

*Research,  
education, and  
citizen court  
monitoring  
to improve the  
courts of  
New York State*

THE  
FUND  
FOR

# MODERN COURTS

## *Report on the FAMILY COURT*

The Rockland County Court Monitors

1999

*It is desirable that the trial of causes of action should take place under the public eye, not because the controversies of one citizen with another are of public concern, but because it is of the highest moment that those who administer justice should always act under the sense of public responsibility, and that every citizen should be able to satisfy himself with his own eyes as to the mode in which a public duty is performed.*

Justice Oliver Wendell Holmes  
*Cowley v. Pulsifer*  
137 Mass. 392, 294 (Mass. 1884)

The Fund for Modern Courts is a private, nonprofit, nonpartisan organization dedicated to improving the administration of justice in New York. Founded in 1955, and led by concerned citizens, prominent lawyers, and leaders of the business community, Modern Courts works to make the court system more accessible, efficient, and user-friendly for all New Yorkers.

The centerpiece of Modern Courts' efforts is our groundbreaking citizen court monitoring program, which gives citizens a powerful voice in how their court system is run. Our monitors, who now number more than 600 in 16 counties throughout New York State, have succeeded in obtaining numerous tangible improvements in the state's courts. In the Capital District, our citizen court monitors are led by Helga A. Schroeter, Modern Courts' Capital District Coordinator. This report details their findings regarding the Schenectady County Family Court. We hope their recommendations will help to obtain improvements for the children and families the court serves.

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# ROCKLAND COUNTY COURT MONITORS

## *REPORT ON THE FAMILY COURT*

1999

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# I. THE PROJECT

## Court Monitoring in New York State

The Fund for Modern Courts is a private, nonprofit, nonpartisan organization dedicated to improving the administration of justice in New York State. Since 1975, Modern Courts has sponsored court monitoring programs around the State, in which groups of citizens observe and evaluate their courts, report their findings, and issue public recommendations for improvement. Today, groups of court monitors are active in 16 counties.

Over the years, court monitoring has proven highly successful at:

- safeguarding the public's interest in the courts;
- creating and maintaining an ongoing, meaningful exchange between citizens and their judiciary;
- making the courts more accountable and sensitive to the needs of the communities they serve;
- educating citizens about the daily functions and operation of their courts;
- publicizing problems that exist in the courts;
- successfully urging those responsible for the courts (including court administrators, state legislators, local government officials, and others) to make improvements, particularly in how the courts serve the public and how their personnel treat the public; and
- creating a constituency of citizens who understand the problems facing the courts and who are supportive of the courts' efforts to function efficiently and effectively.

During a monitoring project, volunteers observe proceedings in a particular court for a period of several months, and complete forms designed to help them to evaluate all aspects of the court's performance, from the demeanor of the judges to the physical conditions under which the court operates. Modern Courts then publishes the monitors' findings in a detailed report, which is sent to the judges and court personnel observed, the administrators of the state court system, State and local legislators, the news media, and other interested parties.

Monitors come from all walks of life, and many have no prior experience with the legal system. The monitors are asked to look at the court from an outsider's viewpoint, which provides a fresh, common-sense perspective on how the courts can be improved.

Modern Courts' citizen court monitoring program has been influential in solving many of the problems that ordinary citizens face in the courts. For example, monitors' comments about litigants with young children in the Family Court have helped lead to the establishment of in-court child care facilities in numerous courthouses across the State. In other courts, the implementation of a "staggered"

calendar, modeled directly on monitors' recommendations, has drastically reduced both waiting time and overcrowding. Monitors' repeated calls for decent housekeeping and maintenance in the state's courthouses have led to a renewed commitment to courthouse upkeep by local governments and to major improvements in recent years. Monitors were also helpful in persuading the State Office of Court Administration to introduce a mandatory "civility training" program for all non-judicial court personnel.

On a larger scale, monitors' reports were instrumental in encouraging the State legislature to pass the Court Facilities Act of 1987, which has led to construction of desperately needed new court facilities around the State. In the Ninth Judicial District, for example, a new courthouse for the Dutchess County Family Court opened in 1997, replacing a deplorable facility that was criticized by monitors in several reports. Other new courthouses are scheduled for construction over the next several years. Monitors' reports also influenced recent reforms to make jury service less burdensome.

Overall, citizen court monitoring has improved communication between citizens and the judiciary, heightened the court system's sensitivity to public needs, and helped to ensure that those needs are met.

### **The Rockland County Court Monitors**

For their first project, the Rockland County monitors chose to evaluate the conditions in the Rockland County Family Court. The Family Court deals with some of society's most serious problems, involving children and families in crisis. However, because it is an "inferior" court (*i.e.*, it is a "lower" court, of limited jurisdiction), it has long been perceived to exist at the bottom rungs of New York's court system, and it has been forced to operate with fewer resources than the other "superior" courts. Moreover, public attention is rarely paid to the operation of the Family Court, since it often operates as a "closed" court (although recent rule changes have been instituted to open Family Court proceedings to the public and press; these are discussed later in this report). Thus, the Family Court has not received the same level of public scrutiny as other courts, with the result that the need for improvements is not broadly recognized. Needed reforms will be instituted only when the public is made aware of the actual conditions in the Family Court. This is the task upon which the citizen court monitors of Modern Courts and the Rockland County Chapter of the National Council of Jewish Women embarked in July, 1998.

At the outset of the project, each monitor was asked to sign a statement of objectivity, certifying that he or she had not been a party to a case in the Family Court. In July, 1998, a project orientation meeting was held, which included presentations by a panel comprising Mr. Bill Cucolo of Child Protective Services; G. Nicholas Del Pizzo, Esq., of the Family Court Unit of the Rockland County Attorney's Office; Beth Levi, Esq., of the Legal Aid Society of Rockland County; Ms. Arlene Schatz of the Department of Probation; and Hon. William P. Warren, Rockland County Family Court judge. Modern Courts' staff explained the monitoring process and distributed materials for the project, including Modern Courts' *Family Court Monitoring Handbook* and copies of the evaluation forms

that monitors complete after each observation. Approximately 50 monitors participated in the Family Court project.

The following report is based on a total of 286 observations by the monitors over a four-month period. Monitors were present in courtrooms every week from July through October, 1998. These regular observations gave them sharp insight into the shortcomings that affect the Family Court's ability to serve the public properly. Monitors thus were able to suggest ways to increase efficiency and reduce delay, to lessen inconvenience to the public, to increase the appearance that proceedings are conducted fairly, and to deal with the large numbers of children who accompany adults to court.

## II. THE FAMILY COURT IN NEW YORK STATE

In 1962, the New York State Legislature passed the Family Court Act, which created a statewide Family Court. The Family Court replaced the Domestic Relations Court of the City of New York and the Children's Courts outside New York City.

The Family Court was given jurisdiction over many issues involving children and families, including paternity, custody, visitation, child support, child abuse and neglect, delinquency, and violence and abuse among family members. The Family Court does not have jurisdiction over divorce, separation, or annulment proceedings, which are heard in Supreme Court. Jurisdiction over adoptions is shared with the Surrogate's Court, which also oversees inheritance cases.

Family Court differs from the other courts in New York's justice system in several ways. First, there are no jury trials in the Family Court. Second, unlike the criminal courts, it was not designed to mete out punishment for criminal offenses. Third, when the Family Court was created, it was not intended to be adversarial; rather, it was intended to be a "remedial" court, in which a judge uses the professional staff of the court and of other governmental and private agencies to devise programs to resolve family problems. This distinctive approach is reflected in the terminology used in Family Court: Plaintiffs, complainants, and the prosecution are called "petitioners"; defendants are called "respondents"; trials are designated "fact-finding hearings"; and sentences are known as "dispositional orders." However, in today's Family Court, children are usually represented by counsel; adult parties also may be represented by counsel, whether private or assigned. Moreover, the Family Court must resolve some of the most intimate, wrenching problems facing individuals and families. Thus, as a practical matter, it is indeed an adversarial court.

### Public Access

Although the Family Court technically is an open court (and has been "open" since its inception), the often-sensitive nature of proceedings has led many judges and court administrators to operate as though it were a closed court. In addition, most Family Court courtrooms are small and unable to accommodate large numbers of spectators.

In June, 1997, the Office of Court Administration issued new rules reaffirming that the Family Court is an open court, and directing that the public and press be given broad access. The rules, which became effective on September 2, 1997, provide that

the Family Court is open to the public. Members of the public, including the news media, shall have access to all courtrooms, lobbies, public waiting areas

and other common areas of the Family Court otherwise open to individuals having business before the court. Judges may exclude the public only on a case-by-case basis.

The issue of public access to Family Court proceedings received heightened scrutiny during a recent and highly-publicized case in Westchester County, which involved a twelve-year-old boy, Malcolm Shabazz, who was accused of setting a fire that resulted in the death of his grandmother, Betty Shabazz. The media petitioned for access, while attorneys for the child and the County Attorney's Office sought to exclude the media on the grounds that the child was psychologically fragile.

The judge who heard the case excluded cameras from the courtroom, but permitted two pool reporters to attend the proceedings, declaring:

Justice cannot prevail under a veil of secrecy or behind closed doors that do not open. Darkness must give way to light. In order to preserve the integrity of public proceedings, avoid the dissemination of misinformation, enhance public confidence in the court system and promote a better understanding of the Family Court, these judicial proceedings must be open to the press.

On appeal, the ruling was unanimously upheld by the Appellate Division, Second Department.

## **Caseload**

When the Family Court began operations in 1962, no one foresaw such upcoming factors as the substantial increase in the divorce rate, the drug abuse epidemic of the 1970s and 1980s, and the emergence of child and domestic abuse as pressing societal problems. These and other conditions have contributed to an explosion in the Family Court's caseload. In 1985, a total of 391,322 cases were filed statewide; ten years later, that number jumped to 591,577. By 1998, the year this project occurred, there were a total of 654,602 filings in Family Court across the state. While a staggering number of drug-related cases flooded the family and criminal courts in the late 1980s, more recently, the growth of Family Court filings has been spurred by increases in cases involving child custody, child support, and termination of parental rights.

## **Family Court Judges**

***Eligibility:*** Outside of New York City, Family Court judges must be residents of the county in which they serve. (In New York City, they must be residents of the City.) All Family Court judges must be attorneys admitted to the bar for at least ten years before assuming office.

***Method of Selection:*** All Family Court judges outside of New York City are nominated in countywide, partisan primary elections and then elected in a countywide general election. (In New York City, Family Court judges are appointed by the Mayor by means of a merit selection process.)

**Tenure:** Family Court judges serve ten-year terms. If a judge is unable to complete a term, the governor appoints a judge to fill the vacancy until the next general election. Family Court judges may serve until a mandatory retirement age of 70, in contrast to Supreme Court justices, who may serve an additional six years, with biannual certification of mental and physical fitness.

**Salaries:** Salaries of Family Court judges are paid by the State of New York, but they vary from county to county. Family Court judges in Rockland County earn \$125,600. However, their counterparts in New York City, Long Island, and Westchester County earn \$136,700.

Despite action by the New York State Legislature in 1999 that substantially raised judicial salaries, these disparities linger, harking back to the period prior to 1977 when municipalities, rather than the State, were responsible for the costs of court administration. As part of its 1999-2000 budget request, the Office of Court Administration sought substantial pay raises for members of the judiciary. As a result, the State Legislature has raise the salaries of Rockland County Family Court judges from \$103,800 to the current annual rate of \$125,600. However, the pay disparities between counties remain: Under the proposed legislation, the annual salaries of judges in New York City and certain other counties have been raised from \$113,000 to \$136,700.

In 1997, over 670,000 cases, covering 20 different types of proceedings, were heard in Family Courts across New York State. Currently, 263 judges and hearing examiners sit in these courts, which means that each judicial officer hears an average of more than 2,500 matters per year.

There are currently two full-time judges in the Rockland County Family Court.

### **Hearing Examiners**

The position of Family Court Hearing Examiner was established by the New York State Child Support Enforcement Act of 1985 in response to federal funding regulations aimed at increasing and expediting collection of support payments.

Hearing examiners are not judges, but they are authorized to hear and make decisions on support and uncontested paternity matters. Decisions made by hearing examiners are binding. However, litigants dissatisfied with a hearing examiner's decision may object, and a resolution of the objection will be handled by a Family Court judge. Hearing examiners are not authorized to issue warrants or to hold individuals in contempt of court; they must forward requests for such actions to a judge.

Hearing examiners have greatly eased the burden on judges by hearing support cases, which can be time-consuming and tedious, and put growing demands on the court's time. The position also has proved to be a "training ground" for judges: Hearing examiners often advance to judicial office.

**Eligibility:** The Uniform Family Court Rules of the State of New York mandate that hearing examiners "shall be attorneys admitted to the practice of law for at least five years and shall be knowledgeable with respect to Family Court procedure, family law, and federal and state support law and programs."

**Method of Selection:** Candidates are appointed by the Chief Administrative Judge of the State of New York, after screening in each judicial district by a commission consisting of the district administrative judge, a Family Court judge, and a representative of the Chief Administrative Judge.

**Salaries and Tenure:** All hearing examiners in New York State earn \$64,606 annually. They serve three-year terms, with reappointment at the discretion of the Chief Administrative Judge.

There are one full-time and one part-time Hearing Examiner in the Rockland County Family Court.

### **Judicial Hearing Officers**

To handle the large caseload of the court and to increase efficiency, some Family Courts utilize personnel known as Judicial Hearing Officers, or JHOs. JHOs are former and retired judges who are designated by the Chief Administrator of the New York State court system to serve as "quasi-judicial officers" of the court. They are assigned to a particular court on a per-diem basis, where they fill limited roles. In Family Court, JHOs may preside over custody and visitation cases, contested paternity proceedings, and domestic violence cases.

**Eligibility:** Only former and retired New York State judges are eligible to serve as judicial hearing officers.

**Method of Selection:** Judicial hearing officers are appointed by the Chief Administrative Judge of the State of New York.

**Salaries and Tenure:** Judicial Hearing Officers are compensated at a rate of \$250 per day.

There are no judicial hearing officers in the Rockland County Family Court.

### **Appeals Process**

An appeal from Family Court is heard in the Appellate Division of Supreme Court. (New York State is divided into four Judicial Departments; appeals from the Rockland County Family Court are to the Appellate Division, Second Department.) Further appeals are brought before the Court of Appeals, New York State's court of last resort.

### **III. THE ROCKLAND COUNTY FAMILY COURT**

#### **The Population It Serves: Rockland County**

Rockland County is located in southeastern New York State. It is bordered on the east by the Hudson River, on the south by the state of New Jersey, and on the west and north by Orange County and the Ramapo Mountains, with an area of 176 square miles.

Rockland County's population for 1995 was 278,136, an increase from the 1990 census population of 265,475. Its county seat is New City, and its largest town is Ramapo, which had a 1995 population of 93,861.

#### **Rockland County Family Court Facilities**

At the time of this project, the Rockland County Family Court was located in the Rockland County Office Building in New City. The court comprises two courtrooms and two hearing rooms, on the ground floor and basement levels of the building. The facilities are described in greater detail in Section X of this report.

The New York State Court Facilities Act of 1987 required every city or county that houses a state court to assess the suitability and sufficiency of existing courthouses, and to develop a plan for construction of adequate facilities or renovation of the existing location. The reports were to be submitted to the Chief Administrator of the Courts by August, 1989.

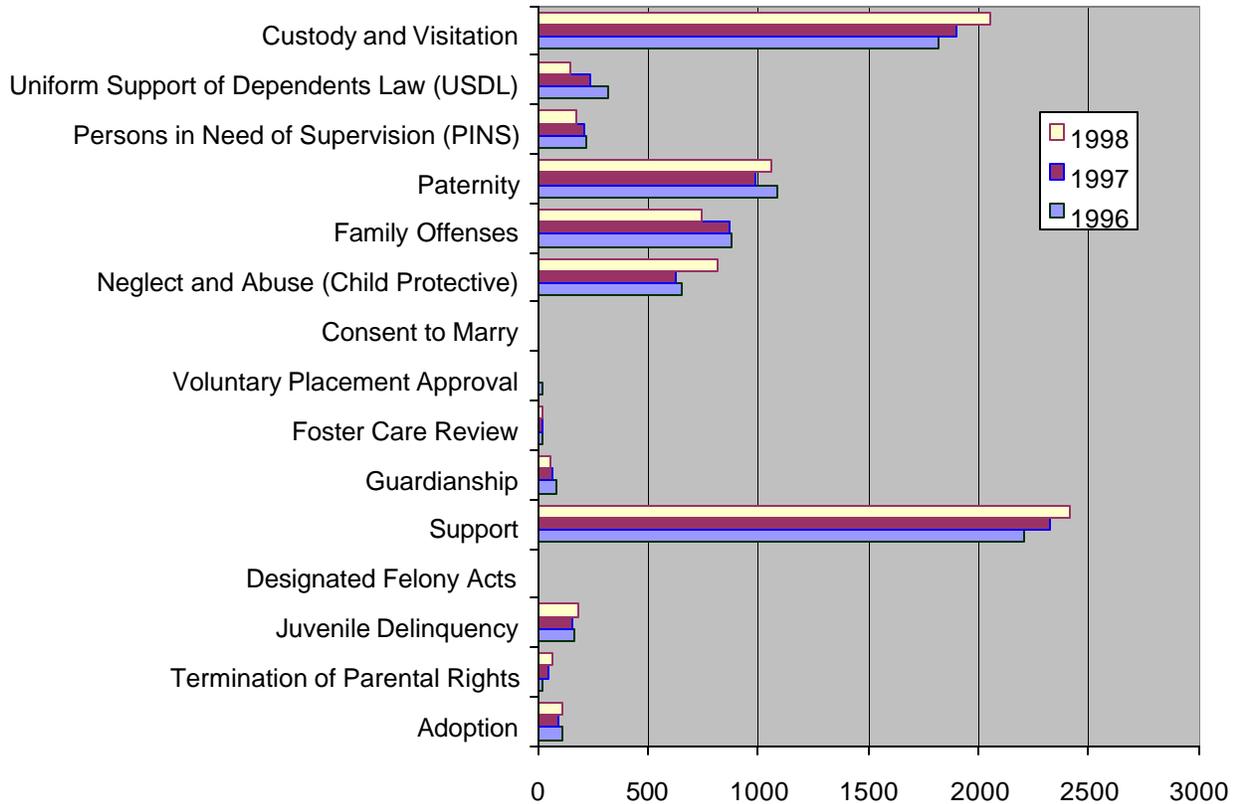
Prior to 1976, each city or county was responsible for all costs of the courts in its jurisdiction, including building and maintaining courthouses, paying the salaries of judges and court personnel, buying equipment and office supplies, and all other operational costs. In 1976, due to severe fiscal pressures on local governments, the state assumed all of the costs of the courts, with the exception of court facilities. The Court Facilities Act was a response to cities' and counties' failure to fulfill their one remaining responsibility toward the courts - providing adequate courthouses.

Rockland County, working with the Office of Court Administration, has begun construction and renovation at the facilities in New City. When the work is complete, the Family Court will join other courts in the Rockland County Courthouse, where it will have significantly greater resources at its disposal. The new Family Court will include three courtrooms, two hearing rooms, dedicated waiting rooms, and three attorney/client conference rooms, as well greatly-expanded facilities for court staff, records storage, and general operational functions.

## Caseload

The Rockland County Family Court currently has two judges, one full-time hearing examiner, and one part-time hearing examiner. In 1998, these personnel presided over a total of 7,854 matters – an increase of roughly 3% over 1996 figures, and nearly 4% over 1997 totals. While the total number of matters heard remained static or showed a slight decline in most areas, two types of cases showed significant increases: In 1998, neglect and abuse cases rose roughly 30% over 1997 totals, and 25% over 1996 figures. Cases involving termination of parental rights increased roughly 35% from 1997 to 1998, and the 1998 totals represented a 160% increase over 1996 figures.

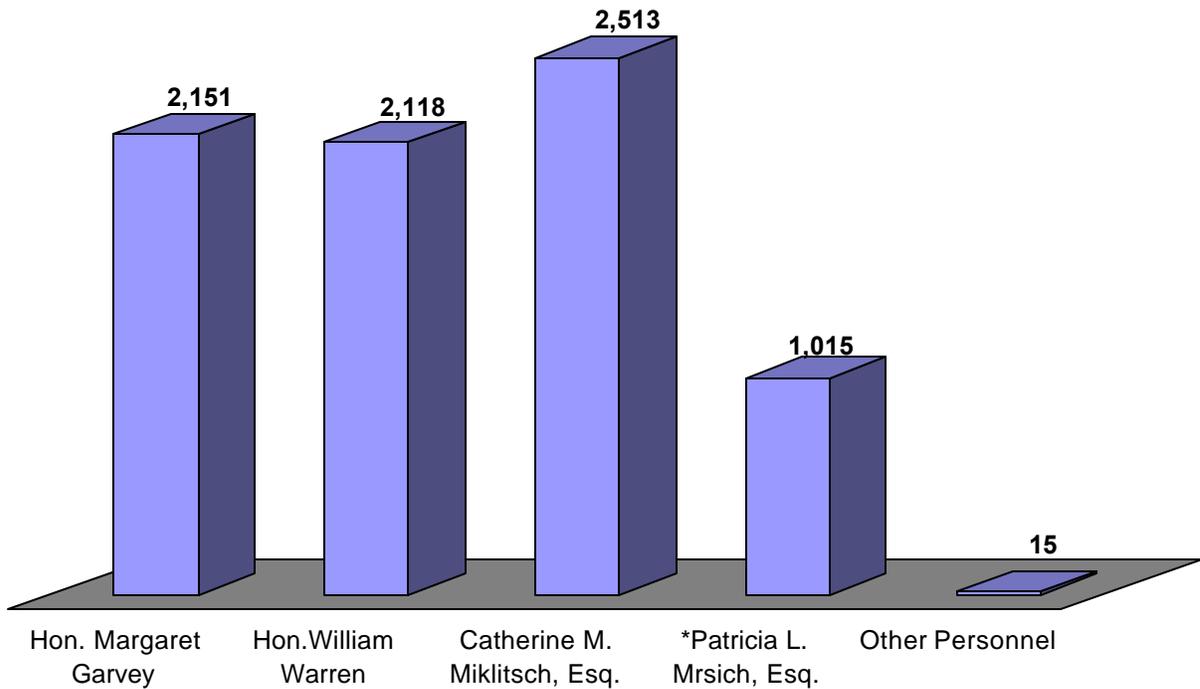
### Rockland County Family Court Filings by Petition - 1996, 1997, and 1998



In 1998, Judge Margaret Garvey heard a total of 2,151 matters, while Judge William Warren presided over 2,118. Hearing Examiner Catherine Miklitsch handled 2,513 matters, while Hearing Examiner Patricia Mrsich heard 1,057. (During the course of the year, a total of 15 other filings were handled by other judicial personnel or the clerk's office.)

### 1998 Caseload, Rockland County Family Court

Assigned to Rockland County Family Court on a part-time basis



## IV. JUDGES

Following are the monitors' evaluations of each judge in the Rockland County Family Court. Monitors did not evaluate the judges' decisions or legal knowledge. Rather, they focused on their demeanor; their attitude toward litigants, attorneys, and court personnel; their efficiency in carrying out their duties; and their ability to maintain control of the proceedings.

Throughout the course of this project, monitors were consistently impressed by the quality of justice provided by the judges of the Rockland County Family Court: The adjective most often used to describe both judges was "exemplary." One monitor declared, "Both judges have [at heart] the best interest of all the children involved, and I give them great credit. This is not an easy job." Another added, "Both judges are extremely able . . . . Rockland County is very lucky to have two such capable judges!!" However, one observer gave Judge Garvey and Judge Warren what is perhaps a court monitor's highest possible praise: "Both judges behaved in a perfect and exemplary manner. . . . I would be perfectly happy (if the situation arose) to have either judge decide my case."

This section includes biographical and caseload data on each judge and summaries of the monitors' findings. The judges are listed alphabetically by last name.

### **Hon. Margaret Garvey**

Hon. Margaret Garvey graduated from Hunter College, and received her law degree from Pace University School of Law. She worked in private practice at Donnelly & Garvey from 1980 to 1990, rising from law clerk to general partner. From 1984 to 1992 she also served as the Deputy Town Attorney for the Town of Orangetown. In 1991, she opened her own practice, which she maintained until 1995; from 1994 to 1995, she also served as a Town Justice for the Town of Orangetown. In 1995, she was appointed on an interim basis as a judge in the Rockland County Family Court, and in 1996, she was elected to the position for a full term.

Judge Garvey is a member of the New York State Magistrates' Association, the Law Guardian Panel of Rockland County, and a number of other bar and professional associations. She has also served as a lecturer and college instructor, and is active in numerous local community activities.

Monitors observed Judge Garvey 124 times over 60 days.

On the whole, monitors were very impressed with that way in which Judge Garvey ran her courtroom. They consistently described her as "firm" and "businesslike," but "fair" and with a "wonderful sense of humor." One monitor declared, "Judge Garvey's conduct of her

court was most impressive! [She] was particularly attentive to: 1) explaining rights of litigants; 2) respect for children's rights and healthy emotional development; 3) common sense in helping parties arrive at amicable solutions; 4) [an] ability to move cases along."

"Another particular strength," one monitor found, "is her ability to clarify throughout the proceeding the essence of the major issue(s) before the court." The monitor explained: "Judge Garvey is sensitive to all aspects of the proceeding: She provides brief explanations for her overruling of objections; she clarifies issues succinctly – both legally and logically; and explains fully why certain evidence will not be admitted."

Most monitors felt that Judge Garvey genuinely cared about the people who came before her each day. "[She is] deeply concerned for the welfare of litigants." One observer described her as "patient, kind, and interested in all parties involved – including counsel, Legal Aid personnel, etc." Another praised her for being "sensitive to the correct pronunciation of witnesses' names." Yet another declared, "I was impressed with her willingness to listen to all the parties." In one difficult case, "she showed extreme concern for a 17-year-old 'limited' young girl – and thought long and hard before rendering her decision. She carefully questioned the opinions of the law guardian and attorneys."

Indeed, monitors frequently commended Judge Garvey's handling of difficult cases and litigants. On one occasion, "[a respondent] was due to be sentenced to six months in jail for support collection (willfulness). He was not represented by counsel – but she gave him a half-hour to plead his case . . . and then did the same for counsel for the petitioner. She listened well and conducted [the proceeding] with dignity." Another monitor recounted how "she agonized over some decisions, especially one where the petitioner wanted to return to an abusive husband. When all but court personnel were dismissed, she lamented, 'This is what I get paid big bucks for!'"

Monitors were also pleased to find that she was "clearly concerned with the children." "Her main focus was on the welfare of the children involved and [she] tried to resolve cases with the least detrimental effect on the children." In fact, according to one monitor, "above all, she had the welfare of the children as her primary concern."

Monitors noted that her approach made efficient use of court time. "Judge Garvey seems kind and helpful, but appropriately direct in her handling of the cases so as not to waste time – that is, she asks of litigants, 'What is it that you would like this court to do?' Sometimes she has to instruct quite clearly on the limits of what the Family Court can and cannot do." As another monitor put it, "Judge Garvey was compassionate but took no nonsense from anyone. She banished a petitioner from the court until he calmed down, because he kept interrupting her. She insisted upon order and court decorum." She was equally strict with attorneys. "She has control of her courtroom: When she directed an attorney, 'You may ask it one time,' and the attorney tried to expand, Judge Garvey admonished, 'I said one time!' and the proceeding moved forward."

However, some monitors found her approach to be a bit too businesslike. Several occasionally described her responses as “flip,” although they also acknowledged that she often had reason to appear annoyed. One monitor summarized these mixed reactions thus: “Judge Garvey needs to control her temper and attitude more, although [she is] a fine judge.”

Others were more specific in their criticism. According to one monitor, in one instance, she ordered a person to “step outside!” without making eye contact; in another, she declared, “I make the rules!” Describing her approach as “more passionate than compassionate,” this monitor felt that she “seemed abrupt” and “came across as too dictatorial.” This was echoed by another observer, who felt that “Judge Garvey frequently demonstrated impatience and addressed the parties in the proceedings in a brusque manner.”

Finally, one monitor also felt that she should make a greater effort to explain such terminology as “forensic” and “CASA” to all parties present.

As a general matter, however, the monitors found Judge Garvey’s approach to be highly successful. One monitor concluded, “Judge Garvey’s court feels like a wonderful ‘team effort’ to arrive at a fair disposition of a case. She does, however, seem to maintain a firm, ‘no-nonsense’ approach in assuring that litigants understand what is required of them. She is straightforward and firm.” Another pronounced her an “outstanding judge.”

### **Hon. William P. Warren**

Hon. William Warren received his baccalaureate degree from Columbia college, his Master’s degree from New York University, and his Juris Doctor from Brooklyn Law School. From 1975 to 1978, he was an Assistant County Attorney, and from 1975 to 1980, he served as counsel to the Multi-Services Committee of the Rockland County Legislature. From 1978 to 1988 he was a partner at the law firm of Walsh and Warren, and from 1980 to 1988 he served in a dual capacity as Chief Assistant County Attorney for Family Court and as Director of Legal Services of the Rockland County Department of Social Services. In 1988, he was appointed on an interim basis by then-governor Mario M. Cuomo to his current position as a judge in Rockland County Family Court. In November, 1988, he was elected to the position for a full 10-year term, and was re-elected in 1998. Judge Warren has also served as Acting Supreme Court Justice, County Court Judge, and Surrogate Judge since 1989.

Judge Warren is a member of several professional associations, including the Association of Family Court Judges. He has served as a college instructor and lecturer on numerous law-related topics, including adoption law, child support enforcement, domestic violence, forensic evaluations, and other family law issues. He is also active in numerous community activities and organizations.

Monitors observed Judge Warren 113 times over 53 days.

Monitors consistently described Judge Warren as “patient,” “compassionate,” “courteous,” and “fair.”

Numerous observers praised his demeanor with litigants: “Judge Warren is a very special person and professional. He puts participants at ease with his logical but warm manner, offers alternatives when a situation seems tense, and is kind and courteous.” In one instance, “when a female respondent wearing a sleeveless dress looked cold, he asked the room temperature to be [raised].” Another monitor recounted a case in which a respondent, clearly dressed inappropriately for court, “kept sniffing - Judge Warren offered him Kleenex, and waited while [he] used it.” This monitor added, “He treats them all with respect, always calling them Miss, Mr., or Mrs. – no first names.”

Judge Warren’s approach extended to other participants in court proceedings, as well. Indeed, several monitors emphasized that “he treated everyone – court personnel, participants, and observers – with great courtesy.” “His rapport with the lawyers and other court officers was cordial and friendly – calling each by name – and with a sense of humor.” One monitor summarized it thus: “Judge Warren is polite to counsel, articulate, pleasant, firm, in charge, kind – a gentleman and a scholar.”

Monitors also reported that he provided participants with clear explanations. “Judge Warren fully explains procedures, clarifies issues with compassion and logic, and gives clear directives to respondents about what is required in the disposition of a case. He also clarifies rights, assures comprehension of the issues, and invites questions for clarification.” One monitor described an occasion in which “he went out of his way to explain ‘right to remain silent’ to a 16-year-old girl in language she could understand.” In another case, “[He] was very careful to make his instructions clear to the interpreter.” Another monitor concluded, “He is perceptive: Sensing that a respondent was uneasy, perhaps confused, perhaps wanting to say something, he asked her attorney to confer with her for a moment. Cases are moved right along, but the judge doesn’t seem to be rushing anybody. He is professional, but not abrupt. He has the finest way of letting someone know they’ve done something wrong – but his demeanor is **factual**, and not mean or accusatory. Judge Warren acknowledges and respects the emotional issues that pervade a case, as he explains the **legalities** of the situation. What a wonderful man!”

Monitors were also impressed with Judge Warren’s control of all aspects of the proceedings. One noted, “His courtroom is clearly under his control; cases proceed efficiently and with dignity for all participants. One has to be impressed with Judge Warren. He balances consideration and leeway with firmness about deadlines, and assures procedures for follow-up, to be sure a commitment is honored.” Another added, “Judge Warren runs a superior court. He is relaxed in his manner – but makes quick, sure decisions when necessary. Yet another monitor declared, “Judge Warren was absolutely outstanding. These cases are highly charged and emotional for both litigants and attorneys – he does a great job of keeping it all under control.”

One monitor described in detail the methods Judge Warren used: “He consistently makes it seem through his line of questioning and his manner that his decisions are ‘team’ decisions. For example, with [six] legal professionals before him, he tried to elicit all perspectives, and asked each individually, ‘What is it that you would like me to do?’ (In one case, in almost each instance, the professionals responded, ‘I don’t know,’ or ‘I don’t have a position on that.’) Judge Warren also concerned himself with the ‘extra-legal’: He urges petitioners and respondents to try to ‘insulate [the children] from the problems and the strife between you, . . .’ or, in another case, encouraging the respondent ‘to seek the means and resources to reunite your family.’”

However, one monitor felt that Judge Warren’s approach was sometimes problematic: “[He was] trying to be formal and informal simultaneously,” and appeared “alternately compassionate and . . . paternalistic.” This monitor felt that his demeanor was sometimes “too familiar with respondents who have been there before (‘You again’).”

A monitor also felt that he “needs improvement in reducing jargon,” and “needs to get to the point clearly in asking questions (*e.g.*, he asked [a litigant] for ‘basis of earning money,’ rather than ‘how much per hour’).”

Overall, however, monitors were extremely impressed with Judge Warren’s performance: “Residents of Rockland County are indeed lucky to have such a caring human being as a judge in our court.” Echoing the words of other monitors, one observer concluded, “I thought Judge Warren was experienced, capable, and fair. He was strong where required, patient, and mannerly. He did not offend or belittle anyone. He took the time after each case to answer our questions with humor and tolerance. We left with the feeling that, should we ever have to come before his bench, we would be treated in the most professional manner. Judge Warren is a fine judge.”

## V. HEARING EXAMINERS

Following are the monitors' evaluations of each hearing examiner in the Rockland County Family Court. As in their reviews of the judges, monitors focused on such qualities as demeanor, attitude, efficiency, and ability to maintain control of the proceedings.

### **Catherine M. Miklitsch, Esq.**

Catherine Miklitsch received her undergraduate degree from Niagara University, and her law degree from the Franklin Pierce Law Center in Concord, New Hampshire. From 1977 to 1979, she worked as a staff attorney for the Niagara County Legal Aid Society, and from 1979 to 1980 she worked in private practice in Suffern. She joined the Legal Aid Society of Rockland County in 1980, where she worked as a staff attorney, and later, as its Deputy Director, until 1987. In 1987, she was appointed a Family Court Hearing Examiner for the Ninth Judicial District, covering Rockland and Westchester Counties.

Ms. Miklitsch is a founding member and past president of the Rockland County Women's Bar Association, where she has co-chaired the Family Law Committee and the Domestic Violence Subcommittee. She has been a member of the Ninth Judicial District's Law Guardian Advisory Committee since 1982, has chaired the Education Committee for Law Guardian Training, and is involved with numerous professional associations.

Monitors observed Ms. Miklitsch 41 times over 30 days.

Monitors consistently praised Ms. Miklitsch for her efforts to ensure that parties understood the proceedings. "Hearing Examiner Miklitsch was a delight to observe in these proceedings. She carefully clarified the procedure to litigants and invited questions throughout the procedure. She advised litigants that proceedings were being taped (a courtesy I've not observed before) and prepared petitioners and respondents for what they might expect: *e.g.*, 'I'm going to ask you about . . . and I'm going to divide it into 5 categories . . . . Then I will ask Mr. \_\_\_\_\_ the same questions. You will have an opportunity to question each other.'" One monitor added, "She was patient with those whose English was not fluent."

Monitors frequently commented that "she meticulously explained rulings and information, including [providing] handy reference documentation." To one respondent, "she explained why the hearing was held and listened to what the respondent and his attorney had to say." On another occasion, "a very angry litigant threw papers [and was] crying; Ms. Miklitsch calmed her and explained the rules."

Another monitor concluded, “The factual questions and statements posed by the Hearing Examiner were accompanied by a lovely vocal manner. Vocal level and style can do much to set the tone of the hearing. Ms. Miklitsch is an extremely skilled questioner – pointed without offending. She also provides very precise explanations in response to litigants’ questions, specifically defining what Family Court can and cannot do.”

Monitors also praised Ms. Miklitsch for her dedication to the parties themselves, frequently working straight through the day to hear their cases. In one instance, “[she] was inundated by a large calendar of cases, which she handled very well. The morning calendar extended well into the afternoon with no lunch break for the judge.” On another occasion, a monitor noted, “there was not enough time to discuss some cases that needed more time. The hearing examiner did not even have time to eat lunch.”

She also made an effort to accommodate the needs of those who appeared in her courtroom. “She was particularly effective in defusing the anger of a respondent who complained about scheduling problems. She was concerned about his work-time loss due to repeated hearings and tried to resolve the issue.”

However, one monitor felt that “[she] gave too much time for all parties,” leading to “constant repetition.” This observer continued, “[She] allows 30 minutes’ leeway on all cases, creating a problem with punctuality.” A monitor was also concerned that, “during a preliminary hearing on support, she appeared to ignore (or not even hear) [a party’s] concern about visitation.”

On the whole, however, monitors felt that Ms. Miklitsch performed her duties in an “exemplary” fashion. According to one observer, “She is in full control of maintaining order and control in her courtroom. She is a very organized and professional person.” Another concluded, “I think on a scale of 1 to 10, she deserves a **10**.”

### **Patricia L. Mrsich, Esq.**

Patricia Mrsich graduated from Iona College and St. John’s University School of Law. In 1985, she was first appointed by the Chief Administrative Judge of the State of New York to her current position of Hearing Examiner in the Rockland County Family Court. Ms. Mrsich currently serves in this capacity on a part-time basis.

Because of Ms. Mrsich’s part-time status, monitors observed her 8 times over 6 days.

Monitors described Ms. Mrsich as “cool, calm, and collected,” as well as “efficient and fair.” Several praised her ability to control the proceedings: “She was very strict about court protocol, which led to dignified, orderly proceedings. She was informed about the cases, explained rulings well, and was respectful to all parties. In one case, she called a 5-minute

recess when one party became emotional, so [the woman] could regain control.” Another added, “Ms. Mrsich is to be praised for her behavior in court. She was very efficient and made every effort to fully explain rulings and consequences to all parties representing themselves. She also made sure that all persons understood their rights under the law. In spite of her very heavy caseload, she should be commended for a job well done. I was very impressed.” She was also commended for “show[ing] concern for the children who need parental support. In one case she lectured the respondent regarding the seriousness of his objection to provid[ing] support.”

On the other hand, one monitor noted, “I didn’t find her to appear compassionate. She was rather robotic in her speech and her actions. She was rushed and seemed to want to get through cases as quickly as possible to move on to the next case.”

Nonetheless, most monitors were pleased with her performance. As one observer concluded, “She was a delight to watch and hear, as she worked in a most professional manner.”

## VI. ATTORNEYS

During the course of the project, monitors observed a variety of attorneys at work in Family Court, including law guardians, court-appointed attorneys, deputy county attorneys, assistant district attorneys, and attorneys in private practice. Overall, the attorneys received high praise for their efforts to provide proper representation under extremely difficult circumstances. However, as will be discussed later in this report, attorneys were frequently late or inadequately prepared, resulting in lengthy delays and a disproportionately high number of adjournments. In evaluating all of the attorneys, both public and private, who appear in Family Court, the monitors consistently criticized their lack of preparation – although monitors were equally quick to note that this seemed to result more from inadequate resources than from anything within the attorneys' control.

### Law Guardians

Under Section 249 of the New York State Family Court Act, the court "shall appoint a law guardian to represent a minor . . . if independent legal representation is not available to the child." In Rockland County, a law guardian supplied by Legal Aid is assigned to each courtroom. If an assigned law guardian has a conflict of interest, another is appointed from a panel of lawyers who have been approved by the Appellate Division, Second Department.

By protecting the legal rights of children, law guardians play an essential role in Family Court proceedings. Monitors were generally impressed with their performance, describing them as "caring, well spoken and knowledgeable." As one monitor put it: "The law guardians expressed deep concern for the welfare of the people they represented. They appeared to be well prepared and organized." Another added, "I was very impressed with law guardian . . . very knowledgeable, very involved, very professional." One law guardian drew particular praise: "She seemed very busy. She had to go from one courtroom to another and back again. Despite this she never lost sight of her concern for the well-being of the child."

However, one monitor noticed that the law guardians' performance sometimes resembled an assembly line: "Law guardians appear to have a lack of continuity, with individuals being plugged in and out with reliance on records rather than personal recollection." Another reported that one law guardian, while "prepared" and effective, "talk[ed] about the case with the respondent's attorney while the petitioner was sitting opposite her in the small room. The petitioner became agitated."

Overall, however, monitors were impressed with the law guardians' work. As one observed, "A law guardian's case load can be 40 to 50-plus at any one time. That seems pretty high."

## **Other Assigned Counsel**

Under Section 262 of the Family Court Act, indigent adult respondents are entitled to counsel in cases involving paternity, custody, visitation, family offenses, and termination of parental rights, in foster care and child protective proceedings, and in cases in which a citation for contempt of court is sought. In addition, indigent adult petitioners are entitled to assigned counsel in cases involving custody, visitation, or family offenses.

In Rockland County, indigent adults receive representation via the Assigned Counsel Plan, operated by the Rockland County Bar Association. Participating attorneys represent indigent litigants in a wide variety of Family Court proceedings: They may represent respondents in paternity actions, in child abuse and neglect cases, in custody and visitation cases, in support violation matters, in guardianship matters, and in contempt actions; they may provide counsel to petitioners in revocation of guardianship proceedings, and in custody and visitation cases where the petitioner is the natural parent. Assigned counsel also may represent petitioners and respondents in family offense proceedings and writs of habeas corpus, and parents in cases involving adoption, foster care, and termination of parental rights cases. Assigned counsel may continue to represent the client through any appeal.

As a general matter, monitors felt that the attorneys representing indigent litigants in Family Court performed extraordinarily well in the face of onerous conditions.

The monitors' main criticism was not that the quality of the attorneys' performance is inadequate, but rather, that they are simply stretched far too thin to represent their clients effectively. As one monitor commented, "I question whether a ['stand-in' attorney] could represent a respondent with a long history in Family Court after spending 15 minutes in the hallway prior to entering the courtroom." Others noted, "I saw some first introduce themselves to their client[s] a few minutes before the hearings"; one "attorney had not had time to speak to her client."

In some instances, however, monitors did find the performance of court-appointed counsel to be inadequate. According to one monitor, "The court-appointed attorney . . . did not seem to adequately prepare his client. [She] appeared confused and the judge had to explain some things to her." On another occasion, a monitor gave this description: "Appointed counsel . . . at times appeared to be dozing. She may in fact have been listening, but this behavior came across as unprofessional, if not rude." Still another noted, "In one case, the court-appointed attorney never showed up."

On the whole, however, monitors blamed most deficiencies on a lack of resources, including an insufficient number of court-appointed attorneys. Monitors repeatedly observed that court-appointed attorneys have too many clients assigned to them, are expected to be in too many courtrooms simultaneously, and have too little opportunity to meet their clients, much less to become familiar with their cases.

## **Government Attorneys**

Attorneys from the Rockland County Attorney's Office represent the Rockland County Department of Social Services, or the County generally, in a variety of cases: child abuse and neglect; foster care; juvenile delinquency; PINS; termination of parental rights; and child support and paternity cases where the children involved receive public assistance. Deputy county attorneys also may represent petitioners in child support and paternity cases.

Generally, monitors found the County Attorneys to be well-prepared, although reaction to their performance was mixed. In one case, “the Assistant County Attorney seem[ed] thorough in her work . . ., skilled at laying [a] foundation.” However, this same monitor observed, “Her credibility and demeanor would be enhanced with improved vocal technique. Her eliciting of testimony from her client sounded almost perfunctory. Her volume was consistently low, and at times I could barely hear her.” Another monitor praised an Assistant County Attorney, noting that her “manner seemed to instill comfort and confidence in her witness.” However, the monitor felt that “her witness . . . needed to be better prepared. [She might work more closely] with case-workers for a tighter presentation.”

## **Private Attorneys**

Occasionally, private attorneys will represent litigants in Family Court. However, Family Court litigants often cannot afford to retain private counsel; on numerous occasions, monitors reported that “only one person had a private attorney,” or that no private attorneys were present at all.

Of the private attorneys who did appear, monitors generally found them to “prepared” and reported that they “behaved appropriately.” On a few occasions, however, monitors did note that attorneys had to be reprimanded for arguing with the judge or hearing examiner, with opposing counsel, or with the opposing party. Overall, monitors found that private attorneys represented their clients well.

## **VII. SOCIAL SERVICE AND SUPPORT AGENCIES**

The goal of Family Court is to help children and families in crisis overcome their problems. To accomplish this objective, Family Court relies on numerous governmental and non-governmental agencies to assist troubled families. During this project, monitors observed representatives from many of these agencies at work in Family Court, acting as advocates for parties involved and providing progress reports on children and others who have been placed under their supervision.

The primary county agencies represented in Rockland County Family Court are the Department of Social Services (DSS), which includes a Support Collection Unit, and the Department of Probation.

### **Department of Social Services**

DSS representatives appear in court in a variety of capacities. DSS is responsible for child protective services: It investigates allegations of abuse or neglect, and if it finds intervention necessary, it petitions the Family Court on the child's behalf. DSS also assists the court in cases involving adoption or foster care placement, and its Support Collection Unit aids persons seeking determinations of support and helps to collect support payments.

As a general matter, monitors found most agency representatives to be both “prepared” and “professional,” particularly in light of heavy caseloads. Monitors reported that they “all were primarily interested in the safety and welfare of the children involved in the cases.” One observed, “They were well-prepared and genuinely interested in the welfare of the people they represented”; another noted that “there seemed to be courtesy and respect between and among the representatives.”

However, other monitors described their performance simply as “adequate.” In one case, a monitor reported that “the court asked the liaison from the Support Collection Unit to ‘be sure [she] had **ALL** employment records’ before the proceedings officially began. I perceived from the intensity of the directive that the court has been disconcerted with less than full preparation for her hearings.” Several monitors noticed that such information, particularly regarding financial records was frequently “missing” or “incomplete.”

### **Department of Probation**

In certain cases, the Department of Probation assists the Family Court with "intake." Before filing a petition, a petitioner is instructed to speak with a representative of the

Department of Probation, who can either attempt to resolve the case informally or refer it to mediation, thereby avoiding commencement of formal hearings. If the case cannot be resolved informally, the representative may assist in preparing the petition. In addition, Probation representatives screen litigants seeking orders of protection and send them to the judicial hearing officers.

The Probation Department also supervises those persons who have been sentenced to probation, and provides the court with reports on offenders' behavior, in order to assist the judge in determining the proper disposition of the case.

One monitor noted that the “Probation [representative] was very helpful in working with parties on joint custody.”

## VIII. OTHER COURT PERSONNEL

Non-judicial court personnel have an enormous impact on the public's perception of the Family Court, and on the quality of justice that is dispensed. A typical litigant spends much time outside the courtroom, dealing with petition clerks, court officers, and other court personnel.

In most courtrooms, one to three court clerks, one or two court officers, and sometimes a court reporter are present. Occasionally a foreign language or American Sign Language interpreter is available.

Generally, monitors found court personnel to be “extremely helpful and pleasant.”

### Court Clerks

Family Court clerks are an integral part of the court's operations. Part clerks sit with the judges in the courtrooms and are responsible for scheduling and other case management duties. Petition clerks staff the intake desks where litigants come to file petitions, and assist them in the preparation of petitions. A petition is a written document that forms the basis for a Family Court proceeding, and it is essential that they be prepared quickly and accurately.

### Court Officers

Uniformed court officers are responsible for providing security in the courtrooms and waiting areas. They also may assist with clerical duties. It is a court officer's responsibility to keep track of the parties who have appeared for a hearing, and to gather the participants when the case is called.

### Court Reporters

Court reporters are responsible for producing official transcripts of court proceedings. Not all judicial personnel in Rockland County Family Court utilize court reporters; the hearing examiners' rooms are equipped with microphones to record proceedings.

***Electronic Recording:*** Taping of court proceedings has been permitted in New York State since 1992, when it was introduced as a two-year experiment in the Court of Claims and the Surrogate's Court. The experiment has since been extended and expanded to other courts,

including the Family Court. Under the current statute, certain Family Court proceedings cannot be taped; court reporters are required for juvenile delinquency, PINS, and family offense cases.

### **Court Interpreters**

Foreign-language and American Sign Language interpreters are often utilized to translate court proceedings. The Rockland County Family Court arranges translating services for litigants who do not speak English or are hearing-impaired.

Throughout the course of the project, the need for interpreters arose relatively infrequently. On those occasions when one was necessary, monitors often reported that cases had to be adjourned while an interpreter was found.

## **IX. COURT OPERATIONS**

### **Caseload**

As noted in Section III, 7,854 matters were filed in the Rockland County Family Court in 1998. This represents an increase of roughly 3% over 1996 figures, and nearly 4% over 1997 totals. This increase is due largely to two types of cases: neglect and abuse cases (which rose roughly 30% over 1997 totals, and 25% over 1996 figures); and cases involving termination of parental rights (which increased roughly 35% over 1997 totals, and 160% over 1996 figures).

### **Case Assignment**

Since 1986, the New York State courts have operated under the Individual Assignment System (IAS). Under this system, the judge who presides over a case at intake generally will handle the case through disposition. The rationales for this system are efficiency and familiarity: The judge who presides at intake is likely to be more familiar with the circumstances of the case, and thus is likely to issue a better-reasoned decision. In Family Court, the IAS is taken yet another step: Not only does one judge handle a particular case from start to finish; if a family returns to court with other business, the new matter usually will be assigned to the same judge who handled the previous case.

Across the state, judges and hearing examiners vary in their approach to disposition of cases. Some regularly adjourn cases in which a party fails to appear, while others dismiss them outright. Some judges adhere to the traditional practice of scheduling all cases at 9:00 AM and working through them case by case throughout the day. Others have adopted some variation of a staggered calendar, scheduling some cases at 9:00 AM, some at 10:00 AM, etc. In the Rockland County Family Court, judges and hearing examiners all appeared to take an especially flexible approach to case disposition, doing their best to hear as many cases as possible, while still accommodating those parties for whom special circumstances had arisen.

### **Delays and Adjournments**

Monitors reported that delays at the beginning of a session were usually no longer than fifteen to twenty minutes. Monitors found that there were two fundamental causes of delays and adjournments: lateness or failure to appear by litigants, and lateness or failure to appear by attorneys or representatives of other agencies. Delays sometimes occurred as a result of heavy caseloads. "There were multiple delays because attorneys and social service agencies handling several cases had to shuttle back and forth between the two Family Court courtrooms." In one

instance, the “court-appointed attorney was a ‘no-show.’ He said he wasn’t notified, nor did he ever speak to the respondent. The judge asked the clerk to ask another attorney appearing later that [morning] to take the case.”

Judges and hearing examiners also granted brief delays and adjournments “to allow a new attorney to confer with the other attorney” or with his or her client, or to encourage a settlement. One monitor recounted an instance in which the “judge allowed a couple with counsel to come to an agreement outside of chambers . . . and thus [a need] for a trial on the matter of relocation was averted.” Monitors also pointed out that judicial personnel made good use of such time: “While waiting for a respondent to be brought from prison, . . . the hearing examiner heard facts from the Support Collection Unit on six cases.”

Monitors were divided as to how well the judges and hearing examiners explained any delays. Several noted that delays were never explained during the proceedings they observed, or were explained only when a monitor asked the reason. Others reported the opposite experience; one monitor declared that Judge Garvey “explained in each case why they were late.”

## **X. COURT FACILITIES**

### **General Physical Facilities**

The Rockland County Family Court is not located in an actual courthouse; rather, its current site is the Rockland County Office Building, next door to the courthouse. While new facilities (discussed in greater detail in Section III) are planned, Family Court personnel and litigants currently must cope with a variety of problems resulting from its present location.

Both judges' courtrooms are on the building's ground floor, and are similar in layout: The bench is elevated, and "seating [is] in a semi-circle facing the judge. The first row [is] reserved for all parties involved, seats in [the second] row for all others." Reaction to the courtrooms was decidedly mixed: Some monitors found the judges' courtrooms to be "well-lit, clean, adequate in size, and comfortable," while others considered them "small and cramped." While some found the room temperature comfortable, numerous monitors consistently complained that it was "too cold" or "need[ed] to be adjusted."

The hearing examiners' rooms, on the other hand, fared less well. Located on the basement level, most monitors described them as "too small, almost claustrophobic," "crowded and depressing," "like operating in a closet," and "more like a cramped classroom than a courtroom." Part of the problem is that the hearing rooms also must double as the hearing examiners' offices, with the result that the rooms are "crowded and cluttered," with papers "piled high." However, an even more significant problem is the small size of the rooms themselves: Opposing parties must face each other across a conference table. Numerous monitors pointed out the potential danger of conducting proceedings in such a cramped setting. Indeed, one monitor was sufficiently concerned to speak to a hearing examiner about the problem, and reported that "she agreed, strongly believing contestants should not face each other" and noting that "violence has been attempted in the past."

The Family Court waiting room also presented problems. Monitors repeatedly described it as "rather seedy," "cold, sterile, and not comfortable." As one monitor put it, "the waiting room is stark and 'tacky-looking.' The stuffing on some chairs is visible through splits in the plastic covering." Another pointed out that "some chairs were taped together," "some were torn," and "moldings were torn away from the floor." The room contained no magazines, and the "few toys that were there were old and dirty." Yet "there are no facilities for children." Unlike some other Family Courts around the state, the Rockland County Family Court has no Children's Center, where small children can stay in a secure and supervised environment while their parents conduct business before the court. Monitors felt strongly that "there should be child supervision available while parents are in the courtroom."

One of the biggest problems with the Family Court facilities is the severe shortage of conferencing space for attorneys and clients. Virtually without exception, monitors criticized the lack of private space for litigants to consult their attorneys and engage in private – and privileged – conversations. One monitor declared, “Lawyers and clients did not have any private room or area to talk with each other. Anyone nearby is privy to their conversations. This is inexcusable.” Another provided a vivid object lesson in the potential dangers created by a lack of conferencing space: “It is imperative to provide a number of private areas for lawyers, clients, and representatives of other agencies to talk. In [one] case, the law guardian and the lawyer for the respondent were sitting in the waiting area outside the courtroom before trial. The petitioner (who appeared agitated upon arrival), sitting across from them, overheard their conversation, even though they were speaking quietly, and became even more upset and called out to them. . . . THE LAWYERS AND REPRESENTATIVES OF OTHER AGENCIES MUST BECOME MORE AWARE OF THEIR SURROUNDINGS AND FIND ANOTHER PLACE TO TALK!”

Finally, monitors also criticized the condition of the women’s restroom. As one described it, “it was deplorable. It was dingy, had cracked sinks, old faucets and a torn leather recliner.” Another reported that there were “no locks on some doors.”

### **Access for the Disabled**

The majority of monitors believed that access to the Family Court facilities for people with physical disabilities was adequate. Those who questioned accessibility generally focused on the size of the courtrooms and hearing rooms: “Although the room was accessible to anyone with a disability ([there are] elevators to the lower floor), it would have been difficult to get around in the hearing room, because it was very small and the chairs were too close, with not much floor space.” Another monitor was more specific: “Facilities are accessible to people with disabilities, but courtroom space is too small if a wheelchair was necessary.” Several monitors commented that the hearing examiners’ rooms, in particular, were too small to accommodate the needs of people with physical disabilities.

However, these monitors’ observations tell only a part of the story. Another member of the Rockland County Court Monitors was particularly well qualified to address the issue of accessibility. This monitor noted: “There was not enough space for a court monitor like me to sit comfortably. I am in a wheelchair, plus I am dependent on being with an aide.” This same monitor was able to point out other significant flaws: “On the outside [of the building], there is no sidewalk that has the break for the wheelchair to go on. The door for the disabled is not wide enough, plus it does not open by itself; it is hard to push open.” Finally, the “bathrooms have double doors and are not easy to open by someone disabled.” The monitoring group felt strongly that these factors must be taken into account when constructing the new Family Court facilities.

## **XI. RECOMMENDATIONS**

- 1. The New York State Legislature should enact Chief Judge Judith S. Kaye's court restructuring proposal.***

New York State Chief Judge Judith S. Kaye and Chief Administrative Judge Jonathan Lippman recently proposed a constitutional amendment to the State Legislature. The amendment would raise the status of the Family Court, so that its clientele would no longer be forced to suffer the indignities, inconveniences, and lack of attention that result from its current position, in which it is treated as the “stepchild” of the court system. The amendment would replace the current complex maze of courts of limited jurisdiction with a much simpler and less hierarchical structure. It would reduce the number of trial courts to two, from the current total of nine. The Family Court would be merged into Supreme Court, and a Family Division of Supreme Court would be created. By raising the status of family matters, the proposal would ensure that such cases would no longer be relegated to a “lower” court.

Like all proposed amendments to the State Constitution, the Kaye plan must be passed by two consecutive State Legislatures; it then must be ratified by the voters in a statewide referendum. Because the Family Court, which serves families and children in crisis, addresses some of New York's most pressing societal problems, the Senate and Assembly should reintroduce the Kaye plan and give it First Passage.

- 2. The New York State Legislature should pass a constitutional amendment providing for nonpartisan merit selection of Family Court judges.***

Monitors felt that Rockland County is unusually fortunate to have such skilled and dedicated judicial personnel in the Family Court. However, judicial elections tend to reward political connections rather than qualifications, and create the potential for conflicts of interest and the appearance of impropriety. A genuine merit selection system would help to ensure that the Family Court, which has a great impact on the lives of ordinary citizens, continues to be staffed with the best-qualified judicial personnel available.

- 3. The New York State Legislature should increase compensation for assigned counsel, and the County should hire additional public defenders.***

Court-appointed attorneys are paid a mere \$40 per hour for in-court work, and only \$25 per hour for out-of-court work. These rates have remained unchanged since 1986. It

is especially important that attorneys be compensated adequately for the time spent outside of court preparing a case. This is particularly true in Family Court, where much of a client's case may depend upon out-of-court work and research. In addition, there are far too few public defenders to handle the court's enormous caseload; monitors urge the Legislature to increase funding both for hiring new public defenders and for providing adequate compensation to assigned counsel.

- 4. Additional waiting area and conferencing space should be constructed to provide waiting litigants with privacy and to prevent noise from the hallways from interfering with court proceedings.***

Participants currently are forced to remain outside the courtrooms in a drab waiting room or in open hallways until their cases are called, and noise from these waiting areas filters into the courtrooms themselves, making it difficult to hear proceedings. These waiting areas generally are the only areas available for clients to confer with their attorneys. Not only do clients have no assurance that their "privileged" conversations with attorneys are truly private, but they are often forced to discuss their cases with their adversaries sitting only a few feet away. Monitors urged that litigants and their attorneys be provided with adequate private space in which to conduct privileged conversations, and that waiting areas be expanded so that opposing parties are not housed in the same cramped facilities for extended periods of time.

- 5. Hearing examiners must be provided with larger hearing rooms so that parties may conduct business in a safe and secure environment.***

Monitors deplored the conditions under which the hearing examiners are forced to work. Because their hearing rooms must also double as their offices, the rooms are constantly cluttered with files, papers, etc., and are small, cramped, and uncomfortable. Worse, the small size of the rooms makes them dangerous to litigants: Monitors reported that opposing parties are separated only by the width of a conference table during hearings. In such emotionally-charged cases as those in Family Court, litigants should not feel threatened while conducting business before the court. Monitors strongly urged that, in the new Family Court facilities, hearing examiners be provided with separate offices, and that the hearing rooms themselves be large enough to accommodate opposing parties seated at separate tables, with sufficient space between.

- 6. Additional steps must be taken to make the Rockland County Family Court facilities genuinely accessible for people with physical disabilities.***

While the County has taken some steps to increase accessibility at the Rockland County Family Court, more must be done, and in planning the new Family Court facilities, accessibility must be ensured. While monitors commend the installation of ramps, elevators, and a restroom intended to accommodate those with physical disabilities, the courtrooms and hearing rooms themselves present significant problems. Disabled litigants would have great difficulty, at best, in navigating the narrow rooms and doorways, particularly if a wheelchair is necessary. Monitors urge the County to take all necessary action to ensure that those with physical disabilities have complete and unfettered access to all Family court facilities.

**7. *To discourage “no-show” litigants, if petitioners who fail to appear do not provide a valid excuse, they should be charged a nominal fee to refile a petition.***

Currently, no fee is charged to file a petition in Family Court. While monitors agree that Family Court proceedings must remain accessible to those in lower income brackets, they repeatedly observed that the lack of a filing fee encourages people to treat their court dates cavalierly. While monitors generally support the current policy of charging no fee to file a petition in Family Court, they urge that this policy should apply only to a party's *initial* filing. If the party fails to show and cannot provide a valid reason, at least a nominal fee should be charged for any subsequent filing.

**8. *Adult restroom facilities should be properly maintained and repaired.***

Throughout the course of the project, monitors complained about the condition of the bathroom facilities, particularly the women's restroom. Locks on restroom doors were broken, fixtures were cracked and dirty, and the rooms appeared unsanitary. Monitors urged regular cleaning and maintenance of all restrooms.

## ACKNOWLEDGEMENTS

The Rockland County Court Monitors and the Fund for Modern Courts wish to thank the judicial personnel and staff of the Rockland County Family Court for their cooperation during this project. The judges and hearing examiners permitted extraordinary access to Family Court proceedings and readily answered monitors' questions, and we are grateful to them and to the court staff for their assistance.

Special thanks go to the Rockland County Chapter of the National Council of Jewish Women, Modern Courts' partner in this project, and in particular, to Ruby Stone, who coordinated the project on behalf of the NCJW and Modern Courts. The monitors themselves deserve the highest praise of all: Without their dedication, this report would not be possible. These citizens volunteer their time to improve the court system for every member of the public.

This report was written by Modern Courts Associate Executive Director Barbara E. Reed, with editorial assistance from Modern Courts intern Lee Griffith, and from the monitors.

## Rockland County Court Monitors, 1998

The following members of the Rockland County Court Monitors and the National Council of Jewish Women participated in the monitoring of the Family Court and made this project a success:

Ansourian, Dr. Rosette; Valley Cottage, NY

Arkin, Roslyn; Spring Valley, NY

Berman, Marilyn; New City, NY

Berman, Marvin; New City, NY

Benson, Trudie; Rochester, NY

Bertussi, Anne, H.; Pearl River, NY

Bielski, Irene S.; Suffern, NY

Bregman, Rachelle; New City, NY

Carr, Edythe B.; New City, NY

Chapin, Debra; Orangeburg, NY

Curran, Muriel; Tappan, NY

Feldman, Helene; New City, NY

Feldman, Dr. Joel T.; Monsey, NY

Feldman, Shirley; Monsey, NY

Fried, Caryn; Nanuet, NY

Garafolo, Rose; Stony Point, NY

Garbatow, Evelyn; Suffern, NY

Gardy, Stephen; Spring Valley, NY

Goldberg, Susan; Congers, NY

Golub, Eleanor; Spring Valley, NY

Halpern, Ethel; Suffern, NY

Herman, Sylvia; Spring Valley, NY

Hittman, Muriel; Bardonia, NY

Horvitz, Estelle; Spring Valley, NY

Kalina, Bianca; Pomona, NY

Kelly, Jean E.; Nyack, NY

Klein, Edith; Spring Valley, NY

Klein, Harry; Spring Valley, NY

Klein, Renee C.; Valley Cottage, NY

Kwilecki, Ilana; Spring Valley, NY

Lazev, Jean; Nanuet, NY

Levin, Henry; West Nyack, NY

Levison, Gayle; New City, NY

Lindenberg, Martin; Tappan, NY

Mandel, Florence; New City, NY

Mann, Bertha; New City, NY

McKiernan, James O., Jr.; Spring Valley, NY

Mednick, Hilda; New City, NY

Morris, Tracey; Spring Valley, NY

Moskowitz, Carolyn; Nyack, NY

Moskowitz, Philip; Nyack, NY

Nading, Helene; Chestnut Ridge, NY

Presser, Ethel; Suffern, NY

Riney, Dennis B.; Suffern, NY

Rosenbaum, Marilyn; Suffern, NY

Ross, Constance; Spring Valley, NY

Sachs, Irma; Pomona, NY

Salzman, Lois; Spring Valley, NY

Shedlin, Sandra; Spring Valley, NY

Schuck, Henny; New City, NY

Simons, Phyllis; Spring Valley, NY

Spielberg, Lillian; Tappan, NY

Stone, Ruby C.; Spring Valley, NY

Suchoff, Miriam; New City, NY

Torpey, Lenore; Pomona, NY

Warner, Barry; New City, NY

Warner, Joyce; New City, NY

Wayser, Leona; Nyack, NY