940.6(a)(4)). The mediator has a continuing ethical obligation, during the mediation, to screen for abuse and to terminate in the event he/she determines that the abuse renders the case unsuitable for mediation.

In order to fund the mediation program, a county may impose an additional filing fee of up to twenty dollars ($20.00) on divorce and custody complaints. (23 Pa.C.S.A. §3902). The court has the authority to set additional costs of the mediation on either party. Each court may establish its own rate and method of compensation for mediators. (Pa.R.C.P. No. 1940.7). The

fees are to be structured so that all parties are assured equal access to mediation services. Still today, Pennsylvania does not have a statewide office for alternative dispute resolution, which means each court must develop and secure its own funds for the mediation program.

The qualifications for mediators in Pennsylvania are extensive. A mediator must have a Bachelor's degree and practical experience in law, psychiatric, etc. He/she must have successfully completed a basic training program in domestic and family violence or child abuse, and a divorce and custody mediation program approved by the ABA, Association for Conflict Resolution, American Academy of Matrimonial Lawyers, or Administrative Office of Pennsylvania Courts. He/she must have completed a program in mediation professional liability insurance. It is also encouraged that a mediator complete additional training by participating in a minimum of 4 mediated cases totaling 10 hours under the supervision of a qualified mediator.

Third parties, including attorneys, other family members, mental health professionals, or any other person who may be of assistance in resolving the custody dispute may be permitted to participate in each mediation with the consent of both parties. (Pa.R.C.P. No. 1940.5(c)). The mediator may also meet with the parties' children with the consent of both parties. If no resolution is reached during mediation, the mediator shall, within 14 days, report this in writing to the court, without further explanation. (Pa.R.C.P. No. 1940.6(c)).

c. New Jersey

New Jersey does not have a statute or court rules detailing mediation programs for custody disputes. N.J.S.A. 2A:23C-1 establishes that New Jersey has a Uniform Mediation Act and N.J.S.A. 2A:23C-3 establishes the scope of the Act. Nothing in this Act provides for any information regarding if and/or when mediation is used in custody matters. N.J.S.A. 2A:23C-1 is a general statute regarding mediation.

d. Connecticut

Connecticut does not have a specific statute or court rules detailing mediation programs for custody disputes. CT R SUPER CT FAM § 25-61 states that "The Family Services Unit shall, at the request of the judicial authority, provide assistance with regard to issues concerning custody, visitation, finances, mediation, case management, and such other matters as the judicial authority may direct". No cases cited to this statute. Also, no other statutory authority or rules establish what guidelines are to be used by the Family Services Unit in providing assistance with mediation.

The Connecticut Court Support Services Division, Family Services states that Family Relations counselors mediate custody and access disputes for up to 2-hour sessions. (http://www.jud.ct.gov/Publications/FM211.pdf). The counselors may offer recommendations to parents at the conclusion of the process if the parties are unable to resolve the dispute. (*Id.*). These recommendations are not provided to the Courts. (*Id.*).

e. Florida

In Florida, the Court may appoint mediators for family and dissolution of marriage issues. Family mediation is defined as: mediation of family matters, including married and unmarried persons, before and after judgments involving dissolution of marriage; property

division; shared or sole parental responsibility; or child support, custody, and visitation involving emotional or financial considerations not usually present in other circuit civil cases. (West's F.S.A. § 44.1011(2)(d)). Primarily, the parties conduct the negotiations in family mediation. (*Id.*). Counsel for each party may attend the mediation proceeding and privately communicate with their clients; however, presence of counsel is not required; it is in the discretion of the mediator, and upon the agreement of the parties. A mediation proceeding may proceed in the absence of counsel unless otherwise ordered by the court. (*Id.*).

The Supreme Court levies a one dollar ($1.00) filing fee on all proceedings in the circuit or county courts to fund mediation services. (West's F.S.A. § 44.108 (2010)). In addition, the parties are required to pay these fees to the clerk of the court: One-hundred twenty ($120.00) dollars per person per scheduled session in family mediation when the parties' combined income is greater than fifty thousand ($50,000) dollars, but less than one hundred thousand dollars ($100,000.00) per year; or sixty dollars ($60.00) per person per scheduled session in family mediation when the parties' combined income is less than fifty thousand dollars ($50,000.00). (*Id.*).

The qualifications of Family Mediators are established in Rule 10.100 of the Florida Rules for Certified and Court-Appointed Mediators. In order to be certified as a family mediator, a person must complete a minimum of forty (40) hours in a family mediation training program certified by the Florida Supreme Court. He/she must have a master's degree or doctorate in social work, mental health, or behavioral or social sciences. Also, he/she must be a physician certified to practice adult or child psychiatry, or be an attorney or a certified public accountant licensed to practice in any United States jurisdiction. In addition, he/she must have at least four (4) years practical experience in one of the aforementioned fields or have eight (8) years family mediation experience with a minimum of ten (10) mediations per year. It is also required that he/she observe two (2) family mediations conducted by a certified family mediator and conduct two (2) family mediations under the supervision and observation of a certified family mediator. (http://www.flcourts.org/gen_public/adr/certify.shtml).

II. Dependency or Child Neglect

The states reviewed for dependency and child neglect statutes or rules consisted of: California, Pennsylvania, New Jersey, Connecticut, and Florida. As with custody situations, some states have well-established statutory guidelines, while others have no set statutory guidelines for dependency situations.

a. California

In California, Rule 5.518 details the mediation program for child protection and dependency situations. (Cal.Rules of Court, Rule 5.518). The juvenile courts of California are encouraged to implement dependency mediation programs emphasizing family preservation. "Dependency mediation" is a confidential process conducted by specially trained, neutral third-party mediators who have no decision-making power. (*Id.*). Dependency mediation provides a non-adversarial setting in which a mediator assists the parties in reaching a fully informed and mutually acceptable resolution that focuses on the child's safety and best interest and the safety

of all family members. Dependency mediation is concerned with any and all issues related to child protection. (Cal.Rules of Court, Rule 5.518(b)). A court may look to a mediation agreement for guidance or order that the parties engaged in mediation in order to attempt to resolve differences within the confines of the orders of the court; however, any agreements reached by the parties are not binding on the dependency court. (*In re Lance V.*, 90 Cal App. 4th. 668 (Cal. Ct. App. 2001)). Each juvenile court is encouraged to develop a dependency mediation program to provide a problem-solving forum for all interested persons to develop a plan in the best interests of the child, emphasizing family preservation and strengthening. (Cal. Welf. & Inst. Code §350 (West 1997)).

Mediators must decline to provide legal advice. (Cal.Rules of Court, Rule 5.518(j)). A mediator must protect the confidentiality of all parties, including the child. They must not release information or make any recommendations about the case to the court or to any individual except as required by statute (for example, the requirement to make mandatory child abuse reports or reports to authorities regarding threats of harm or violence). (*Id.*).

The dependency mediation program is based upon local protocols. Each court/county can run the program as they see fit. In the Superior Court of California, County of Alameda Local Rules of Court, mediation is required and all appropriate cases will be referred to the program prior to a contested hearing. (Rule 5.533). Here, the mediator must advise the court as to whether mediation occurred and what, if any, agreement was reached. In the Superior Court of California, County of San Francisco Local Rules of Court, the county sets what days and times parties may meet with a mediator. Mediations are generally set for 9:00 a.m. or 1:30 p.m., or they can be specially set at earlier or later times to meet the special needs of counsel or parties. However, mediations should *not* be set to begin any later than 9:30 a.m. or 2:00 p.m., or take place on Wednesdays, except in exceptional circumstances, and with advance approval of the mediators. (Rule 12.46). In the Superior Court of California County of Kern Local Rules of Court, a parent who has been given proper notice of a mediation conference and who willfully fails to appear for the mediation may be prohibited from presenting evidence at the contested hearing on the issues that were referred to mediation. (Rule7.6.7).

When at all possible, dependency mediation should include the direct and active participation of the parties, which includes, the parents or legal guardian, a representative of the child protective agency, and, at some stage, their respective attorneys. (Cal.Rules of Court, Rule 5.518(d)(2)(A)). The child has a right to participate in the process with his attorney. If the child makes an informed choice not to participate, then the child's attorney may participate. If the child is unable to make an informed choice, then the child's attorney may participate. (Cal.Rules of Court, Rule 5.518(d)(2)(B)). In order to make an informed choice, the child must be able to grasp the circumstances and understand his/her role in the process. Other family members, guardians ad litem, or other involved persons or professionals may participate in the mediation. (Cal.Rules of Court, Rule 5.518(d)(2)(D)). A mediation participant, who is a victim of domestic violence from another mediation participant, is permitted to have a support person present at the mediation, so long as the person acts solely as emotional support for the alleged victim. (Cal.Rules of Court, Rule 5.518(d)(2)(E)).

The qualifications of a mediator in a dependency mediation are extensive. A mediator must possess at least: a master's or doctoral degree in psychology, social work, marriage and family therapy, conflict resolution, or another behavioral science substantially related to family relationships, family violence, child development, or conflict resolution from an accredited college or university; or a juris doctorate or bachelor of laws degree. (Cal.Rules of Court, Rule 5.518(e)). He/she must have at least two (2) years of experience as an attorney, a referee, a judicial officer, a mediator, or a child welfare worker in juvenile dependency court, or at least three (3) years of experience in mediation or counseling, preferably in a setting related to juvenile dependency or domestic relations. (*Id.*). The mediator must also complete at least forty (40) hours of initial dependency mediation training in a variety of subject areas, within twelve (12) months of beginning practice as a mediator. (*Id.*). Volunteers, interns, or paraprofessionals may act as mediators, but only if they are supervised by a professional mediator who is qualified to act as a professional dependency mediator (Cal.Rules of Court, Rule 5.518(h)).

b. Pennsylvania

There is no child protective mediation statute or rules in Pennsylvania.

c. New Jersey

New Jersey does not have a statute or court rules detailing mediation programs for child protective matters. As stated in the New Jersey custody section, N.J.S.A. 2A:23C-1 is the general statute of New Jersey regarding mediation.

d. Connecticut

In Connecticut, there is no specific statute or court rules' regarding child protective mediation. However, Connecticut does provide voluntary mediation programs for child protection issues through the Superior Court, Juvenile Matters. (http://www.jud.ct.gov/Publications/jm159.pdf). Child protection mediation is completely voluntary, confidential, held only if all parties agree, referred by the court, not ordered by the court, and designed to cover matters including, neglect, termination, permanency review, and guardianship. A team of two (2) members of Court Services Officers, private attorneys and clinicians conduct each mediation. (*Id.*). The make- up of each team takes into account gender, cultural competency and area of expertise. The mediators must have approximately fifty (50) hours of training before they may take cases. (*Id.*). If the parties reach an agreement, the parties put the agreement in writing. The agreement is then reviewed in court by the judge and, if approved, made part of the decision of the case. If the parties do not reach an agreement, they go back to court. (*Id.*).

e. Florida

In Florida, dependency mediation or child-in-need-of-services mediation is not required in every county. Any party in a child protective proceeding, may request the court to refer the parties to mediation. (West's F.S.A. § 39.4075 (2010)). The court may also refer the parties to mediation. The parties are responsible for contributing to the cost of the dependency mediation. (*Id.*). The same rules apply for child-in-need-of-services mediation. (West's F.S.A. § 984.18 (2010)).

The parties may timely object to mediation on the grounds of financial hardship. (Fla.R.Juv.P. Rule 8.290(f)). On the objection of a party or the court's own motion, the court may, after considering the objecting party's ability to pay and any other pertinent information, reduce or eliminate the fee. (*Id.*).

Counsel may be absent from the dependency mediation or may be ordered by the court. (Fla.R.Juv.P. Rule 8.290(l)(3)). The court may prohibit the child from appearing or require the child to appear at mediation upon determining whether such appearance is or is not in the best interest of the child. (Fla.R.Juv.P. Rule 8.290(l)(4)).

The qualifications of Dependency Mediators are established in Rule 10.100 of the Florida Rules for Certified and Court-Appointed Mediators. In order to be certified as a mediator for dependency matters, a person must complete a supreme court certified dependency mediation training program. Training would involve forty (40) hours if the applicant is not a certified family mediator or is a certified family mediator who has not mediated at least 4 dependency cases or twenty (20) hours if the applicant is a certified family mediator who has mediated at least 4 dependency cases. He/she must have a master's degree or doctorate in social work, mental health, behavioral sciences or social sciences; or be a physician licensed to practice adult or child psychiatry or pediatrics, or be an attorney licensed to practice in any United States jurisdiction. In addition, he/she must have four (4) years experience in family and/or dependency issues or be a licensed mental health professional with at least four (4) years practical experience or be a supreme court certified family or circuit mediator with a minimum of twenty (20) mediations. It is also important to have observed four (4) dependency mediations conducted by a certified dependency mediator and conduct two (2) dependency mediations under the supervision and observation of a certified dependency mediator. (http://www.flcourts.org/gen_public/adr/certify.shtml).

Appendix F. Other States' Experiences

Meetings with judges and a bar leader in adjoining states who were involved with Family Court structural and operational issues in their respective states:

Connecticut Judiciary

Honorable Lynda Munro

Honorable James Bentivenga

Honorable Christine Keller

Barry Armata, Esq. Connecticut Bar Association

New Jersey Judiciary

Honorable Thomas Zampino

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Appendix H. New York State Child Welfare Court Improvement Trainings – 2010, 2011, 2012

NYS Child Welfare Court Improvement Trainings
2010

Date(s)	*Topic*	*Location*	*Audience*
1/22	Achieving ICWA Competence for Child Welfare Matters	Batavia	Genesee County
2/4	Everything You Always Wanted to Know About Section 8 and Other Housing Services But Were Afraid to Ask	Westbury	Nassau County
2/25	Interstate Compact for the Placement of Children and Runaways	Westbury	Nassau County
3/9	Judicial Leadership Pre-Conference Seminar	Albany	Statewide
3/10	Ready…Set…Go! Enhancing Court Practices in Child Welfare Proceedings	Albany	Statewide
3/15	The Lawyer's Guide to Agency Adoptions	Mayville	Chautauqua County
4/9	Doing the Hard Thing: The Legal and Psychological Effects of Conditional Surrenders	Cicero	Onondaga County
4/22	Trauma in Infancy and Early Childhood: Developmental Risk and Intervention Strategies	Westbury	Nassau County
5/14	The Lawyer's Guide to Agency Adoptions	Batavia	Genesee County
7/30	Important Legislative Update: Recent Changes in Child Welfare Law	Rochester	Monroe County
9/16	Tools for Engaging Children in Their Court Proceedings	Cortland	Cortland County
9/30	Tools for Engaging Children in Their Court Proceedings	Mayville	Chautauqua County
9/27	Subsidized Guardianship	Cicero West	Onondaga County
10/14	Peeking Through the Doors of the Family Court System	Seneca	Erie County
10/20	Tools for Engaging Children in Their Court Proceedings	Olean	Cattaraugus and Allegany Counties
10/20	The Lawyer's Guide to Agency Adoptions	Olean	Cattaraugus and Allegany Counties
10/28	Teen Day	Manhattan	New York County

11/10	Overview of the Interstate Compact on the Placementof Children (ICPC) Process	Rochester	Monroe County
11/15	Child Permanency Mediation Training	Buffalo	Erie County
11/17	Literacy Volunteers of Oswego County, Inc.	Oswego	Oswego County
11/19	NYC CASA's Project Family Connect: Working with Children in Foster Care Impacted by Parental Incarceration	New York	New York City
11/29	Frontloading Without Railroading	Garden City	Nassau, Suffolk and Westchester Counties
12/3	Best Practices in Working with Muslim and Immigrant Families: Breaking the Cultural Barrier	Buffalo	Erie County
12/7	Important Legislative Update: Recent Changes in Child Welfare Law	Elmira	Chemung
12/14	Interstate Compact for the Placement of Children and Runaways	Queens	Queens
12/17	Interstate Compact for the Placement of Children and Runaways	Manhattan	New York County

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NYS Child Welfare Court Improvement Project Trainings 2011

Date(s)	*Topic*	*Location*
1/13	**Legal Framework for Education in NYS: IEP, CSE, and Transition Services**	**Rochester**
2/10	**Adolescent Mental Health Concerns: Conduct Disorders and Trauma**	**Rochester**
2/17	**The Use (and Misuse) of Psychiatric Medications in Treating Adolescents Involved in Family Court Proceedings**	**Queens**
2/17	**The Lawyer's Guide to Agency Adoptions**	**Phoenix**
2/25	**Taking Some of the Hurt out of Trauma: Integrating trauma-informed, solution-focused strategies in family court**	**Mayville**
3/2	**Treatment Court and Treatment 101**	**Poughkeepsie**

3/3	Educational Stability for Children in Foster Care	Richmond
3/9	Educational Stability for Children in Foster Care	Queens
3/10	Child Welfare Update: Caselaw and Subsidized Guardianship	Rochester
3/25	Taking Some of the Hurt out of Trauma: Next steps - Placement considerations and decision-making	Mayville
3/29	Frontloading Without Railroading: Advocacy in the first 60 days following removal	Elmira
3/30	The Many Faces of Domestic Violence	Queens
3/31	Educational Stability for Children in Foster Care	New York
4/1	Subsidized Guardianship and Other New Child Welfare Laws Affecting Permanency	Utica
4/9	Understanding the Nexus: Substance Abuse and Domestic Violence	Hyde Park
4/14	Trauma and Its Biological Effects: Promoting Positive Attachment and Emotional Well-Being	Rochester
4/14 and 4/27	Legal Standard of Imminent Risk: How Does it Differ from Safety?	Queens
4/20	Tools for Engaging Children in their Court Proceedings	Albany
5/12	Effectively Engaging and Understanding Teen parents	Rochester
5/16	Child Permanency Mediation	Mayville
5/23	Educational Stability for Children in Foster Care	Brooklyn
5/24	Supports and Challenges for Parents with Mental Illnesses in Family Court Proceedings	Jamaica
5/25	Best Practices in Representing LGBTQ and Other Marginalized Youth	Phoenix
5/26	Common Cause: ICWA Compliance -- Intent Meets Reason	Buffalo
6/16	Frontloading Without Railroading: Advocacy in the first 60 days following removal	Rochester
6/16 to 6/17	Special Immigrant Juvenile Status	Manhattan and via V Brick
6/20	Adolescent Mental Health Concerns: Oppositional Defiant and Conduct Disorders	Elmira

6/23	**Permanency Mediation and the 5 W's**	**Binghamton**
6/23	**Lawyer's Guide to Agency Adoptions**	**Binghamton**
6/28	**Tools for Engaging Children in their Court Proceedings**	**Goshen**
6/29	**Taking Some of the Hurt out of Trauma: Next steps - Visitation Considerations and Decision-Making**	**Mayville**
7/14	**Surrendering a Child: What is Your Role?**	**Syracuse**
7/19	**Frontloading Without Railroading: Advocacy in the first 60 days following removal**	**Troy**
7/27	**Lead Judges Meeting**	**New York**
7/28	**Continuous Quality Improvement Initiative**	**New York**
8/5 and 8/12	**Everything the Substance Abuse Professional Always Wanted to Know About the Child Welfare Legal System**	**Utica**
8/18	**CASA: Volunteer Recruitment and Diversity**	**Webinar**
9/12	**The Lawyer's Guide to Agency Adoptions**	**Utica**
9/13	**Visit Hosts**	**Webinar**
9/13	**Child Permanency Mediation**	**Batavia**
9/19	**Statewide Interdisciplinary Collaboration Group**	**Rensselaer**
9/19 to 22	**Child Permanency Mediation**	**Binghamton**
9/22	**Representing Litigants with Mental Illnesses and Accessing Appropriate Services in the Community**	**Jamaica**
9/22	**CASA: Self-Care and Vicarious Trauma**	**Webinar**
9/28	**Subsidized Guardianship and Other New Child Welfare Laws Affecting Permanency**	**Syracuse**
9/30	**Trauma-Informed Care Series: Special Considerations and Decision-Making with Adolescents**	**Mayville**
10/4 and 10/5	**Special Immigrant Juvenile Status**	**New York**
10/13	**Telling Our Story: An Evaluation of a Trauma-Informed System of Care Approach**	**Rochester**
10/14	**Legal Standard of Imminent Risk: How Does it Differ from Safety?**	**Oswego**

10/14	**Introduction to Oswego County's Visitation Host Program**	**Oswego**
		Manhattan and via V
10/21	**The Lens of Implicit Bias**	**Brick**
10/25	**Permanency Mediation: Training for Caseworkers**	**Elmira**
10/26	**The Impact of Domestic Violence on Children: A training for CASA staff**	**Webinar**
11/10	**Permanency Mediation: Training for Caseworkers**	**Cortland**
11/10	**Juvenile Firesetter Intervention Program**	**Rochester**
11/15	**Child Permanency Mediation**	**Schenectady**
11/16	**Understanding the Child Welfare Court Data Metrics**	**Webinar**
11/17	**Cases Involving Elder Abuse: A Training for Attorneys**	**Jamaica**
11/30	**Native American Children in the New York City Child Welfare System: More than Meets the Eye**	**New York**
12/6	**Impact of Domestic Violence On Children**	**Batavia**
12/7	**The Effects of Domestic Violence on Children's Well Being**	**Westbury**
12/7	**Representing Clients in Article 10 Cases: Nuts, Bolts and Beyond**	**Hyde Park**
12/8	**Permanency Mediation: Agreement Writing Training**	**Binghamton**
12/8	**Child Abduction by Parent: A Guide for Judicial and Legal Professionals**	**Rochester**
12/8	**Domestic Violence Within the South Asian Community**	**Jamaica**
12/9	**Using Data to Take Action**	**Webinar**
12/14	**Trauma-Informed Care Series: Mental Health and Educational Considerations**	**Mayville**
	Training and meetings in support of the CQI Initiative	
12/14	**NYC Executive Committee for Child Welfare Practice: CQI and court data metrics training**	**New York**
10/5	**Monroe County Stakeholders Group**	**Rochester**

10/6	**Onondaga County Stakeholders Group, Part 1**	**Syracuse**
10/9	**Cortland County Stakeholders Group**	**Cortland**
10/18	**Westchester County Stakeholders Group**	**White Plains**
10/21	**Albany County Stakeholders Group Executive Committee**	**Albany**
10/24	**Dutchess County Stakeholders Group**	**Poughkeepsie**
10/26	**Suffolk County Stakeholders Group**	**Islip**
11/9	**Chautauqua County Stakeholders Group**	**Mayville**
11/15	**Nassau County Stakeholders Group Executive Committee**	**Westbury**
11/17	**Oneida County Executive Committee**	**Utica**
11/21	**Orange County Stakeholders Group**	**Newburgh**
12/8	**Onondaga County Stakeholders Group, Part 2**	**Syracuse**
12/16	**Oswego County Stateholders Group**	**Oswego**

	NYS Child Welfare Court Improvement Project Trainings 2012	
Date(s)	***Topic***	***Location***
1/6	Vicarious Trauma, Compassion Fatigue	Bath
1/12	Cayuga Centers (Cayuga Home for Children):Foster Care Programs: Evidence-Based Treatment, EI Prgrams and Residential Treatment Intensification Program	Rochester
1/19	Early Childhood Trauma	Westbury
1/25	An Overview to Involving Youth in Courts: Maximizing Their Voice	Jamaica
2/9	Child Welfare Legal Update	Rochester
2/17	Joint CWCIP and NYS OCFS Regional Office Staff Meeting in Support of CQI	Rensselaer
3/1	Shelter From The Storm	Westbury
3/2	Lawyer's Guide to Agency Adoptions	Buffalo
3/2	Taking some of the Hurt Out of Trauma: Considerations in Permanency Decisions	Mayville

3/8	Fetal Alcohol Spectrum Disorder (FASD)	Rochester
3/9	Two Topics for Four Counties: Child Custody Options For The Non-Parent And Court Ordered CPS Investigations	
3/14	Promoting self-advocacy with youth clients: a valuable skill and why its important	Jamaica
3/23	Child Welfare Legislation Update	Jamestown
4/18	Strategic Planning Session for Schenectady Collaborative	Schenectad
4/19	Youth Voice in Court: A Broader Perspective	
4/27	Permanency Mediation	Cortland
5/29	Creating a Trauma-Informed Legal System	Queens
6/5	Adolescent Well-Being: Supporting Foster Youth on a Successful Path to Adulthood	New York
6/12	Adolescent Well-Being: Supporting Foster Youth on a Successful Path to Adulthood	Albany
6/15	Taking Some of the Hurt Out of Trauma: Considerations in TPR's and Concurrent Planning	Mayville
6/19	Adolescent Well-Being: Supporting Foster Youth on a Successful Path to Adulthood	Rochester
7/27	Conerstone Advocacy on Behalf of Young Clients	Rochester
8/20	Meet n Greet	Mayville
9/10	Child Abuse and Neglect Institute	White Plain
9/14	New York State Family Court 50th Anniversary Celebration	Albany
9/18	Everything You Wanted to Know About Adoptions...and Then Some.	White Plain
9/19	Undoing Racism	White Plain
10/19	The Changing Face of Family Court: 50th Anniversary Symposium	Amherst

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