

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

THE
FUND
FOR

MODERN COURTS

Report on the
SCHENECTADY COUNTY
FAMILY COURT

The Capital District Court Monitors

2000

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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This report is dedicated to the memory of Martha F. Neugebauer.

Ms. Neugebauer, a resident of Niskayuna, had long been a valued member of the Capital District Court Monitors and the Capital District Advisory Board of the Fund for Modern Courts. Her contributions to the community, her efforts on behalf of children and families, and her commitment to improving New York's justice system will be sorely missed. We join with her family, friends, and colleagues in mourning her passing, and in celebrating her life.

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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, through which ordinary 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 last twenty-five years, court monitoring has proven to be highly successful at achieving numerous public-interest objectives, including:

- publicizing problems that exist in the courts;
- safeguarding the public's interest in the courts;
- educating citizens about the daily functions and operation of their 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;
- 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.

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 courts from an outsider's viewpoint, which provides a fresh, common-sense perspective on how the courts can be improved. During the course of a monitoring project, these 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.

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 Third Judicial District, for example, the county converted an old jail facility into a new courthouse for the Rensselaer County Family Court. The court opened in 1998, replacing a deplorable facility that had been 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 Capital District Court Monitors

The Capital District Court Monitors observe and report on courts in Albany, Rensselaer, Saratoga, and Schenectady Counties. Helga A. Schroeter, Modern Courts Capital District Coordinator, administers the projects.

In 1999, the Capital District Court Monitors chose to evaluate the conditions in the Schenectady 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 state's so-called "superior" courts. Moreover, public attention is rarely paid to the operation of the Family Court, since it often functions, in effect, 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. These problems are endemic to the entire Family Court system across New York State. However, 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 Capital District Court Monitors embarked in March, 1999.

Monitors also wished to evaluate another aspect of the Family Court's operations: a pilot project unifying the family and matrimonial divisions. Under the antiquated and labyrinthine structure of New York's nine-tier trial court system, in order to resolve an action for divorce, the parties may be required to litigate different issues in as many as three separate courts. Only Supreme Court has jurisdiction over the divorce itself, but custody and support issues must be heard in the Family Court; where family offense

proceedings are involved, the parties must also go to County Court. Chief Judge Judith S. Kaye has proposed a constitutional amendment that would create a permanent solution to these problems by consolidating the court system's nine tiers into two, and elevating the Family Court to a division of Supreme Court, thus enabling one judge to preside over all aspects of such cases. However, this plan has encountered significant political opposition. As an interim solution, the Judge Kaye and the Office of Court Administration established a pilot project creating unified family and matrimonial divisions. The Fourth Judicial District, which includes Schenectady County, was chosen to inaugurate the program.

Under this program, Family Court Judges G. Douglas Griset and Vincent Reilly, Jr., along with Surrogate Court Judge Barry Kramer, have been designated Acting Supreme Court Justices and have been assigned to handle all matrimonial cases. In that capacity, the judges are able to integrate matrimonial proceedings with custody, visitation, child support, and other ancillary issues that commonly arise in divorce cases. As a result, in Schenectady County, the plight of families undergoing the trauma of divorce is no longer exacerbated by archaic requirements that they divide their time, energy, and resources between multiple courts and multiple judges.

The Capital District Court Monitors decided to assess the impact of the new pilot project, coupled with a much heavier regular caseload, on the operations of the Schenectady County Family Court. Modern Courts Capital District Coordinator Helga Schroeter conducted an orientation session for the monitors at the Family Court facility on February 8, 1999. At the orientation, Family Court Judges Griset and Reilly, Hearing Examiner Colleen Quirion, and Deputy Chief Clerk Melissa Sroczynski spoke to the volunteers and provided an overview of how the court functions. The presentation ended in a tour of the facility, conducted by Ms. Sroczynski. Ms. Schroeter distributed court monitoring handbooks and report forms and gave instructions to the monitors on the etiquette and procedure of court monitoring. The monitors began their visits to the court in mid-March and finished their evaluation in June.

Ms. Schroeter also scheduled two additional meetings with the monitors, one midway through the project, and one in the summer, after the project's conclusion. At these meetings, monitors shared information, provided feedback, evaluated the data in their monitoring forms, and formulated joint recommendations. Summarized below are their findings regarding all aspects of the Schenectady County Family Court, including court personnel, operations, security, the physical facility, and the performance of various agencies that serve users of the Family 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.

In recent years, the issue of public access to Family Court proceedings received heightened scrutiny during a 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:

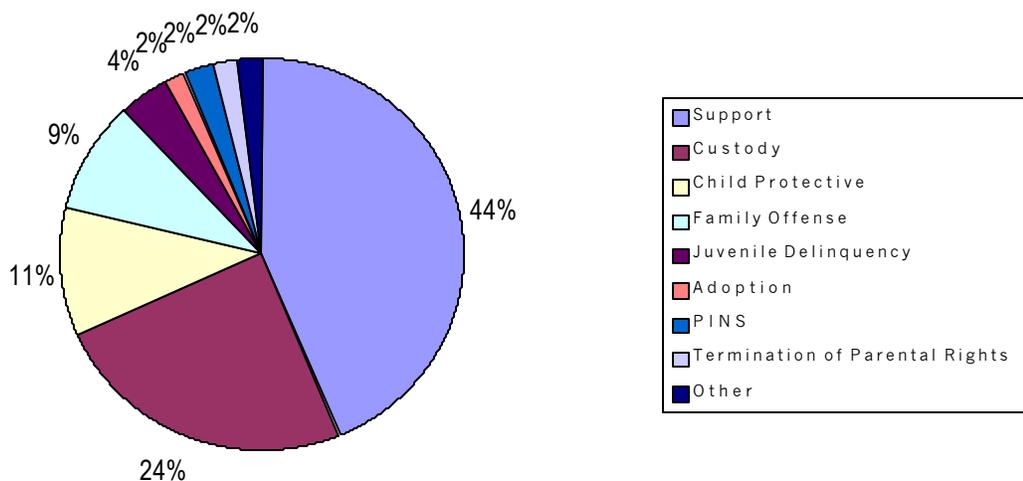
Justice cannot prevail under a veil of secrecy or behind closed doors that do not open. Darkness must give way to light. In order to preserve the integrity of public proceedings, avoid the dissemination of misinformation, enhance public confidence in the court system and promote a better understanding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

Since the Family Court began operations in 1962, a substantial increase in the divorce rate, the drug abuse epidemic of the 1970s and 1980s, and the emergence of child and domestic abuse as social problems 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 immediately preceding this project, there were a total of 654,602 filings in Family Courts 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.

**1998 Filings
New York State Family Court
Percent of Total Filings by Petition Type**



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 prior to 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 an interim 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, with biannual certification of mental and physical fitness, may serve an additional six years.

Salaries: The standard salary for Family Court judges in Schenectady County has most recently been set at \$119,800, which is identical to the salary scale of Family Court judges in Albany, Rensselaer, and Saratoga Counties. However, their counterparts in New York City, Long Island, and Westchester County earn \$136,700 per year.

As part of its 1999-2000 budget request, the Office of Court Administration sought substantial pay raises for members of the judiciary. Action by the New York State Legislature in 1999 substantially raised judicial salaries, but left in place these disparities, harking back to the period prior to 1977 when municipalities, rather than the state, were responsible for the costs of court administration.

In the Schenectady County Family Court, however, Judges Griset and Reilly both have been designated Acting Supreme Court Justices. As a result, they are paid at the scale for Supreme Court justices, which is set at \$136,700.

In 1997, over 654,000 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 nearly 2,500 matters per year.

There are currently two full-time judges in the Schenectady 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 place 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: Hearing examiners in New York State earn \$78,103 annually. They serve three-year terms, with reappointment at the discretion of the Chief Administrative Judge.

The Schenectady County Family Court has one full-time hearing examiner and one part-time hearing examiner.

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 receive \$300 per day.

There are two part-time judicial hearing officers in the Schenectady 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 Schenectady County Family Court are to the Appellate Division, Third Department.) Further appeals are brought before the Court of Appeals, New York State's court of last resort.

III. THE SCHENECTADY COUNTY FAMILY COURT

The Population It Serves: Schenectady County

Schenectady County is part of the four-county region, including Albany, Rensselaer, and Saratoga, loosely identified as New York's "Capital District." Schenectady County is bordered on the south by Albany County, home of New York's capital city. To the southwest is Schoharie County; the Montgomery County line provides the northwest border. Saratoga County lies immediately to the north, and Rensselaer County lies across the Hudson River, which serves as Schenectady County's eastern boundary. Schenectady County has a geographic area of 206 square miles.

First settled by the Dutch in the mid-1600s, the County of Schenectady was formally established by the New York State Legislature in 1807. The City of Schenectady serves as the county seat. As of the 1990 census, the county's population was 149,285; however, in the intervening decade, the population's ethnic and cultural diversity has increased dramatically.

Schenectady County Family Court Facilities

The Capital District Court Monitors last visited the Schenectady County Family Court in 1987, and gave the court generally high marks for its performance. However, monitors also strongly criticized the limited space and the lack of security in the Family Court facility. At the time, the court occupied only a part of the fifth floor of the county office building, and the hearing examiner's room was located in a small cubicle in the staircase of the Schenectady County Courthouse.

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.

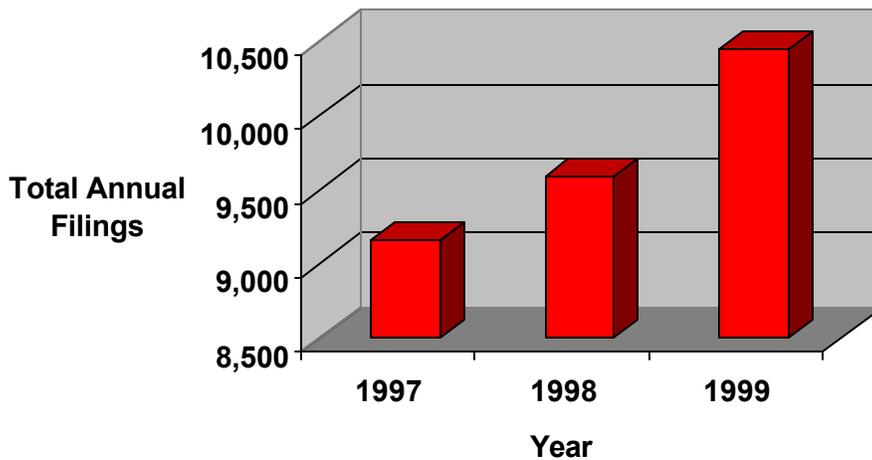
Since the monitors' 1987 project, the county has addressed some of the court's space needs. When the Department of Probation was moved to another site, the entire fifth floor was allocated to the Family Court. The hearing examiner's room was relocated to the fifth floor of the county office building, in order to integrate it with the rest of the Family Court. Security was also significantly enhanced: Metal detectors were installed at both entrances on the fifth floor, and additional court officers were assigned to handle court security.

Nonetheless, space is still at a premium: During their orientation tour of the court facility, monitors noted that the clerical offices were literally overflowing; the court no longer had sufficient space even to store files. The facilities are discussed in greater detail in Section IX of this report.

Caseload

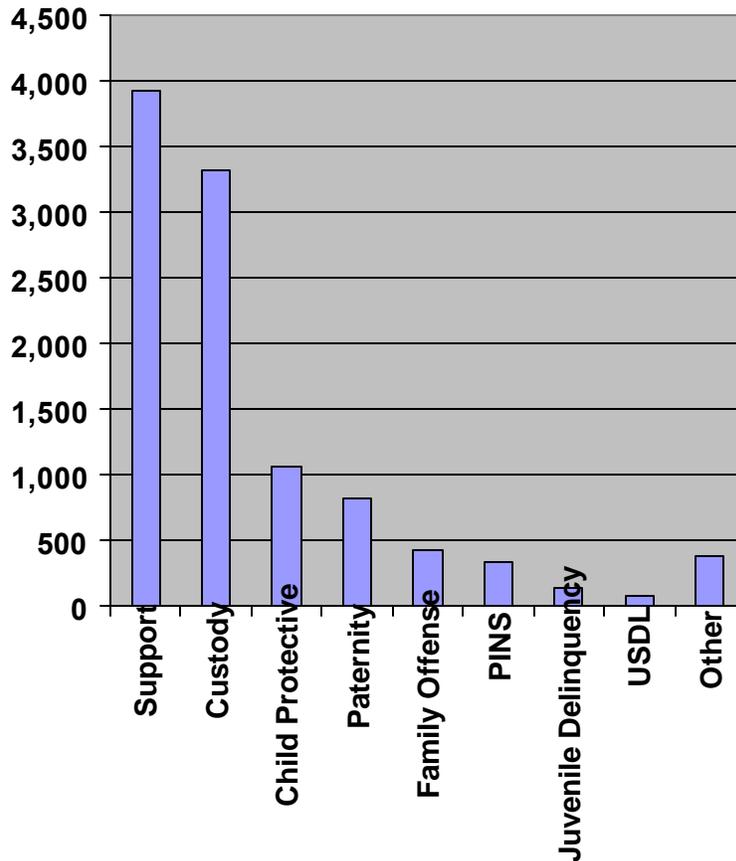
The Schenectady County Family Court currently has two judges, one full-time hearing examiner, one part-time hearing examiner, and two part-time judicial hearing officers. In 1999, these personnel presided over a total of 10,451 filings – an increase of roughly 9% over 1998 figures, and roughly 14% over 1997 totals.

**Filings in the Schenectady County Family Court,
1997-1999**



In 1999, the overwhelming majority of cases involved support (3,929 petitions) and custody (3,318 petitions) Child protective cases ran a distant third at 1,060 filings.

1999 Total Filings by Petition Type



In their capacities as Acting Supreme Court Justices, Judges Griset and Reilly carry still heavier caseloads. In 1999, Judge Griset was assigned 116 uncontested divorces and 45 contested cases; Judge Reilly was assigned 117 uncontested and 48 contested divorce cases.

IV. THE JUDGES

Following are the monitors' evaluations of each judge in the Schenectady 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.

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. G. Douglas Griset

Judge Griset is a native of the Capital District, and a graduate of Mohonasen High School. He received his B.A. from Syracuse University in 1964 and his J.D. from Boston University School of Law in 1967. He was in private law practice from 1967 to 1981 and also served as Assistant District Attorney in Schenectady County from 1969 to 1972. He was elected twice to the post of Police Court Judge for the City of Schenectady, and served in that capacity from 1976 to 1981. In 1981, he was elected Schenectady County Family Court Judge, and was re-elected to that position in 1991. In 1995, he was appointed Acting Supreme Court Justice, and in that capacity he presides over matrimonial cases in Schenectady County Supreme Court. In January, 1999, Judge Griset was appointed Supervising Family Court Judge of the 4th Judicial District, and was made a full-time Acting Supreme Court Justice.

Judge Griset is a past president and a current director of the Association of Family Court Judges of the State of New York. He is a member of the Family Court Advisory and Rules Committee, the Family Court Initiatives Committee, the Universal Case Management System Committee, the Family Violence Task Force, and the New York State Division of Criminal Justice Services Advisory Panel. He is a past member of numerous area agencies and organizations, and has been particularly active in those that serve youth or provide criminal justice services in the community. He has served as an Adjunct Professor of Law at the State University of New York at Albany, and has held several lecturing positions. Judge Griset has also been honored with several awards: In 1994, he was the CASA/NYS nominee as National Juvenile Court Judge of the Year, and in 1985, he received the New York State Trial Lawyers Association Award of Merit.

Judge Griset is married and has two grown children. He and his wife June have raised three foster children. The judge is also a marathon racer, having completed 13 races.

Judge Griset was observed by fourteen different monitors on 27 different days.

Monitors gave Judge Griset very high marks in all respects. They found him to be a very compassionate but firm judge who is clearly in control of his courtroom: "Judge Griset tends to keep things fairly informal in his court, not usually taking personal

appearances for the record, sometimes using first names, and greeting people with phrases such as, ‘Good morning, folks.’ At the same time, he presides with a calm, deliberate manner that conveys dignity to the proceedings.” One monitor added, “I think he sets just the right businesslike tone, indicating that he is concerned about [the] case but that he will not put up with any nonsense. At the same time, he maintains a sense of humor that is greatly appreciated by his staff.”

Monitors found that Judge Griset clearly communicates his expectations to the litigants, as well as to the attorneys who appear before him. He “is patient but makes it clear [that] he is in charge of [the] court.” One monitor noted, “He is also direct and honest about what he can and cannot do for people, telling [one couple]. ‘You have so many problems, it is impossible that either one of you will leave feeling real good about this.’”

Monitors commended him for "act[ing] with fairness and dignity, with particular attention to juvenile cases." “In one case, the judge talked with a young girl about her placement, and asked her to work hard [so] she could get out early. She needed encouragement, he said.” On another occasion, a monitor reported, “Judge Griset also showed particular concern today for the impact [of matrimonial cases on children], talking, for example, to [one couple] about how the kids were not at fault and shouldn’t be victims, and advising [the parents] to keep their difficulties as adults from impinging on [the children].” “He encouraged parents to communicate with each other for the sake of the children”; and “he made efforts to prevent unnecessary returns to court.” One monitor concluded, “His concern for the welfare of children is primary in all circumstances.”

Monitors also were impressed with Judge Griset’s ability to listen carefully and to recall details from past appearances or from reports. One observed, “He always appears to know his cases and is up to date on information and reports he receives.” Another reported, “To keep cases moving right along . . . Judge Griset rarely referred to a file except to clarify a question. I assume he has a fantastic memory for detail, [and] review[s] files in his chambers beforehand.” On one occasion, this monitor noted, “he cleared an entire 17-case AM docket, plus two ‘add-ons,’ despite starting almost half an hour late [because other participants were delayed by inclement weather]!”

Monitors were pleased to find that, notwithstanding this heavy caseload, and “despite his many years in Family Court, he gives all parties his full attention and consideration.” One monitor did feel that he sometimes took a ‘different approach,’ which the monitor believed “may seem impatient to some observers.” Nevertheless, this same monitor summarized Judge Griset’s overall performance as “exemplary.”

Hon. Vincent J. Reilly, Jr.

Judge Vincent Reilly is also a native of the Capital District, and is a graduate of Niskayuna High School. He received his undergraduate degree in economics from the College of the Holy Cross in 1964 and his law degree from Albany Law School in 1967.

He currently participates in continuing legal education programs in family law and criminal law through the New York State Bar Association and the Office of Court Administration. He was in private law practice from 1967 to 1985, served as Assistant District Attorney from 1970 to 1977, and was elected Niskayuna Town Justice from 1977 to 1985. In 1985, he was elected to the Schenectady County Family Court and has served in that capacity since that time. He has been active in the county bar association, the New York State Bar Association, the Association of Family Court Judges of the State of New York, and the American Judges Association. He has been designated a part-time Acting Supreme Court Justice for Schenectady County, and he has also served as Acting Surrogate in Schenectady County, and Acting County Court Judge in Schenectady and Oneida Counties.

Judge Reilly chairs the Law Guardian Advisory Committee for the Third Department, and he is a member of the Judicial Commission on Substance Abuse in the Profession. He also serves as a lecturer at Albany Law School and for the New York State Bar Association's Continuing Legal Education Program. He is a recipient of the Law, Order & Justice Community Service Award, the Trial Lawyers Association's Harold Korman Award, and the Schenectady County Bar Association's 1999 Lawyer of the Year Award. He is active in his parish and has served as a director on the boards of several community service organizations. He and his wife Linda have six children.

Judge Reilly was observed by 14 different monitors on 28 different days.

Monitors found Judge Reilly to be "patient," "considerate," "firm," and "fair." "While he always treats people with respect, he varies his style of address and can be firm, humorous, or kindly and encouraging, as the situation seems to call for," one monitor observed. Another noted that he "maintains composure in spite of some actions by [the litigants]," and occasionally adds "moments of comic relief – in good taste." Several monitors reported that "sometimes he speaks too softly," but according to one, "[litigants] and attorneys did seem to hear him."

Monitors were also pleased with Judge Reilly's thoroughness in dealing with litigants. "[He] carefully explains all charges, rights, and procedures to litigants and asks if they have had an opportunity to consult with counsel." "He clearly tells [litigants] directly what his expectations are," and "he elicits specifics on [the] circumstances of those who come before him." "He moves cases along efficiently, giving succinct but clear rulings, but at the same time, [he] allows ample time for parties to make their cases, listening carefully, asking clarifying questions, and occasionally intervening to make corrections of fact."

Monitors also noted that while Judge Reilly exhibited extraordinary patience with litigants and their families, "[h]e sometimes seems frustrated with the agencies – DSS [Department of Social Services] and Probation." One monitor reported that "he clearly understands addiction and makes appropriate comments. He knows placement agencies and shows concern that placement be appropriate for [the] individual child."

This monitor added that "DSS and Probation don't seem to be 'on top of' [cases and potential placements]; another noted that these agencies "work very slowly at times –

conclusions are difficult to come by.” Monitors applauded Judge Reilly for refusing to accept dilatory or inadequate work by agency representatives. In one case, a monitor reported, “the judge intervened actively and continued the case A trial date was set and the judge warned DSS [that] it had to produce substantive facts.” Judge Reilly also “seems to have [a] good working relationship with [the attorneys] he sees in court,” but he “firmly imposes order when things threaten to get out of hand, as they did when the attorneys became somewhat heated in [one case].”

One monitor did express certain reservations, noting that “Judge Reilly seems genuinely concerned and compassionate, but there is a paternalistic, condescending edge to this consideration.” Reporting that “he confides in us that many of the families he sees ‘have a long history with the court,’” this monitor was troubled by the possibility that such a statement “impl[ie]d that such things are inevitable: Dysfunctional parents beget dysfunctional children.” Nonetheless, on balance, the monitors felt that Judge Reilly “shows genuine concern and compassion for those before him.”

Indeed, monitors reserved some of their highest praise for Judge Reilly’s clear dedication to children. Describing a proceeding they observed, two monitors noted that he “was clearly pleased to be presiding over an adoption – joshing with the shy kids.” On a separate occasion, “he was endlessly patient with children [who were] reluctant to talk at first. He let them sit in his chair behind the bench.” As one monitor concluded, “He has a lot of concern about the young and their future.”

IV. THE HEARING EXAMINERS

Following are the monitors' evaluations of each hearing examiner in the Schenectady 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.

Colleen M. Quirion, Esq.

Ms. Quirion is a graduate of Siena College, where she received her B.A. in sociology in 1980. In 1983, she received her J.D. from Albany Law School. From 1983 to 1990, she served as confidential law assistant to the judges of the Schenectady County Family Court. In April, 1990, she was appointed Family Court Hearing Examiner in Schenectady County, a position she holds today. As the only full-time hearing examiner in Schenectady County Family Court, Ms. Quirion handles 60% of the court's support filings each year.

Ms. Quirion is currently a board member of the New York State CASA Association and Schenectady Christian School. She is also actively involved in her church. She and her husband Richard have three children.

Ms. Quirion was observed by twelve different monitors on 14 different days.

Monitors found Ms. Quirion to be "very competent." "[She] conducts her courtroom in a businesslike but pleasant manner." In addition, "she seems very well-informed and generally prepared, although" one monitor added approvingly, "she did apologize to one set of litigants for not realizing she had a mediation report in her file."

Monitors also found her to be very fair, reporting that "she is very careful about explaining rights to litigants, particularly in paternity cases, where she makes every effort to make sure [that] respondents understand both their rights and the consequences of admissions." Another added, "Her concern showed in questions about health coverage and safety, as well as strict dollar issues."

Despite that obvious concern, Ms. Quirion did not tolerate inappropriate behavior. One monitor reported that "she did become exasperated with [an] affluent couple who wanted to reargue their divorce settlement, despite being told to take another route (an Article 78 proceeding), after she'd given them 30 minutes to broker a compromise themselves." On another occasion, she "was very firm with a young man who said he would not work for minimum wage, but wanted a public defender. She said she would not waste taxpayer money on someone who would not work." In still another instance, a monitor observed, "quietly, and with deliberate calm, Ms. Quirion's control of one particular [litigant], who kept interrupting her directions, was outstanding." Finally, another monitor applauded her for setting the proper tone for controlling proceedings effectively: "[Her] questions [were] most concise and probing, [and] presented in a non-aggressive manner, which led to the attorneys' [positive] attitude toward each other."

Monitors also praised Ms. Quirion for her efficient caseload management. On one occasion, a monitor observed that she “had a huge caseload, which she handled with aplomb.” This monitor added that Ms. Quirion apparently was “used to hearing 25 cases in three hours.” Another noted, “Ms. Quirion runs a tight ship in order to sail through a very crowded calendar, yet she also exhibited extraordinary patience with the petitioners [and respondents], many of whom were still teenagers.” In another case, she intervened swiftly to resolve a problem: She defended the Support Collection Unit (“They’re doing their best”), but also picked up the phone to call them when a discrepancy was noted.” On the same day, she also “picked up on the fact that she had been given [the] wrong file [there were two different people with the same first and last name, and she] remembered that one was [of a different race] and a much younger man.” One monitor concluded: “How do they remain aware of so many cases?”

Kathleen J. Cullen, Esq.

Ms. Cullen is a graduate of Saratoga Springs High School. She received her B.A. from Mount Holyoke College in 1979, and her J.D. from Albany Law School in 1982. She is certified to teach mathematics and social studies in the State of Massachusetts. From 1983 to 1993, Ms. Cullen engaged in private practice. In March, 1993, she was appointed Acting Hearing Examiner for the Schenectady County Family Court, and was reappointed in August, 1993. In February, 1994, she was named Hearing Examiner for the Family Courts of Schenectady and Washington Counties, a position she holds today. Because she must divide her time between both counties, she usually hears cases in the Schenectady County Family Court two days per week.

Ms. Cullen is a member of the New York State Bar Association, the Women’s Bar Association, and the local bar association. She is also involved with the Junior League of Albany and the Albany Institute of History and Art, and serves as a professional adviser to Parents Without Partners.

Ms. Cullen was observed by ten different monitors on eight different days.

Monitors applauded Ms. Cullen’s manner in dealing with litigants, noting that she has a “kind manner” and “shows great compassion.” “She listen[s] carefully to what is said, and at the same time asks pertinent, clarifying questions.” “[She] also takes time to answer questions and explain procedures and rulings and the limits of her jurisdiction.”

One monitor reported, “She always explains [litigants’] rights (even when people don’t seem concerned about them . . .).” Another added, “She is careful to make sure all parties understand the terms of any rulings, what rights and responsibilities they may have, and is open to and fully answers any questions. She appears very well prepared and makes an effort to provide additional information to help litigants in resolving problems they may have.”

Monitors did note that she can “be assertive when required, to get her point across and impress upon litigants the seriousness of the proceedings,” and one felt that she “seemed somewhat impersonal and cool.” On balance, however, monitors consistently

emphasized Ms. Cullen's "mild-mannered," "soft-spoken," and "compassionate" demeanor. One observed that "by striking the posture that she assumed [that] both parties would, of course, be reasonable, she tended to defuse one lawyer's bluster." In another proceeding, a monitor reported that "she showed sensitivity in a paternity case; she advised a litigant, 'I have to ask you some personal questions under oath,' and used a gentle, kind tone in putting her questions."

Indeed, monitors particularly endorsed Ms. Cullen's approach of resolving difficulties, rather than simply clearing cases. In one case, "[Ms.] Cullen showed a flexible, even creative, approach (within legal constraints) to people's problems. She acted promptly, using, for example, a three-way teleconferencing device to obtain information from a man confined to wheelchair (at home)." In another proceeding, "she directed the father to re-examine his priorities; she gently stresse[d] personal responsibility; she helped him develop structure." This monitor added, "I am impressed with the lengths to which she goes to accommodate [the] indigent, [the] disabled, etc."

V. JUDICIAL HEARING OFFICERS

To help handle large caseloads and to increase efficiency, courts around the state utilize personnel known as judicial hearing officers, or JHOs. Only former and retired New York State judges are eligible to serve as judicial hearing officers, and they are appointed by the Chief Administrative Judge of the State of New York. They are assigned to a particular court on a per-diem basis, and are currently compensated at the rate of \$300 per day.

In this capacity, JHOs serve as "quasi-judicial officers" of the court, with limited jurisdiction. In Family Court, JHOs may preside over custody and visitation cases, contested paternity proceedings, and domestic violence cases. However, to hear a case, they must obtain consent from all parties, and they are permitted to render only certain types of decisions. If the case requires a decision outside these jurisdictional boundaries, it must be heard by a judge.

At the time of the monitors' observations, there were two judicial hearing officers in the Schenectady County Family Court: Hon. Gene L. Catena and Hon. John J. Mycek. Judge Catena and Judge Mycek handle cases for Judges Griset and Reilly, who, in addition to their regular Family Court cases, also preside over matrimonial proceedings in Schenectady County Supreme Court. However, Judge Catena and Judge Mycek are assigned to the court on a part-time basis. As a result, it was difficult for monitors to observe them regularly during the course of the project. Judge Mycek was observed by six monitors on six different days, and Judge Catena was observed by two monitors on two different days.

Generally, the monitors found both judicial hearing officers to be "thoughtful," "considerate," and "patient" in dealing with litigants. In addition, both were scrupulous about explaining their status as JHOs, and about obtaining the necessary consent before proceeding with a case.

Monitors applauded the JHOs for being "dignified, good-natured, [and] attentive," for "listen[ing] very carefully to all parties before making [a] decision," for having "a considerate and gentlemanly manner," and for "us[ing] simple, direct language, especially with young people."

Monitors did express some significant reservations about the utilization of JHOs in the Schenectady County Family Court. However, their concerns should not be regarded as criticisms of the two JHOs personally. Rather, monitors were troubled by systemic problems inherent in attempting to control caseloads via part-time personnel who have only limited jurisdiction. Adjournments and delays were constant problems.

One monitor was disturbed by the attitude of attorneys who appeared before Judge Catena in his capacity as judicial hearing officer: "Attorneys do not seem to take him seriously, as indicated by [their] long conferencing delays and lackadaisical adherence to procedure." This monitor added that the judge "seems amiable and compliant," but noted that "there was no sense of urgency or direction in his handling of cases; instead, he seemed to wait for proposals from the attorneys." In addition, two

cases raised other concerns: “In a strange case of an unbalanced mother attached to her BB gun, it fell to the ADA to offer visitation with her daughter in return for surrendering the gun. As a result, the case was adjourned for the third time.” “In another case, the judge was gently advised by the DSS attorney how to restate his ruling in the disposition of an abuse case.”

Another monitor described the following scenario: “While for the most part Judge Mycek’s demeanor sets a tone of order and dignity, in one case, . . . things got a bit unruly. A small child was present who became restless, and the attempts of the parents to quiet him, consisting mostly of either yelling or grabbing, were pretty unsuccessful. Because of the noise and what I suspect was a failure of the respondent to understand some of the terms the judge was using, Judge Mycek and the young man misunderstood each other, and there was much confusion regarding whether he wanted an attorney or was admitting or denying paternity.” The monitor was unsure whether, even after additional explanations and discussion, “given the confusion and misunderstandings, . . . the young man fully comprehended the consequences of his admission, but he seemed satisfied with the outcome, and everyone left in good spirits.”

Again, monitors felt that these problems highlighted defects in the system, rather than in the individuals. Monitors recognized that any attempt to address such a volume of cases using part-time personnel with limited jurisdiction could only be characterized as a stopgap measure, at best. The Schenectady County Family Court cannot function properly without the addition of a third full-time judge. As one monitor concluded, under the current system, “it seems as if specific needs are put off,” adding: “We need another full-time judge!”

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, attorneys frequently were inadequately prepared, resulting in lengthy delays and a disproportionately high number of adjournments. One monitor offered a specific example: “[The] respondent’s lawyer did not have a counter-offer ready which seemed ill-advised. [A] long delay ensued while the lawyer conferred with his client [one hour and forty-five minutes].”

In evaluating all of the attorneys, both public and private, who appear in Family Court, the monitors frequently criticized this lack of preparation – although monitors were equally quick to note that often this seemed to result largely from a lack of adequate resources. However, one monitor reported that “the attorneys appearing before Judge Griset, as a group, seemed better prepared and acted more professionally than they, as a group, seemed when appearing before Judge Reilly.” Monitors also noted that “there is a distinctive difference in [the level of] preparation by privately-hired attorneys.” One suggested a possible reason for this discrepancy: “I suspect they haven’t taken enough time reviewing the case[s] with their client[s] prior to their court date[s]. Is this because of the pay – in-court and out?” As discussed later in this report, assigned counsel are compensated at the rate of \$40 per hour for in-court work, but at a rate of only \$25 per hour for out-of-court work.

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 Family Court cases, the legal interests of a parent often may not coincide with those of the child. In such cases, a law guardian is assigned to ensure that the child’s best interests are protected. By safeguarding the legal rights of children, law guardians thus play an essential role in Family Court proceedings.

As a general matter, monitors were impressed with the performance of the law guardians who appeared in the Schenectady County Family Court. One monitor noted that the law guardians “all appeared informed and concerned for their clients, particularly [one attorney,] who took time in [one case] to express his concern about the lack of a plan for permanency for the children and to ask for a speedy trial on [a] neglect petition.” On another day, a law guardian “took time to talk to [the court officer] about removing [a] young man’s shackles while he was in the courtroom, so that his little brother, a toddler who was there with his mother, would not seem him in irons.”

Monitors did acknowledge that “law guardians seem to vary widely. Some seem to have established [a] rapport [with their clients,] while others seem to be superficially involved.” Nonetheless, monitors felt that most of the law guardians did their best for their

clients under extraordinarily difficult circumstances. They applauded those who made particular efforts on behalf of the children, giving special mention to one who “showed concern and a willingness to spend time getting more information about her clients and their cases,” and another who “seemed prepared, was courteous and concerned, and told the parents, ‘The kids can call me anytime.’”

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.

Attorneys who participate in the assigned counsel plan 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. They 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. “Many times the attorneys have just been appointed, so they can’t be prepared.” A monitor added, “Sometimes they seem to just get cases because they are in court that day.” Despite such short notice, one -appointed attorney, “assigned by the court to represent [a litigant] in . . . a continuation of a fact-finding hearing, worked very hard under difficult circumstances to make a case for his client.” However, monitors criticized this same attorney’s behavior on two other occasions. One monitor observed that he “had a bad habit of interrupting testimony ([and had] also interrupted [the] hearing officer [during a previous observation]).” In another instance, when the attorney “appeared for one no-show father, [he] actually bad-mouthed his absent client, muttering that he would have been surprised ‘if he shows up ever.’”

However, 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. The monitors understood the frustrations faced by assigned counsel, who receive cases with little or no notice, and who have few resources at their disposal in providing representation. Under existing legislation, 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. Unfortunately, because much of a Family Court litigant's case may depend upon out-of-court work and research, this pay disparity further undermines the litigants' ability to obtain adequate representation. Moreover, there are far too few participating attorneys available to handle

the court's enormous caseload. Monitors were convinced that assigned counsel rates must be raised substantially to provide adequate representation for those who can least afford it, but who perhaps need it most.

Government Attorneys

Attorneys from the Schenectady County Department of Social Services, or DSS, represent the County 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 DSS attorneys to be "courteous" and "professional." However, monitors frequently criticized all representatives of DSS for inadequate preparation. It was unclear, however, whether this problem was within the control of the DSS attorneys, or stemmed exclusively from DSS staff.

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 no private attorneys were present at all.

As noted previously, of the private attorneys who did appear, monitors generally found them to be better-prepared, on the whole, than their court-appointed counterparts. While monitors found some of the private attorneys to be "professional and polite," "exceptionally pleasant," and "rigorous in their representation," they also occasionally found their performances worthy of criticism. "[A] private attorney representing angry parents in [one] case did not seem prepared to cross-examine character witnesses. . . . Advised that her case seemed weak, she did not appear willing to settle, probably prolonging a futile case." Another monitor found a different private attorney "to be rather aggressive and challenging in his questioning, getting a little loud and seeming almost to be taking things personally, at times." In yet another case, a monitor reported that a private attorney "actually became combative, raising his voice to challenge a temporary order of protection issued against his client." Monitors understood the need for vigorous representation, but felt that private counsel appeared to transgress the boundaries of professional demeanor more frequently than did government and court-appointed attorneys. Overall, however, they found that private attorneys represented their clients well.

VII. OTHER COURT PERSONNEL

Non-judicial court personnel have an enormous impact on the public's perception of the Family Court, as well as on the quality of justice that is dispensed. Litigants spend much time outside the courtroom, dealing with court clerks, court officers, and other personnel.

In most courtrooms, court clerks, court officers, and sometimes a court reporter may be present. Occasionally a foreign language or American Sign Language interpreter is also available. Litigants often encounter these people outside the courtroom environment, during intake, while waiting for cases to be called, or while arranging for support or other services.

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

Court Clerks

Family Court clerks are an integral part of the court's operations. In the Schenectady County Family Court, the Chief Clerk and Deputy Chief Clerk handle a wide variety of functions, from petition intake to maintenance of court records, and are responsible for the daily operational activities of the court. Monitors were particularly impressed with Deputy Chief Clerk Melissa Sroczynski, with whom they had frequent contact during the course of their observations. Ms. Sroczynski provided them with extensive information at the beginning of the project, and freely answered questions during the succeeding months. Monitors repeatedly described her as “pleasant,” “gracious,” and “efficient,” and felt that she was indispensable to the effective functioning of the Family Court.

The clerks are assisted by a variety of administrative and support staff, who process much of the paperwork. Some these staff operate the petition intake desks and assist litigants with their preparation. 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.

On several occasions, one monitor evaluated intake proceedings, and commended the staff member handling them for her patient efforts to assist litigants. On one day, she was observed “quietly taking petitions and clarifying information, explaining to one litigant that the court must have an address for a respondent, and offered phone books and pointed out the pay phone to help [the person] try to find one.” The monitor added that she “expresses regret for the things she is unable to do for people, like assist with finding a respondent’s address, offering helpful suggestions when she can.” She also expressed the hope that “she will have time in the future to revise [the intake forms] and make them more user-friendly for people.”

However, this monitor also noted that the intake procedure functions best when court traffic is light: As the waiting areas become more crowded, it is difficult to keep track of new arrivals and to ensure that each person knows what steps to take. The monitor suggested that this problem might be easily solved by posting a sign outlining the steps necessary to complete a petition.

Court Officers

Uniformed court officers provide security in the courtrooms and waiting areas, and 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 participants when the case is called.

Monitors generally applauded the officers of the Schenectady County Family Court, describing them as “very helpful.” Some offered specific praise: “The female court officer was especially pleasant to some young children who came in for an adoption.” A male court officer also “was pleasant, answering questions and helping to keep track of petitions.”

Monitors felt that one court officer “was sometimes brusque,” but noted that “he had the job of keeping quiet and order in the adjoining waiting room.” Another monitor added, “Although occasionally [he] seemed a little loud in his announcement of ‘Thank you. Parties are excused,’ this did get people moving, which was helpful, with the way things were running today.” Yet another monitor advised that such curtness was not limited to one particular officer: “Staff vary. Some are fairly brusque in indicating where people should sit [when] calling the cases. They’re efficient but not overly polite. Sometimes they could be more pleasant when they usher people out of the courtroom at the conclusion [of a case].”

However, monitors also applauded all of the court officers for particular acts of kindness. On one occasion, an officer was “discreet in serving an order on someone in the waiting room.” On another occasion, this same officer worked with another officer “to get some tissue to a litigant who became tearful.” Another monitor reported that a court officer “even offer[ed] to heat up a bottle for a man with an infant.” Finally, a monitor described an especially charming scene involving two court officers: They were “particularly nice with one small boy who brought a drawing up to the[ir] desk.”

Court Reporters

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

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 Schenectady County Family Court will arrange translating services for litigants who do not speak English or are hearing-impaired.

VII. SOCIAL SERVICE AND SUPPORT AGENCIES

To help troubled families to resolve their problems, the Family Court relies on numerous governmental and non-governmental agencies. During the course of this project, monitors observed representatives from some of these agencies at work in the Family Court, acting as advocates for the parties involved and providing progress reports on children and others who have been placed under their supervision.

The primary county agencies represented in the Schenectady County Family Court are the Department of Social Services (DSS), which includes a Support Collection Unit (SCU), and the Department of Probation. Additionally, monitors occasionally observed representatives of drug and alcohol evaluation services; mental health agencies; shelter and detention facilities; the Law, Order & Justice Center; the Court Appointed Special Advocates (CASA) program; and domestic violence counseling organizations.

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.

Monitors generally agreed that most DSS representatives were “courteous,” and a few even described them as “well prepared.” On the vast majority of occasions, however, monitors harshly criticized the Department of Social Services for a variety of deficiencies.

One monitor reported, “DSS sometimes seems slow to accomplish goals for [its] clients. the programs seem to be in place, but not all agents are as diligent as others.” A few days later, a DSS representative “was not well prepared. She had to leave to get up-to-date information on the case being heard.” On yet another occasion, a representative “did not have [its] recommendation in writing – [the court] had to adjourn for 30 days.” A monitor summarized the situation as follows: “There seems to be a lag in getting evaluations to the court on a timely basis. DSS representatives don’t seem very concerned about delays; it obviously creates frustration for the judge. In another case, “the judge really got angry with DSS, saying there was not enough planning before they came to court.”

DSS’s Support Collection Unit fared no better. One monitor observed that the “Support [Collection] Unit seems to provide a clerical function – no more than that.” This monitor added, “The [SCU] seems to act solely as an accountant, and needs to have more of a sense of what the situation is. The judge seems to be pulled into matters that could be handled by non-[judicial] personnel. Indeed, one SCU representative, who “brought almost all [of] the actions [on a particular day], was inefficient, unprepared, and seemed to have to defer on several occasions to [the Unit supervisor] for direction.” The monitor acknowledged that the supervisor “seemed familiar with [the] cases in question,” but was troubled by the fact that the hearing examiner “had to coach [the representative] on what she

was asking of the court.” In one case, . . . “the hearing examiner had to tell [the SCU that] it had to withdraw its petition.”

Even when SCU representatives did their best, they seemed to be stymied by bureaucratic mistakes and other problems beyond their control. One monitor noted that an SCU investigator “was polite and made every effort to be helpful both to the court and to the litigants. [A supervisor also] appeared ready to try and help out, [but] he wasn’t any more successful in extracting the pertinent information from the SCU printout than were [the investigator and] Ms. Quirion.” On another occasion, a monitor reported, the SCU investigator “was courteous to all and tried very hard to be helpful, sometimes under difficult circumstances - especially during those times [when] he ended up presenting positions set out by [his supervisor] that did not meet with the court’s approval, or when he attempted to help a litigant . . . who was trying the patience of a hearing examiner.”

Department of Probation

In certain cases, the Department of Probation assists the Family Court with evaluation of those involved in certain types of cases. 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.

The monitors observed representatives from the Department of Probation less frequently than those from DSS. However, they reported that the agency suffers from some of the same deficiencies: “Probation seems to take a long time to provide actual placement situations.” Another monitor observed that with Probation, as with DSS, the “reports always seem to be late.”

IX. OPERATIONS AND FACILITIES

Since the monitors' last evaluation of the Schenectady County Family Court in 1987, the court has expanded, and now occupies the entire fifth floor of the county office building. The fifth floor may be reached via either of two elevators (although during the course of the project, one was sometimes out of service) or via a staircase. The building's main entrance on the ground floor is equipped with a sliding door, which opens automatically, thus making it reasonably accessible for those with physical disabilities. However, parking is limited to spaces on a slope in front of the building, which may be somewhat hazardous for the physically disabled. "Please [provide for] more 'handicap parking!'" one monitor pleaded.

On the fifth floor, one must pass through court security to the left of the elevator before entering the judges' parts. To the right are the hearing examiners' parts, which are equipped with their own magnetometers and court officers. The clerical offices and file room are located between these two parts.

As a general matter, monitors found both Judge Griset's and Judge Reilly's courtrooms to be adequate in size. Monitors were particularly pleased with the appearance of Judge Reilly's courtroom, which was described as "good-sized and well-lighted, with a pleasant view from its many windows. Appointments are plain but attractive, ventilation is good, and there was ample room for the numbers in attendance [on that day]."

The hearing examiners' rooms, on the other hand, did not fare as well. Monitors were troubled by their "very small" size: Besides the obvious problem of overcrowding, it makes accessibility difficult or impossible for those with mobility impairments. One monitor reported that "it was difficult to get a baby carriage through the aisles, so a wheelchair would have been almost impossible." Worse, it was apparent to monitors that such small rooms raised safety concerns: One described a proceeding in the "cramped room," where "the two parties were almost side by side – within striking distance, anyway." Another added, "I thought it was a problem to have only one table. Parties ended up sitting right next to each other, which was awkward when there was animosity." To underscore this problem, a monitor related the following: "[A] private attorney complained to Ms. Quirion about noise from the waiting room [that was] making it hard for him to hear, and asked if there was a reason for keeping it open. Ms. Quirion explained [that] it was a security issue, acknowledged the noise problem, and said she wished they could have an officer for the courtroom so that the court could be shut during [each] session."

Audibility also was a constant problem. In many instances, the acoustics simply were "poor," and while monitors noted the presence of microphones, they reported that they "are only for taping purposes, not for amplification." They urged that microphones be made available for amplification purposes for all judicial personnel, attorneys, and litigants.

Virtually all monitors attributed additional audibility problems to a loud air conditioning system, which many also criticized for its lack of proper climate control. One observed, "As the outdoor temperature rises, the courtroom can become uncomfortable." A monitor was informed that "the County puts on the air conditioning only at a set time of year, regardless of the outside temperature. In the earlier spring, the courtroom was cold."

Monitors were also troubled by the lack of attention given to basic furnishings. As one monitor put it, "cleanliness is lacking, underscoring an egregious disrespect for those who need to use and work in this facility." "Chair seats are dirty, and [what appear to be] dog hairs are pervasive," this monitor added. Other monitors agreed, describing the chairs as "worn-looking," "sagging," and "scuffed." One noted that a "door frame [was] chipped," "some chair seats [were] stained," "all [of the] wood on [the] chairs [was] chipped and/or scratched," and the "American flag [was] dirty." Another monitor reported that "the staff tend to secure [second-hand] furniture and equipment themselves as they find them, because it doesn't seem to be in the budget." Indeed, it appears that the staff not only must scavenge for needed items, but must perform much of their own housekeeping and maintenance. One monitor asked, "Does anyone dust furniture around here?" Another advised that the staff "must dust [the] furniture themselves."

Public areas were also deficient. No conferencing space exist for litigants to confer with attorneys, which jeopardizes the right of attorney/client privilege. Monitors also found that "[the] waiting room is far too crowded," and "noise from [it] makes hearing difficult" when in the hearing examiners' rooms. Prior to the 1:30 PM court session, people must use one of the corridors as a waiting area, where there is "no bench or rest area"; a monitor noted that this creates special difficulties for those with physical disabilities, and suggested that a bench be placed in the hall. It was also "crowded in the petition waiting room, [with] children playing on [the] floor."

In fact, monitors reported that the presence of children created constant problems for the court, and for the litigants. Because there is no children's center in the Schenectady County Family Court, "parents have to bring small children to court." "On several occasions, [litigants] carried babies and a squirming toddler into the courtroom." As one monitor observed, "although [the] court officers are pleasant and concerned, . . . their other duties clearly make it impossible for them to look after children, who can be both disruptive and distressed (I heard crying several times today)." Indeed, monitors emphasized that repeated "disruptions caused by young children . . . point out the need for some kind of child care facility in this court."

Monitors also harshly criticized the condition of one final public area: the restrooms. One monitor reported that "the public bathroom for women on the first floor is small (two stalls), inconvenient to use (no hook for coats or bags, or shelf for papers), and a little 'grungy' around the edges." Moreover, "the light in [this] ladies' room is still out, making it even more difficult to negotiate using the one non-handicap stall. It has been out for several weeks." Another monitor added, "One sink continually drips heavily; [only] cold water [is available]. [The] other sink [is] new, [but is] 'not hooked up yet.' [A] clerk assured me [that] the drip has been [there] 'forever.'" In addition, the "door is warped; [there are] elaborate instructions for how to handle it." Several

monitors agreed that the women's restroom, at least, was "not likely to be accessible" for those with physical disabilities. Moreover, there are no facilities "on the same floor as the court"; people must descend four floors simply to use the restroom. In one case, a monitor was permitted to use the employees' restroom, and discovered that conditions there were also abominable: "dark, dingy, [the] faucet ran – [the] hot water [could only] be turned off [and] on under the sink!"

The space shortage at the Schenectady County Family Court has become so severe that it has begun to affect operations. Despite the best efforts of the staff, the contents of file room have begun to overflow into the corridors, because there simply is not enough space. According to monitors, "as part of the [current] file system," "boxes [are now] piled upon [the] floor."

In addition, operations are further impaired by a lack of technology and automation. A monitor reported that, "until June, [there was a] computer in the courtroom only – none in [the] court clerk's office, although [one had been] ordered in early 1998; she had to come into the courtroom to use [the] computer." Another declared, "The computers are hopelessly out of date," adding that Ms. Quirion "uses a 286!" As of the publication of this report, the Schenectady County Family Court is apparently the only Family Court in the state that still does not have e-mail. There is "one fax machine for the entire court," and what monitors described as "one and a half copy machines." They were aghast that, at the end of the 20th century, a Family Court could be without the most fundamental information technology.

X. RECOMMENDATIONS

1. *The New York State Legislature should pass Chief Judge Kaye's court restructuring plan.*

In 1997, New York State Chief Judge Judith S. Kaye presented to the State Legislature a proposed constitutional amendment to restructure the state's court system. The amendment would replace the current nine-tier maze of courts, which often have overlapping jurisdiction, with a streamlined, less hierarchical structure. It would reduce the number of trial courts from the current nine to a total of two. The Family Court would be merged into Supreme Court, and a Family Division of Supreme Court would be created. 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. By raising the status of family matters, the proposal would ensure that such cases would no longer be relegated to a court that is "inferior" in both legal status and its effects on litigants.

To the monitors, this need is particularly urgent. The Fourth Judicial District, which includes Schenectady County, was the inaugural district for the Office of Court Administration's pilot project creating unified family and matrimonial divisions. Under this program, Judges Griset and Reilly have been designated Acting Supreme Court Justices and have been assigned to handle matrimonial cases, which permits them to integrate divorce proceedings with custody, visitation, child support, and other ancillary issues that commonly arise in such cases. As a result, Schenectady County families undergoing divorce no longer find the trauma exacerbated by archaic requirements that they divide their time, energy, and resources between multiple courts and multiple judges. Observing firsthand the benefits of unified family and matrimonial divisions, a modest form of court restructuring, the monitors recognized that New York's courts *must* be restructured; the state's families deserve no less.

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

2. *The Legislature should create an additional full-time judgeship for the Schenectady County Family Court.*

Monitors consistently found that, despite the presence of hearing examiners and judicial hearing officers, the Family Court judges remain overextended. Judicial hearing officers, intended to aid in processing the judges' caseloads, work only on a part-time basis, which impairs continuity of

proceedings. Moreover, many issues can be heard only by a Family Court judge; the jurisdiction of judicial hearing officers is severely limited. Combined with ever-expanding caseloads, these circumstances often leave judicial personnel with no choice but to dispense “assembly-line justice.” Monitors urge the Legislature to create a third full-time judgeship immediately, and to provide sufficient funding and resources to provide the judge with the necessary space, staff, and operational resources.

3. *The New York State Legislature should pass, and the Governor should sign, legislation increasing compensation for assigned counsel.*

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. In evaluating the sufficiency of the representation in the Schenectady County Family Court, monitors recognized that it is especially important that attorneys be compensated adequately for 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 too few attorneys to handle the swelling rolls of litigants who need assigned counsel. Monitors urge that funding be increased to provide adequate compensation to assigned counsel.

4. *The County should establish a child care center within easy reach of the court.*

Currently, there are no child care facilities in or near the Schenectady County Family Court. Monitors repeatedly observed situations in which the presence of small children created significant problems: Children distract their parents or guardians from their business with court; they disrupt proceedings; and most important, they may be traumatized by the nature of the proceedings themselves and the hostility among family members. In-court child care centers currently exist in 22 courts across New York State, where trained staff keep children fed, entertained, and under constant supervision. Construction of a child care center in or next to the Schenectady County Family Court would permit parents to conduct court business efficiently and without distractions, secure in the knowledge that their children are safe and supervised.

5. *The County should address the court's growing space needs.*

As the caseload of the Schenectady County Family Court has expanded, so has the court's attendant need for space. Despite substantial growth over the past several years, however, it still occupies only the fifth floor of the county office building. Monitors reported that, while the two judges' courtroom appear to be adequate, virtually no other aspect of the facilities is large enough. The hearing examiners' rooms are so small that it raises potential security problems. The waiting rooms become so crowded that litigants and their families have no place

to sit, and there is no space for children to play while their parents tend to business. The contents of the file room have literally overflowed, and boxes of files now line the corridors. Conferencing space is non-existent: Attorneys and their clients must conduct discussions in public waiting areas, jeopardizing attorney/client privilege. Finally, there is no courtroom space for a desperately-needed third judge. The monitors urge that the County allocate or construct adequate space, in compliance with the State Court Facilities Act of 1987.

6. *The Legislature and the Office of Court Administration should provide for additional resources, including full automation.*

Monitors were appalled by the operational obstacles facing the Schenectady County Family Court. In addition to the file storage and maintenance problems created by lack of space, the lack of technological capabilities severely limits the court's ability to function efficiently. The telephone system is insufficient to handle the volume of calls to the Family Court, and the entire court facility relies on only one fax machine. Only two photocopiers are available to handle the large volume of duplication necessary to court operations. Monitors were especially critical of the court's inadequate information technology resources: There is a severe shortage of computer equipment; existing equipment is old, outdated, and slow; and the court remains the only Family Court in New York State that does not have access to e-mail. Monitors urge the Legislature and the Office of Court Administration to remedy these deficiencies with the passage of the 2000 judiciary budget, by allocating sufficient funding to bring the Schenectady County Family Court into the 21st century.

7. *The County should improve housekeeping and maintenance in the Schenectady County Family Court.*

The monitors took much notice of the condition of the court's facilities. The stained carpeting, filthy seating, and deplorable conditions in the restrooms diminish the dignity of the court and of the people who must use it. To compensate for the County's failure to maintain the court properly, court staff attempt to fill the gap, dusting furnishings and using stopgap measures to accommodate broken plumbing fixtures. However, monitors felt that this deficiency in essential maintenance and housekeeping creates an environment for staff and litigants that is lacking in basic human dignity, and urge the County to rectify the situation immediately.

8. *The agencies that serve the Family Court should improve staffing, resources, and productivity.*

The monitors witnessed frequent delays and adjournments resulting from a lack of preparation by the agencies that serve the Family Court. Judicial

personnel depend upon timely reports from a variety of agencies to make informed rulings that protect the parties' interests; such information is especially important in safeguarding the best interests of children. Repeatedly, monitors observed proceedings that were adjourned multiple times because agency representatives had failed to file a requisite report or did not have necessary information. This places an additional hardship on adult litigants, who may have to take additional time from work to return to court, and on children who may be caught in the limbo of a custody or foster care proceeding. Monitors urge that the Legislature provide adequate resources to the agencies that serve the Family Court, and that the agencies institute and enforce quality-control measures to ensure that their clients' interests are protected.

9. *The Family Court should reduce the number of non-appearances in court.*

Delays and adjournments in the Schenectady County Family Court often resulted from litigants' failure to appear. During the course of their observations, monitors discovered that in many cases, the notice of first appearance is frequently sent by mail, and generally does not require a filing of proof of service. When a petition is brought by the department of Social Services, DSS itself handles service of notice, and in those cases where the petitioner is represented by a private attorney, the attorney usually will handle service. However, in most other cases, service must be performed by the Schenectady County Sheriff's Department, which has sufficient resources to employ only one process server. It would have been physically impossible for one process server to handle the nearly 10,500 petitions that were filed in the Family Court in 1999.

Nonetheless, monitors believe that there is an urgent need to reduce the number of non-appearances in the Schenectady County Family Court. Because they felt that requiring proof of service might help to reduce such failures to appear, they suggested that the court experiment with a pilot program requiring proof of service, with an evaluation at the end of the pilot period, to see whether this reduces the number of non-appearances. However, they also recognize that such a program would be impossible to implement without an adequate number of process servers. Support collection and other cases in the Family Court generate hundreds of thousands of dollars annually on behalf of the County. To help reduce delays and adjournments and to adjudicate cases in a more timely and efficient manner, monitors recommend that a portion of these monies be allocated to the Sheriff's Department for the purpose of hiring additional process servers.

ACKNOWLEDGMENTS

The Capital District Court Monitors and the Fund for Modern Courts wish to thank Judge Griset, Judge Reilly, Ms. Quirion, Ms. Cullen, Judge Catena, and Judge Mycek for their cooperation during this project. They permitted extraordinary access to Family Court proceedings and readily answered monitors' questions, and we are grateful to them and to court staff for their assistance. Very special thanks go to Chief Clerk James Armour and Deputy Chief Clerk Melissa Sroczyński for their willingness to answer questions and provide information, both during the orientation and throughout the course of this project. The monitors also wish to thank Administrative Judge Jan Plumadore for his support of the project.

Modern Courts owes particular gratitude to Helga Schroeter, who coordinated the project, and to the monitors themselves: Without their dedication, this report would not have been possible. Their willingness to volunteer their time and efforts help to improve New York's courts for the public as a whole.

This report was written by Capital District Coordinator Helga A. Schroeter, with editorial assistance from Associate Executive Director Barbara E. Reed, and from the monitors.

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