

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

THE
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Report on the
**Albany County
Family Court**

The Capital District Court Monitors

2001

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. This report details the findings of our citizen court monitors regarding the Albany County Family Court. We hope their recommendations will help to obtain improvements for the Albany County residents that the court serves.

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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 1998, the Capital District Court Monitors chose to evaluate the conditions in the Albany 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 in recent years, 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. While these problems are endemic to the entire Family Court system across New York, 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 May, 1998.

Monitors also wished to evaluate another aspect of the Family Court's operations: the capacity of the physical facilities to handle the court's exploding caseload. The monitors last visited the Albany County Family Court in 1991, a year after it was relocated to its current location, a rented facility on Van Tromp Street. At the time, monitors felt that the relocation was a significant improvement. However, in 1990, the Family Court handled an annual caseload of roughly 9,000 petitions. By 1998, its

caseload had jumped to more than 15,000 petitions annually. In addition, since the monitors' last evaluation, the Family Court added a children's center, to provide a resource for those who are forced to bring small children to court. The monitors were eager to see the impact of the child care center on court operations, and of the rising caseload on facilities and operations.

In May, 1998, Modern Courts Capital District Coordinator Helga Schroeter conducted an orientation session for the monitors at the Family Court facility. At the orientation, Family Court Judges Duggan, Maney, and Tobin and Chief Clerk William Person addressed the volunteers and provided an overview of how the court functions. The presentation ended in a tour of the facility, conducted by Mr. Person. 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 late May and finished their evaluation in September.

Ms. Schroeter also scheduled two additional meetings with the monitors, one midway through the project, and one in September, 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 Albany 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:

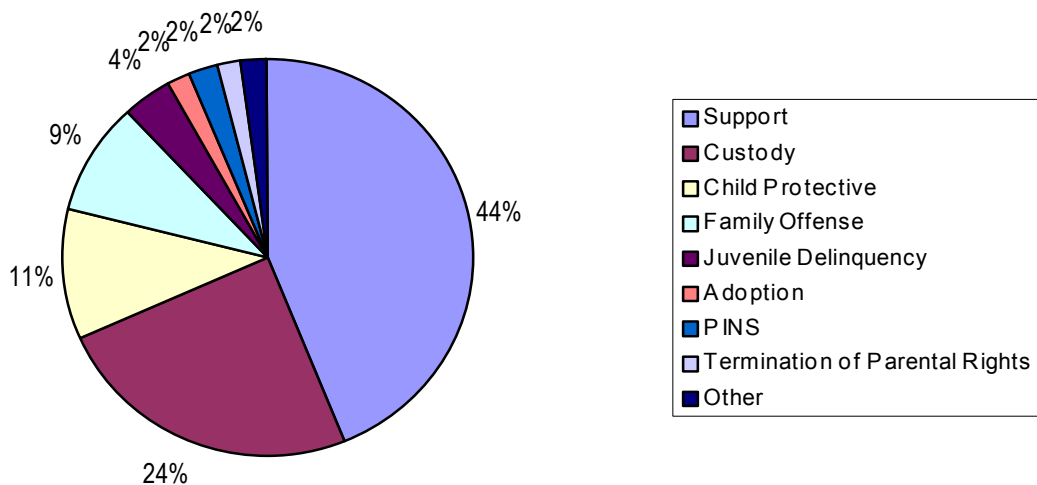
Justice cannot prevail under a veil of secrecy or behind closed doors that do not open. Darkness must give way to light. In order to preserve the integrity of public proceedings, avoid the dissemination of misinformation, enhance public confidence in the court system and promote a better understanding 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, 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 Albany County has most recently been set at \$119,800, which is identical to the salary scale of Family Court judges in Rensselaer, Saratoga, and Schenectady 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 Albany County Family Court, both Judge Maney and Judge Duggan have been designated on occasion as Acting Supreme Court Justices. Supreme Court Justices are paid an annual salary of \$137,700. As Acting Supreme Court Justices, they are compensated at that level on a prorated basis for the period in which they serve in that capacity.

In 1997, over 654,000 cases, covering 20 different types of proceedings, were heard in Family Courts across New York State; 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. It is estimated that each of the three judges in the Albany County Family Court will hear approximately 4,000 matters in 2001.

There are currently three full-time judges in the Albany 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 \$85,762 annually. They serve three-year terms, with reappointment at the discretion of the Chief Administrative Judge.

The Albany County Family Court currently has two full-time hearing examiners.

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 is one part-time judicial hearing officer in the Albany 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 Albany 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 ALBANY COUNTY FAMILY COURT

The Population It Serves: Albany County

Albany County is part of the four-county region, including Schenectady, Rensselaer, and Saratoga counties, loosely identified as New York's "Capital District." Albany County is bordered on the south by Greene County, and on the west, by Schoharie County. Schenectady and Saratoga Counties lie immediately to the north, and Rensselaer County lies across the Hudson River, which serves as Albany County's eastern boundary. Albany County has a geographic area of 524 square miles. The City of Albany serves as both the county seat and the state's capital.

The United States Census Bureau reports that in 2000, Albany County registered a population of 294,565, a change of 0.6% over 1990 census figures. The overwhelming majority of the county's residents — 83.2% — identify themselves as white. The second-largest ethnic group comprises African-Americans, at 11.1%. All other ethnic groups constitute between zero and 2.7% of the population, individually. Only 22.6% of the population is under the age of eighteen.

Albany County Family Court Facilities

The Capital District Court Monitors last visited the Albany County Family Court in 1991, and gave the court generally high marks for its performance. At the time, they found that the Van Tromp Street facility was a vast improvement over the court's previous location. However, the current facility at Van Tromp Street was planned as a temporary solution to the Family Court's dire need for additional space. The Van Tromp Street facility has now served twelve years as the Albany County Family Court's headquarters. During their most recent visit, monitors expressed concern about the facility's ability to handle increased caseloads and traffic.

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.

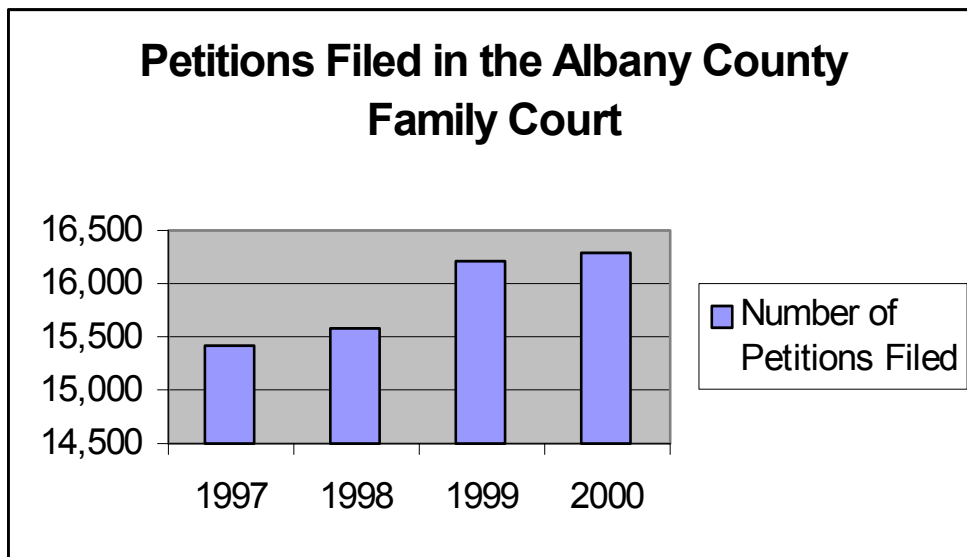
Prior to 1976, each city or county was responsible for all costs of the courts in its jurisdiction, including building and maintaining courthouses, paying the salaries of judges and court personnel, buying equipment and office supplies, and all other operational costs. In 1976, due to severe fiscal pressures 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' 1991 project, the Family Court has attempted to compensate for the court's growing space needs. It has also added a child care center. Nonetheless, space is at a premium. Monitors noted that the waiting areas are consistently overcrowded, and

attorney/client conferencing space is utterly inadequate. The facilities are discussed in greater detail in Section IX of this report.

Caseload

The Albany County Family Court currently has three judges, one part-time judicial hearing officer, and two full-time hearing examiners (During the monitoring period, three hearing examiners were observed because one of the hearing examiner stepped down and was succeeded by another hearing examiner). However, the caseload has increased regularly over the last several years. In 1997, a total of 15,421 petitions were filed in the Albany County Family Court. The following year (and the year this monitoring project was undertaken), that figure rose to 15,586. However, 1999 saw a more substantial increase, as filings rose to 16,264. In 2001, officials project that the total number of filings will have reached 17,000. These increases are illustrated in the chart below:



IV. THE JUDGES

Following are the monitors' evaluations of each judge in the Albany 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 by seniority.

Hon. Beverly Cipollo Tobin

Judge Tobin is a 1959 graduate of the College of New Rochelle, and a 1962 graduate of Albany Law School. She began her legal career in private practice with the Law Offices of Michael A. Cipollo, where she remained until 1971. From 1971 to 1988, she served in the Counsel's Office of the New York State Division for Youth. In 1988, she was elected to the Albany County Family Court bench, and she continues to serve in that capacity.

Judge Tobin maintains membership in a number of professional organizations, including the Association of Family Court Judges and the Law Guardian Advisory Committee for the Third Department. She is also a member of the New York State Bar Association, the Albany County Bar Association, and the Capital District Women's Bar Association. She has received a variety of service awards, and is involved in numerous community service activities and organizations.

Judge Tobin was observed by eleven monitors on fourteen different days.

Monitors described Judge Tobin as "very thorough," "calm," "gentle," and "very organized." They praised her efficiency and effectiveness in handling her caseload. One described her as "detail-oriented," and noted that she "corrects existing records as she works." According to this monitor, her "working habits [are] very exceptional."

Monitors also reported that, rather than merely processing cases, Judge Tobin made a special effort to help families resolve their larger problems. One observed, "Judge Tobin clearly was familiar with cases; in cases with substantial records, she showed [a] remarkable understanding of family and dynamics." Another noted that "Judge Tobin seeks to expedite processes – [she] set[s] reappearance dates quickly and refers petitioners to immediate services." Indeed, monitors consistently commended her use of alternative resources to aid litigants, reporting that "she was familiar with referral agencies"; she "has resource/reference lists available, and distributes [them] readily"; and "she offered referrals for mediation and counseling services." In another case, "she asked [one litigant] if she was getting pre-natal care and urged her to 'please take care of yourself.'" According to one monitor, "in some cases, [she] came up with several solutions."

Monitors were impressed with Judge Tobin's treatment of those who came before her. One reported, "She is always very careful to assign counsel where warranted and allowed by law." Another added, "She showed a concern for balance of the individual's rights and addressing of his/her problem and the need for community protection." A third noted, "The judge is very conscientious about advising people of their rights. Today, she handled a heated discussion between litigants very well, telling them only to address the court and not each other. She also showed concern about how the children handle the parents' separation in one case and advised the father to seek help with anger management."

Indeed, monitors particularly commended her treatment of children: "She places the interests of children first, taking extra time to collect information when she feels this is necessary." One monitor commented, "[She] tried very hard to have children speak and answer her – to get them to understand what was happening and what they would have to do to improve their own situation." On another occasion, a monitor reported, "In a number of cases, the judge clearly spent time exploring alternatives for placements in the best interest of the children." Another noted approvingly, "In one case, the judge's concern for the dignity of a child was demonstrated when she sternly ordered the court security [officers] to remove child's feet shackles in the courtroom." One monitor concluded, "She has a motherly touch with children."

Monitors expressed a few criticisms of Judge Tobin's performance. One observed, "I thought there was some disorganization [on the part of the] judge." One commented that she was "sometimes abrupt when displeased by defendants." Another noted that she "can also be stern."

However, monitors generally tended to view this sternness with approval. One observed, "Today, Judge Tobin showed her firm side, both with some clients and also with some attorneys. She reprimanded one attorney who called the child's 'graffiti' a victimless crime; she said the comment was very inappropriate in front of the child. She spoke sternly to some of the parents and kids to make them see the long-term consequences of their behavior." Another added, "Judge Tobin is very thorough and does not always 'buy' into what the attorneys say. She really wants to do what is right in each given case. She tries to impress on parents and children the need for reforming their ways." Yet another reported, "In [a different case], she maintained order by lecturing all parties: 'It's late in the day; we need some civility here. We are dealing with the needs of two children.'" Monitors found that she required attorneys to remain disciplined: "When attorneys strayed to what would be fact-finding in a case that has moved beyond that, she firmly but politely informed the attorneys to get on track." They concluded, "Judge Tobin held up well and maintained decorum in several frustrating situations."

Overall, monitors applauded Judge Tobin's performance, finding that "[s]he is experienced and in control and has an excellent blend of understanding and firmness where needed," and "shows great compassion and concern concerning the issues before her." One monitor concluded, "I thought in each case Judge Tobin was ready to do the best she could."

Hon. Gerard E. Maney

Hon. Gerard Maney is a 1971 graduate of Siena College, and a 1976 graduate of Widener University School of Law. Between 1976 and 1991, he was in private practice with the firm of Scheiberling, Rogan & Maney, and from 1978 to 1981, he also served as assigned counsel with the Albany County Public Defender's Office. From 1981 to 1991, he was an Assistant Corporation Counsel with the Law Department of the City of Albany.

In 1991, Judge Maney was elected to the bench of the Albany County Family Court. He simultaneously served in additional jurisdictions: In 1991, he was an Acting Family Court Judge in Ulster County; in 1992, an Acting Family Court Judge in Rensselaer County; from 1992 to 1993, an Acting Family Court Judge and Acting Surrogate in Sullivan County; and in 1995, an Acting Family Court Judge and Acting Surrogate in Schoharie County. In 1996, he became an Acting Supreme Court Justice, serving in Albany and Ulster Counties; and in 1997 and 1998, he also served as an Acting Supreme Court Justice in Albany County.

Judge Maney is also a member of numerous professional associations, including the American Judges Association, the New York State Bar Association Committee on Judicial Administration, the New York State Bar Foundation, and the New York State Assembly Criminal Justice Roundtable. He is also a member of the Board of Directors of the Family Court Judges Association, and is Past President of the Albany County Bar Association.

Judge Maney was observed by nine monitors on twelve different days.

Monitors described Judge Maney as a "concern[ed]" judge who worked "expeditiously," and whose "performance was excellent."

Overall, monitors were impressed with Judge Maney's efforts on behalf of those who came before him. One declared, "Judge Maney showed great concern for young people involved in cases before him today." Another concurred: "Judge Maney takes seriously his responsibility to render justice, and to consider the best interests of children and young people, in which cases he clearly tries to reach out, encouraging young people [to] set goals and continue their education." One monitor noted that "[h]e tends to bring in examples [from] his personal life, going back to his youth and his large family, when growing up," and added, "This may or may not be effective for some of the young people before him, but it does communicate the message, 'Hey, I've been there!'"

Monitors were divided over Judge Maney's demeanor, particularly in tense and difficult cases. One found that he "sometimes seemed curt and abrupt," while another applauded him for being "very firm about the pertinence of questions (time frame consideration) from a defense lawyer, who persisted in stepping outside time limitations." Monitors reported that "[h]e gave a terrific lecture to a male teenager," and that he "was stern with parents who he felt were not acting in the best interests of their children."

“However,” one monitor observed, “Judge Maney can be quite stern and even angry (his color rising) in his demeanor, at times. While this sometimes seemed justified and probably productive [in some cases] where it was clearly important for the seriousness of the situations to be emphasized, it seemed less clearly helpful in other cases.” This monitor noted, “Interestingly, Judge Maney expressed more patience and compassion when he talked to us about the history of these cases afterward, indicat[ing that] his courtroom manner didn’t reflect any lack of concern on his part.” The monitor added, “I think that in certain cases Judge Maney could be more effective in getting his message across to young people and families he wishes to be of service to if he expressed the compassion and concern I believe he truly feels as freely as he shares some of his feelings of anger and frustration.”

Another monitor echoed this sentiment: “Judge Maney can get quite upset over some cases, where he already knows a lot of the background. He turns red in the face! In one case, he tried to move a young defendant by having him handcuffed, apparently to get across how grave his behavior is.” On another occasion, however, a monitor reported that “[h]is handling of a petitioner was a real effort to get him into some functioning mode – this petitioner just didn’t ‘get it’ – and the judge’s efforts to get him counseling & employed are heroic.”

According to one monitor, “Judge Maney occasionally confused names on this busy day. In most cases this didn’t seem to cause any problems but in [one] case I have to believe that repeatedly reversing the twins’ names didn’t help him in his efforts to get through to [one] young man.” “this monitor added, “Also, although I know it is difficult, with so many people appearing before him, to remember everyone’s name, I think it’s particularly important to get them right with young people when trying to get them to listen and benefit from what’s being said.”

However, another monitor found that “[h]e has a great memory and remembers details and names.” In addition, a third monitor may have found a source of the confusion in Judge Maney’s caseload: “[He] appears to carry a heavier caseload [than] the other judges. [For example, on] June 10, 1998, [Judge] Maney had 51 cases, [Judge] Tobin had 22 cases, [and Judge] Duggan had 16 cases. I realize they have daily ‘add-ons,’ but [Judge] Maney stands out with a good-sized caseload. Also, on June 24, [Judge] Tobin finished at 11:20 – [Judge] Maney [was] still holding court [at] 1:00 PM. [I] question how cases are doled out.”

In a written response to a draft copy of this report, Judge Duggan wrote, “[E]ach Judge in Albany Family Court carries an equal caseload.” However he added, “On any given day, the calendar of each Judge can vary greatly. For example, a Judge may have only one case on his or her calendar if it is a trial” or may be handling an intake calendar which has a higher volume of cases and is assigned all three judges on a rotational basis.

As a general matter, monitors commended Judge Maney’s performance. One noted approvingly, “He takes time to thank people (grandparents, aunts, etc.) who have assisted families, and commends parties who have worked out their differences or overcome problems.” Another added that “he often requests, especially from the students, letters be sent to him telling him how they are doing. This is great as [the]

student gets the feeling that the judge cares about him as a person.” On another occasion, a monitor reported, “The previous case, about the girl who wants to be emancipated, came back, and here the judge clearly showed his pleasure and approval of how things have been worked out. He felt his strategy worked.” One monitor concluded, “[Judge] Maney attempts to make a difference.”

Hon. W. Dennis Duggan

Hon. W. Dennis Duggan is a 1972 graduate of the University of Notre Dame, and a 1976 graduate of Albany Law School. He began his career as a law clerk in the Albany County Public Defender’s Office, from 1973 to 1974. From 1974 to 1976, he was a law clerk in the City of Albany’s Office of the Corporation Counsel, and from 1976 to 1978, he was confidential law clerk to a County Court judge in Albany.

In 1978, Judge Duggan returned to the Office of the Corporation Counsel as an Assistant Corporation Counsel and as Chief Labor Counsel and Negotiator for the City of Albany. He remained in these positions until 1986, when he became Executive Deputy Corporation Counsel, a post he held until 1988. In addition, from 1978 to 1994, he was in private practice, with emphases in criminal, matrimonial, labor, and negligence law, and from 1992 to 1994, he served as Counsel to the Albany Local Development Corporation. In 1993, Judge Duggan was nominated by Governor Mario Cuomo to fill a vacancy in the Family Court and then elected to a full ten year term beginning in January 1994.

Judge Duggan maintains numerous professional affiliations, including membership in the Albany County Bar Association, the New York State Bar Association, the Capital District Women’s Bar Association, and the Capital District Black Bar Association. He is a graduate of the National Institutes of Trial Advocacy, a member of the Supreme Court Historical Society, and the Notre Dame Law Association. In addition, he is a member of the National Council of Juvenile and Family Court Judges, Treasurer and Legislative Chair of the New York State Association of Family Court Judges, a member of the American Judges Association, and serves on the Board of Directors of the American Judicature Society. Judge Duggan also serves on numerous professional committees.

Within the State Court System, Judge Duggan serves on the Family Court Advisory and Rules Committee, the Family Law Curriculum Development Committee, the New York State Judicial Institute Committee and the Deputy Chief Administrative Judge’s Committee on Standard and Goals. He also is a frequent speaker at Family Law related forums and at Albany Law School, and author of numerous articles and papers.

Judge Duggan has served as a Family Court Judge in Rensselaer, Schoharie, Ulster, Oneida and New York Counties and has been frequently assigned as an acting Supreme Court justice in Albany and Rensselaer Counties for both the Civil and Criminal terms.

Judge Duggan was observed by eight different monitors on ten different days.

Monitors described Judge Duggan's demeanor as "excellent," "kind," and "extremely firm." One monitor commented, "Judge Duggan is great! He keeps people on track."

Monitors praised Judge Duggan's efficiency. One reported, "Judge Duggan moved his calendar along efficiently, without appearing to rush through any case." Another observed that "Judge Duggan is very proficient in using modern technology to aid the proceedings." Still another noted, "The judge makes excellent use of available resources, *e.g.*, with CASA. He also displays a pleasant touch of humor."

Monitors also praised Judge Duggan's thoroughness. One commented, "Judge Duggan asks very good questions aimed at getting to the bottom of the case." Another reported that he "does not accept embellished data in lieu of fact. [Judge] Duggan does his best to get the facts."

However, one monitor felt that Judge Duggan did not always take steps to ensure that people understood the proceedings properly: "Occasionally, he seemed to miss his mark, as in [one case] where [a boy] answered, 'Yeah,' to Judge Duggan's 'Do you understand?' The judge asked, 'What?' repeatedly, to the boy's continued 'yeahs,' and then finally asked, 'Is that a yes?' to which the boy answered, 'Yeah,' again – never, in my opinion, getting what the judge was driving at."

In a written response to a draft copy of this report, Judge Duggan responded, "It is important that the record be clear when a juvenile waives his or her rights to a trial and pleads guilty." He added, "If an answer is not clear, I usually try to elicit a clear "yes" or "no" by asking "what?" before suggesting what I thought the answer was."

The monitor added, "While I found Judge Duggan's lecture on Thomas Jefferson's connections to Albany personally, interesting, I question what benefit the boy in [a] case [today] derived from it, and wonder, since Judge Duggan's stated purpose for his assigned book reports are to learn more about the kids, if court time might have been better utilized by asking the boy about his current circumstances and interests."

In a written response to this monitor's comments regarding the book report, Judge Duggan stated that the book reports do "tell [him] a lot about the boy and his 'current circumstances.'" He added that the book report "serve several purposes" including "show[ing] whether the juvenile can follow instructions and complete an assignment," telling "whether the juvenile has age appropriate language skills" and "giv[ing] the juvenile an incentive to read and maybe a spark of hope and inspiration." Judge Duggan also noted, "In all cases, I would have reviewed an extensive and detailed probation report, often a 30 day psycho-social assessment, sometimes a family assessment, often a letter from the juvenile and report from his law guardian. The juvenile and his or her parent might also have expressed their thoughts and interests at prior court appearances. So, his [the juvenile's] interests and circumstances get pretty well covered in all cases."

Most monitors found that Judge Duggan made real efforts to reach people: One declared, "Judge Duggan is clearly committed to doing all he can to help people,

especially the children, in the cases that come before him.” They also applauded him for not tolerating any nonsense when resolving cases. A monitor noted, “Judge Duggan cares about the young people before him, and this includes a very firm hand at times: Today he did not hesitate to order placement far away to help the child.” Another added, “He is very much aware of some of the ‘games’ clients of the court will attempt to play and manages to keep the upper hand.”

Monitors commended Judge Duggan for his methods in working with children and young people. One noted that “[h]e has a drawer of books for kids if he wants them to write a report [and] also a box of stuffed animals if he needs them.” They consistently expressed their approval of his emphasis on education. In praising his methods, one observed: “Most importantly, Judge Duggan shows his genuine concern for the youngsters involved; he tries to get their attention with a stern talk, but also praising them for things well done. He assigns book reports!” The same monitor commented, “He is also very supportive in his comments when kids do well and show that they are turning around.” On one occasion, “[t]he judge also showed great sensitivity towards a developmentally disabled child who had a [juvenile delinquency] proceeding before him!”

Overall, monitors were pleased with Judge Duggan’s performance. One concluded: “A judge should make a difference in the lives of the people who come before him. [Judge] Duggan makes a difference.”

IV. THE HEARING EXAMINERS

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

Heidi Malaczynski, Esq.

Ms. Malaczynski received an associate's degree from Schenectady Community College, and a bachelor's degree from the State University of New York at Albany. She was awarded a Master of Science degree from Russell Sage College, and earned a law degree in 1987 from Albany Law School.

While teaching at Hudson Valley Community College, Ms. Malaczynski also worked at the Albany County Department of Probation. She left the Probation Department in 1986, and moved to the Albany County Attorney's Office in 1987, where she remained until 1993. From 1994 to the present, she has held her current position of Hearing Examiner in the Albany County Family Court. She also serves as a member of the Bethlehem Youth Court and the Child Abuse Task Force.

Monitors described Ms. Malaczynski as “quick,” “smart,” and “firm,” with a “very positive, friendly attitude.”

Monitors were particularly impressed with Ms. Malaczynski's treatment of those who came before her. According to one monitor, “[s]he treated all parties with respect and exhibited concern for their problems.” Another found that “[s]he is very conciliatory and considerate of individuals' singular predicaments.”

Monitors also felt that she had good command of her caseload and control of the proceedings. One observed, “Ms. Malaczynski was clearly fully informed on the background of the case, remembering prior appearances by [the parties].” Another reported, “Ms. Malaczynski has a friendly, pleasant manner and allows ample time for all parties to state their positions. She listens carefully to what is said, explains or reviews litigants' rights and goes over their options and what they need to do next.”

Overall, monitors were impressed with her performance. One monitor concluded: “[She] is a very positive member of court.”

John J. Reilly, Esq.

Mr. Reilly graduated from Siena College in 1981. After graduation, he worked for Liberty Mutual Insurance for three years before attending Albany Law Schools; he received his law degree in 1987.

From 1987 to 1988, Mr. Reilly worked both as a public defender for Albany County and for the private firm of Rutnick and Rutnick, Esq. From 1988 to 1998, he was a member of the Albany County District Attorney's Office, and from 1994 to 1998, he also taught at Siena College. From 1998 to the present, he has served as a Hearing Examiner in the Albany County Family Court.

At the time of the monitors' observations, Mr. Reilly had just assumed his position of hearing examiner, which they took into account in evaluating his performance. Overall, monitors gave him positive reviews.

One monitor observed, "I though[t] Mr. Reilly performed very well today, considering he had only been on the job a few days and this was his first DSS intake day. He was very considerate and respectful in his manner towards all before him, and established a pleasant tone that seemed to help put people at ease. He was thorough in informing litigants of their rights, and careful to make sure they understood what he said to them. He was patient about answering questions and sympathetic when people were distressed. He was, however, also not afraid to assert his authority, insisting, in several cases [on the day's calendar] on reading respondents their rights, even when they indicated they didn't care about them. He was careful to make sure people understood their obligations as well, explaining the child support guidelines and the consequences of failure to obey an order."

According to another monitor, "Mr. Reilly was as informed as possible, under the circumstances, about the cases, but was still clearly getting used to the system for organizing files, and [he] relied, to some extent, on his assistant Lisa and DSS personnel for background information on cases." However, the monitor added, "I have no doubt he will rank higher in this area once he has been in the job a little longer." Another added, "The examiner has only had this position for ten days. It is a learning process for him. He tried his best to be helpful and in one case was honest in admitting he would have to study to see which state had jurisdiction."

One monitor concluded, "I thought that he was doing a great job for being new."

Fernande Rossetti, Esq.

Biographical information is not included here for Ms. Rossetti, who returned to private practice shortly after the monitoring project commenced. She was succeeded by Mr. Reilly, whose biography is included above.

Overall, monitors were impressed with Ms. Rossetti's performance.

One monitor observed, "Ms. Rossetti is both very professional and at the same time pleasant in her demeanor, thus both giving the proceedings an air of dignity [and] showing respect and concern for those before her." Another found that "[s]he was very confident and thorough in her manner.

On one occasion, a monitor noted, "I thought she seemed bored at times," but conceded, "In fact, this day was very repetitive." The monitor added, "She was, however, attentive, and provided each party with ample time to present."

Monitors also praised her willingness to explain and to provide information. One reported, "She introduces herself to litigants and takes ample time to explain the proceedings, going over petitions, fully outlining rights and consequences of admissions and making sure that what she says is understood." Another added, "She was also willing to take time to answer questions and to give people information about how they could obtain help or services regarding issues that were not within her jurisdiction."

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.

Hon. Michael V. Tepedino

Hon. Michael V. Tepedino has served on the bench in various capacities for more than 40 years. From 1958 to 1966, he was a City Court Judge, and from 1966 to 1972, he served as a Police Court Judge. In 1972, he moved to the Family Court bench, where he remained as a judge until 1982. From 1982 to 1992, he was a Judicial Hearing Officer in Supreme Court, and from 1992 to the present, he has served in that same capacity in the Albany County Family Court.

When monitors observed Judge Tepedino, he was substituting for an absent hearing examiner. When evaluating his performance, they took into account the fact that he was not presiding over his regularly assigned caseload.

Monitors reported that Judge Tepedino was conscientious in handling unfamiliar cases. One noted, "Judge Tepedino carefully went over petitions, explained rights and made sure litigants understood the proceedings."

Monitors found that Judge Tepedino did not appear to be as in command of cases as other judicial personnel, but attributed this to his status as a substitute. One observed, "It is perhaps unfair to assess [a] temporary judge against performance ratings of regular judges. Judge Tepedino seemed confused at times, and also did not always recall information provided, nor did he 'know' cases. Another noted, "I think he was a retired judge and a substitute, so he seemed to ask the court clerk and stenographer a lot of questions, as he was not sure of the correct procedure." Monitors viewed this willingness to ask questions in a positive light: One reported, "[Judge Tepedino] was substituting for another judge. For this reason he was perhaps not as adequately prepared as he might have been, but asks many questions." Another added, "As a substitute for other judges, Judge Tepedino is understandably less well-informed about cases than the regularly sitting judges, [but he] received considerable help from his staff, and sought out additional assistance when needed."

Monitors also found that Judge Tepedino exhibited a gentle demeanor. However, some were concerned that this would not serve him well in contentious Family Court. One monitor observed, “He appears to be a very kind, sweet person. However, this group that appears in Family Court needs an extremely strong, forceful judge.” Others noted, “There was a more casual atmosphere to the proceedings under Judge Tepedino than I have seen in this court before,” and his “soft-spoken manner was not commanding.” Still, another monitor added, “Judge Tepedino seemed comfortable at [the] bench. His performance was not as sharp [or] crisp as [those of] others I have witnessed. However, he was knowledgeable about procedure.”

Monitors were divided on his control of the courtroom. One declared, “He was very considerate, but not as much in control as some of the other judges.” According to another, “however, [he] did take control of his courtroom when he thought it necessary, asking pointed questions and emphasizing the seriousness of the incident in [one case].” Nevertheless, this monitor was troubled by an episode that occurred on one occasion: “At the same time, he did, in this case, join in with others in making comments regarding [the litigant], which seem to me to encourage others in the court to continue this behavior.” After observing this episode, the monitor added, “I think it’s important for all those connected with this court to refrain at all times from the kind of casually-expressed opinions that were exchanged regarding the circumstances of [this] case, if the court is to maintain the appearance of impartiality and fairness. I think the opening up of this court to more public scrutiny will be a good influence in curbing this kind of talk.”

Another monitor was troubled by Judge Tepedino’s handling of a case involving visitation. The monitor reported that, “on [the] issue of whether [the] infant’s visits with father [should] be supervised or unsupervised, [the] judge assumed that there [was] no need to worry – ‘Father wouldn’t harm a baby’ – [the] father seemed like a nice guy, and [the] judge sounded naïve!”

Nonetheless, one monitor observed, “He was able to mediate with petitioners in [an] avuncular way to obtain some agreement on next steps, or [on] making conciliatory moves to resolve conflicts.” This monitor concluded that his “judgment was firm and in the interests of [the] children.”

Monitors did express some significant reservations about the utilization of JHOs in the Albany County Family Court. However, their concerns should not be regarded as criticisms of Judge Tepedino 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 suggested that the court “strengthen [the] back-up process for covering absences of judges with more assistance [and] information [given] to [the] replacements judges, or [provide a] greater ‘stable’ of back-up hearing officers.” Another monitor commented, “I question using retired judges. They do not appear to have the vim and vigor of one who handles cases on a daily basis.”

Again, monitors felt that these problems highlighted defects in the system, rather than in 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. They felt that the commendable efforts of judicial hearing officers to help manage caseloads were undermined by a lack of resources and continuity.

In a written response to a draft copy of this report, Judge Duggan stated, “It would be hard to underestimate the difficulty of the circumstances in which Judge Tepedino substitutes in Albany County Family Court . . . For starters, Judge Tepedino has no personal staff, no secretary, no court attorney.” Judge Duggan continued, “Often, he will have three different judge’s cases on his calendar on the same day [which] may require the use of different procedures and different forms, while working with different staff that may not be familiar with the procedures used by the assigned judge.” In his comments, Judge Duggan concluded, “Albany County Family Court would be paralyzed without the help of Judge Tepedino.”

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 sometimes were 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 the 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. One monitor provided a specific example: “A public defender, on this date, had [had] one month to make a relevant-to-the-case telephone call and still had not made the necessary call. Result: Case adjourned. Judge [Duggan] did chastise the public defender – rightly so. [The] judge also chastised those others [who were] unprepared. In all fairness to the respective parties – could this unpreparedness be because of too HEAVY a caseload? Also, note, it is my understanding that the salary for the parties is quite low.” (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.) This monitor was troubled by the public perception that this combination of enormous caseloads and inadequate compensation creates: “From my observation, I hope I never have to use a public defender, because I will end up in jail even though I may not be guilty. They are, I think, too overworked and underpaid. Therefore adequate representation is not forthcoming.” The monitor concluded, “This aspect of the court system must be corrected, like pronto! How can a lawyer adequately represent a party without being familiar with his or her case? Homework must be done and it often isn’t being done. Ergo, innocent person ends up a guilty person.”

Overall, however, monitors agreed that, “[w]ith exception of attorneys who received cases on assignment by court in session, most were well-prepared, deferential, and appropriate.” One monitor, however, strongly criticized “[o]ne attorney (either DSS or [a] law guardian . . .) did his work in court, but in the lobby area and in court between cases, he revealed information about petitioners freely and loudly.”

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.

Law guardians were among the lawyers that the monitors encountered most frequently during their evaluation of the Albany County Family Court, and as a general

matter, monitors were very impressed with their performance. One monitor's comment was representative: "The attorneys I saw today seemed prepared and appeared, for the most part, to serve the interests of their clients well." On numerous occasions, monitors praised the performances of specific law guardians. Monitors believed that these lawyers were singularly dedicated to the best interests of their clients.

One monitor observed, "Jeff Cohen, also a law guardian in several cases, was professional in his presentation and pleasant in manner." On another occasion, the monitor noted, "In [one case], Jeff Cohen, as law guardian, took time to quietly advise and encourage the young man he represented, telling him to speak up and 'hang in there . . . just do what [the judge] says.'" In still another instance, a monitor reported approvingly, "Jeffrey Cohen, law guardian for [the child in a case], outlined what things he felt needed to be addressed to serve the child's best interests, was pleasant in his behavior to all parties, and spoke to both parties afterwards outside the courtroom about the value of working things out themselves."

A monitor also commented, "Juli[e] Denison, in [one case,] clearly took her role as law guardian very seriously, spending time reading and talking with the mother, carefully presenting her recommendations to the court, and, as I observed on leaving the courtroom later, taking time for a subsequent discussion with [the father]." On another occasion, a monitor reported, "Juli[e] Denison also showed great concern in her role as law guardian in [another case], asking the court to protect [the] confidentiality of information she had obtained from the children, and particularly, [from] an older girl whose custody was not at issue in this case."

Monitors repeatedly commended James McSparron for his performance, finding that he was "informed and concerned and both professional and pleasant in his role as law guardian." One monitor observed, "James McSparron was prepared and courteous, and particularly as law guardian in [one case], showed informed concern for the welfare of his client, making a careful, well-argued case for his recommendations." On another occasion, this monitor added, "I also, in the course of spending some time in the waiting area, happened to observe Mr. McSparron conversing with a family in what I took to be his role as law guardian. He was warm and friendly to the children, with whom he seemed to have a relationship, and they jumped up eagerly to his invitation to 'Come on, guys,' as he shepherded them to the small conference area in the hallway, talking with them there while a woman I took to be their mother waited outside." A monitor did note that "in [one] case, another attorney and Mr. McSparron came into court exchanging words. Judge Maney pointed out the presence of monitors in the courtroom, in the course of admonishing them to preserve decorum." However, the monitor admitted that "[h]is remarks seemed to be principally directed at [the other attorney]."

Monitors also praised Keith St. John* for his work as a law guardian. One noted that "Keith St. John and [another attorney] worked hard in [a volatile] case to keep the young men who they represented calm, attentive, and informed of the seriousness of the situation and the possible consequences involved." On a different occasion, the same

* Mr. St. John, who, in addition to other professional employment, serves as a law guardian, is a member of the Board of Directors of the Committee for Modern Courts, a private, nonprofit, nonpartisan lobbying and advocacy organization affiliated with the Fund for Modern Courts.

monitor reported, “Keith St. John was prepared and did well by his client in [one case], convincingly noting that his client did complete domestic violence and anger management programs, but that the domestic violence [program] had not been done at Equinox because he had been ‘referred out’ by them to another program.” According to another monitor, “Keith St. John represents young people very well. He is calm, caring, and prepared.” This monitor added that “law guardians, as a group, do a commendable job.” Finally, another concluded, “I was particularly impressed with Keith St. John.

Monitors also applauded the efforts of law guardian Ruth Supovitz. “As usual” was a frequent expression used in praising her performance; they commonly reported that she was “professional in demeanor, well informed, and showed concern for the matter at hand.” One monitor noted that, on one occasion, “Ruth Supovitz appeared to have given considerable time and assistance to her newly assigned client . . . in [a] PINS case.” In another instance, a monitor added, “Ms. Supovitz, as law guardian in [two] cases, performed in her usual professional, concerned manner; [she] was well-prepared and performed well for her client in [another case], despite the fact that she was unable to resist rolling her eyes occasionally at the line of questioning pursued by her opponent and allowed by Judge Duggan over her objections.

Occasionally, some law guardians’ performances did not fare so well. For example, a monitor reported that “[I]n one complex case, the appointed law guardian had not seen the child, who was in a residential facility for psychiatric problems. The lawyers representing the parents (particularly the mother’s) were overtly hostile to each other. In [this] case, the father was living in Central Islip, Long Island, and there was difficulty in communicating with him. His visitation had been suspended, but the judge declared forcibly that that did not mean suspension of communication. The law guardian’s lack of preparedness delayed the case, because the judge needed her input.”

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 who represented indigent litigants in Family Court performed extraordinarily well in the face of onerous conditions. According to one monitor, “Attorneys seem as well prepared as possible, although in some cases, law guardians and assigned counsel who had been very recently assigned had little information, or had been unable to reach their clients.” Another observed, “Lawyers who have just been assigned cases are not up to speed, but these are usually first appearances of petitioners or when [lawyers] substitute for a colleague.” Still another noted, “One [attorney] was not very knowledgeable about [the] case – [the lawyer] had just met [the] client in [the] last 10 minutes. [The] case was adjourned.” Another echoed this concern: “Some of [the] lawyers seem to have just met [their] clients.”

The monitors' primary criticism was not that the quality of court-appointed 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. One monitor also suggested that the court and the public defender's office should do “whatever is necessary to insure that assigned counsel from the public defender's office are able to meet with their clients and have adequate time to prepare their cases.”

Among the court-appointed lawyers that monitors observed, William Andrews was found to be especially effective under these difficult circumstances. One commented, “William Andrews, the [appointed attorney] representing [one participant] took only a small role in the proceedings, but he was most probably hampered by the absence of his client, whom he had notified of the court appearance, but [had] not heard from.” On another occasion, a monitor reported, “Mr. Andrews presented his client's position before Judge Tobin clearly [and] succinctly, conferring quietly with [his client] at intervals during the proceedings. I also observed him later, outside the courtroom, taking time to explain points of law regarding custody to [his client], and advising him on how to proceed in terms of visitation.” On a different day, “Mr. William Andrews was appointed during court [to represent the] respondents in two cases. He performed well on short notice, and although he did tell his client in [one] case to ‘keep your mouth shut,’ [she] appeared agitated and not in control, and the instruction seemed to settle her down without appearing to further distress or offend her.”

Monitors also commended Pamela Joern. One monitor commented, “Pamela Joern, who was assigned in court to represent [a client] in [one of the day's cases], worked hard to get an overview of the case – reading over the file furiously, while at the same time following the proceedings, which were adjourned, in part, so she could have time to consult with her client.” On another occasion, a monitor noted, “in [one case,

she] said she hadn't received notice and had just seen her client coming in, but she presented her client's position professionally on the record, and was courteous and pleasant in her interactions."

A monitor also reported, "In [another case, one of the participants] said his attorney, Mr. Kevin O'Brien, was not here yet. Judge Tobin put in a call to his office, noting this was the third time this had happened. She adjourned the case so that counsel and [the] law guardian would have a chance to confer. Later, Mr. O'Brien came in briefly to tell Judge Tobin that, while there had been a flurry of phone calls over the weekend, he had not actually been retained and didn't know if he would be."

Finally, a monitor commended "Lauren Kurtzman, from the public defender's office, [who] had a number of cases on today, was pleasant in her manner, and seem[ed] prepared for most of her cases, except in [one case] in which she represented [one of today's participants]. She told Judge Tobin she hadn't had an opportunity to talk with her client, didn't have copies of all the orders, and was missing the family offense petition. Even so, she made every effort for her client, entering a denial of the allegation, protesting the drug and alcohol evaluation her client objected to. The case was adjourned to a later date, with all temporary orders staying in place."

Government Attorneys

Attorneys from the Albany 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.

Monitors found that one DSS attorney, Maura Spratt, performed especially effectively. They described her "professional," "well-prepared," and "very efficient in [her] presentations." On one occasion, a monitor observed that "Maura Spratt was, as usual, well prepared, fully informed, efficient in her presentation and pleasant in manner"; on another day, she was found to be, "as usual, well prepared and professional and courteous in her manner." A monitor also reported, "In the dispositional hearing [in another case] , Maura Spratt presented the DSS case in her usual informed, professional, and concerned manner, apologizing for not being available earlier."

Monitors also commended DSS attorney James Green. One monitor noted, "James Green, representing DSS, was informed, efficient, and pleasant to everyone." On another occasion, a monitor reported, "One attorney (James Green, Albany DSS) was involved in several cases. He is well-prepared and helpful." Another added, "The attorney from Social Services, James Green, seemed very well-prepared in each case that he was responsible for. He treated his clients with respect."

Monitors did have some criticism, but they were directed at the Department as a whole, rather than at specific attorneys. One monitor observed, "It seems to me [that] the DSS Legal Department needs to plan better for this court to insure that an attorney who

has had an opportunity to familiarize [himself or herself] with a case is available to appear in court.” The monitor added, “[There should be] better coordination on the Department of Social Services’ part to be sure they have an adequate number of attorneys available to cover the calendar.”

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. A monitor commended one lawyer: “Mr. Summers, a private attorney [representing a participant in one of the cases] was fully in command in the facts of the case and performed well for his client. He was pleasant to [another participant], even suggesting that it would be in her interest to seek counsel, but did (when Mr. Reilly suggested that perhaps an agreement could be worked out in the interval before the adjournment date) say that it was his policy not to talk directly to the opposing party in a *pro se* situation except if the communication were in open court or in writing.”

Overall, monitors found that private attorneys represented their clients well. However, they did have a few criticisms. One reported, “[A] private attorney, Ms. Millstein, [was] very long-winded.” On one occasion, a monitor noted, “One lawyer whose perspective differed from [the] judge’s repeated himself and his views on best procedure. He was, I believe, a private attorney. [The] judge afterward suggested that private attorneys tended to want to keep on coming back to string things along.” In another instance, a monitor concluded, “Some of the private attorneys, in particular, need to be better prepared to work toward a quicker resolution of the cases!”

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 described court personnel as “very pleasant, very helpful,” and “very efficient,” with “a positive attitude.”

Court Clerks

Family Court clerks are an integral part of the court's operations. In the Albany County Family Court, the Chief Clerk and Deputy Chief Clerk are responsible for a wide variety of functions, from petition intake to maintenance of court records, and oversee the daily operations of the court.

The clerks are assisted by a variety of administrative and support staff, who process much of the paperwork. The support staff operates the petition intake desks and assist litigants with preparation of their paperwork. 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 different days, one monitor evaluated intake proceedings, and generally commended the staff members handling them for their efforts to assist litigants. The monitor reported that, on one occasion, a young woman “was covering phones and speaking to people at the desk, although she apparently didn’t have autonomy to sign off on papers. I found out later she was a clerk’s assistant. While she wasn’t as knowledgeable as some of the more experienced people I’ve observed at the desk, she was very pleasant and polite, and promptly turned cases she couldn’t handle over to Steve. Steve was, as usual, efficient, pleasant, and very helpful – even helping a man for whom this court did not have jurisdiction figure out where to go, and giving him the phone number for [the] Rensselaer [County] Family Court. He also empathized with a man who wanted to file for custody, but [said that] paternity had been established in another court, agreeing that it was too bad they were not advanced enough to be linked up in such a way [as] to get that filiation [order] directly from another court.”

On another occasion, the monitor noted, “I spent a half hour observing downstairs in the clerk’s office, where people come to file petitions or get information. A woman named Donna was helping people when I first arrived. She was pleasant and efficient. At one point, a man who had no current address for a respondent came in. She explained he could use a ‘last known address.’ When asked if support collection could help, she

said she didn't know, but offered to check for him. She may have lost track of helping him, [being busy] with other things, because he did wait quite awhile, and when he went up to the desk again, she apologized for not getting back to him. Later, Steve, who had joined her at the desk, took him upstairs. Steve was very pleasant and helpful explaining procedures to people, and asking helpful questions, such as, 'Do you want this address kept confidential?'" People line up at the desk informally, and while this generally seems to work well, some people seem a little confused about how it works, hesitating, or, in one case, asking me if they were 'taking numbers.'"

On a third day, the monitor again "spent a little time, around one o'clock, down at the main desk in the clerk's office. The monitor added, "It was crowded when I arrived, with seven people in line. Steve was alone on the desk, but managed, in his friendly, efficient way, to take care of everyone in only about five minutes."

Court clerks work in the courtrooms, assisting judicial personnel with case management and other duties. As a general matter, monitors commended their performance. One monitor commented, "The court clerk was very helpful and polite. In fact, he went downstairs to get me a calendar for today, which I neglected to get when I arrived." A monitor also commended a "court clerk [who] provided Kleenex tissues to a lady in tears." On another occasion, another monitor reported, "Judge Maney's clerk today was especially helpful, alerting Judge Maney to the fact that there might be some confusion in a respondent's mind regarding the total cost for paternity testing."

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 found that the officers of the Albany County Family Court were helpful; indeed, one monitor described an officer as "overly helpful." On one occasion, a monitor criticized the fact that court officers made "no introduction" at the beginning of proceedings. However, some monitors praised court officers for providing additional information: One noted, "[An officer] provided me with a calendar." Another observed, "During the session, I was given an updated court schedule (I had one in hand from [the morning]), which I [had] not request[ed]."

Court Reporters

Court reporters are responsible for producing official transcripts of court proceedings. Not all judicial personnel in the Albany County Family Court utilize court reporters; Judge Duggan's courtroom and 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. Until recently, court reporters were required for juvenile delinquency, PINS, and family offense cases. However, OCA, by administrative directive, now permits the taping of all proceedings in Family Court. In fact, the Albany County Family Court is part of a pilot project to test a digital recording system which records proceedings in the three courtrooms mentioned above directly onto a centrally located server.

Monitors had relatively little contact with the court reporters. However, one noted approvingly, "It was good to see a black court reporter in the court today, since there is little staff diversity!" Another was ambivalent: "Judy, the reporter, especially worked hard to help Judge Tepedino, but also made some inappropriate comments."

Court Interpreters

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

Again, monitors had relatively little contact with interpreters. However, a monitor reported that on one occasion, while an interpreter was indeed available, there was "still some difficulty in a multi-language case!"

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 Albany 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.

Monitors were frequently troubled by agencies' seeming inability either to complete reports in a timely manner or to communicate findings to the court. One monitor observed, "Often, the court's hands are tied, waiting for services from other agencies. Perhaps better funding for some of these services might speed up the process." On another occasion, a monitor commented, "Once again, cases such as [today's] PINS case, illustrate the degree to which this court's ability to serve the public is affected by other agencies over whose funding and policies the court has little control. Greater coordination between these agencies, particularly the Department of Social Services, would certainly be useful."

On a different day, this monitor also noted, "Again, the efficiency of this court could be much improved, in my opinion, by better coordination with those agencies (and, no doubt, better funding of those agencies) whose services are necessary to the court's operations, such as St. Catherine's, Probation, and the Department of Social Services. Judge Duggan suggested today that having a DSS ombudsman would be helpful in this respect. I also wonder if greater use of CASA services would be possible and helpful." Another monitor added, "Since [the] court depends on timely submission of reports, greater responsiveness from other agencies is needed at times. This may well be a funding problem!"

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.

Overall, monitors found that "DSS personnel were efficient in their presentations and pleasant in manner." They found the performances of several representatives to be particularly noteworthy: "Ms. Penny showed considerable compassion, particularly toward [a respondent] in [one case], as did Ms. Healy, offering, for example, in [another

case], to take time to ‘go over everything with anyone’ when [one party] asked for an adjournment so she could take advantage of an opportunity to obtain free legal advice at work.” Mark Duncan received special praise. Monitors reported that he “works hard to find and arrange placements, and is attentive and courteous to the people he deals with.” One monitor noted, “Mr. Duncan appears to work very hard researching and arranging placements for juveniles, although it seems space is limited, and on several occasions, the first choice for placement had no availability and other plans had to be made.” Another added, “Mark Duncan of DSS was always there and trying hard to place kids – he seemed to take his job very seriously!”

Problems occasionally arose. One monitor reported, “In two instances, DSS was not prepared with reports – Judge [Duggan] was clear that this was not acceptable.” Another commented, “I think [the] New York State Department of Social Services is bursting at the seams, so to speak. In Albany County alone, it appears that tons of people are utilizing their services on a daily basis.” Another described an incident in which “the County DSS, in a case of [a] child who had molested another child, made it clear to the law guardian that it would not pay \$500 per day for an intensive in-patient treatment program, but would only consider a state facility. It was obvious [that] the lack of referral options for juvenile sex offenders is a problem for a Family Court judge.” After observing a separate case, a monitor declared, “I am concerned about how the mistake by the Support Collection Unit and DSS that precipitated the difficulties in [this] case came about, and what could be done to prevent similar errors in the future from leading to disruptions in children’s support.”

One monitor noted approvingly that “Social Services now has a computer terminal and [a] person assigned to the court for fast answers to questions. [This person] was asked about [a] payment that had been made, [and] produced a summary in minutes.” However, another monitor reported that “Judge Maney mentioned [that] it would be useful to have a DSS case manager, with computer access, on the premises to facilitate placement information and arrangements. He mentioned how successful he believes Erie County has been in getting OCA and DSS people working together.”

Department of Probation

The Department of Probation assists the Family Court with evaluation of persons 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.

Monitors observed representatives of the Probation Department less frequently than they did employees of the Department of Social Services. As a general matter, they found most Probation employees to be “prepared” and “professional.”

One monitor noted that “Probation Officer George Hakimian was in the courtroom several times, and he seemed very well prepared each time.” Another reported, “All seemed to perform appropriately, and were respectful and courteous. However, [in one instance involving] a warrant control date on a PINS case in which the young man had

failed to appear at a prior court date, Judge Duggan reprimanded [a probation officer], telling him, 'You must c.c. the Law Guardian on anything that comes to the court,' adding, 'I don't know why your department has such a hard time with this.'

Children's Center Staff

One monitor visited the Children's Center to assess its operations and staffing. On one occasion, the monitor observed, "It was a quiet day, with only one infant and three older girls using the computer The room is clean and bright, with an attractive array of toys and materials. There were two caregivers on duty. One, a young woman holding the infant, was warm and affectionate in her manner with him. The other young woman was friendly and outgoing, and interacted positively with the young girls at the computer."

After a second visit, the monitor reported, "It was, as before, clean and bright, with a good variety of toys and education materials. The staff was friendly and welcoming to all, and warm and encouraging in their interactions with the four children in attendance today. I caught them on another quiet morning, but in talking to them about recent busier days, I got the impression they are able to maintain a positive, nurturing atmosphere, even when caring for considerably more children."

IX. OPERATIONS AND FACILITIES

Delays and Adjournments

Monitors reported that delays and adjournments were rampant in the Albany County Family Court. Usually, the cause was tardiness or a failure to appear, either by parties or by attorneys. On one occasion, monitors reported, “[I]n the beginning, we were waiting for a stenographer for a few minutes.”

Whether delays were explained appeared to depend upon the judge or hearing officer and the specific circumstances. Some monitors reported that delays were indeed explained – for example, by Judge Tepedino: “Delays were explained – [they were due to] ‘no shows’ or late arrivals, but Judge [Tepedino] moved on to [the] next case.” Another monitor reported: “When I arrived, court was not in session. Judy, the court reporter, said they were waiting for attorneys, but I got the impression from Todd that he was looking for litigants for 9:00 cases, as well. Also, there was no clerk present when I first came in – he arrived later. They were running late by mid-morning, which the judge commented on (‘We’re doing poorly here’), but they did have a number of add-ons to the calendar, and Judge Tepedino needed to take time to get background information and consult with staff on some matters.”

On other occasions, however, “[d]elays were not explained. Judge [Maney] took time to talk to court monitors. Cases [that were] scheduled at 9:30 were heard at 10:15. [Those] scheduled for 10:15 [were] heard 11:20.” After a session in Judge Maney’s courtroom, another monitor reported: “Today’s session started at 9:15. Judge Maney explained to us that he was waiting for the court reporter, who had been delayed. Since I was in the court, I don’t know what announcements or explanations were made to those waiting to appear. Judge Maney apologized occasionally to those appearing before him for running late, and asked his court attendant to pick up the pace. But he also took time to talk to monitors about cases between cases, and it seemed to me his staff would wait for him at these times before bringing people in.”

Sometimes, delays resulted simply from circumstances in the court on the day. One monitor observed, “There were no delays, as such; the calendar was running a little behind schedule, but given that this was Mr. Reilly’s fourth day on the job and his first DSS intake morning, I thought he moved things along very well.” On another occasion, a monitor reported that there were “[d]elays in locating files. Case names were the same as [those of the] previous case’s petitioners. They may have been mixed up. Clerks [and] assistants check[ed] all possibilities. [They] proceeded on [the] basis of documents DSS had on hand; copies [were] made & circulated. Judge [Tepedino] seemed confused about paperwork at times – clerks and assistants kept things going. [There was also] some waiting for parties to be seated.” In addition, another monitor added, “[t]here were positive uses of time between cases, when [the] judge was approached by court personnel to sign or issue orders [or] releases, vacate warrants, etc.” This monitor felt that these were “[n]ot to be considered delays, [because] their expeditious action increase court efficiency.”

Monitors found the delays troubling for a number of reasons. One monitor observed, “While I’m sure the state’s decision to mandate against paying the additional cost of proof of service on first appearances is an effort to save taxpayers money, I could see today how it negatively impacts court efficiency in a way the court has no control over. They can only guess how many cases put on the calendar will actually result in appearances. It would certainly be useful if there was some way for the court itself to have some input into the policies of other agencies that directly affect its functioning.” On a later occasion, this monitor noted, “Again, it seemed there was time wasted today because of non-appearances and adjournments for service.” The monitor added, “also, it would seem to improve efficiency if there were more direct ways for courts to communicate with each other re[garding] pending matters, such as findings of paternity and other matters.”

Finally, the repeated delays and adjournments highlighted another problem that, monitors found, impacts the entire court system: the antiquated structure of New York’s courts. One monitor reported, “One of today’s cases ([with] a family offense [case] also pending in criminal court) clearly showed the benefits court restructuring would have for the litigants – and the greater efficiency and quicker resolution of cases.” Another monitor declared: “It seems very hard that, in cases [like one I observed today], [one party], who told Judge Tobin she cleans houses and loses income every time she has to appear in court, has to deal with two separate court systems in trying to obtain support for her children, and then discovers that the two courts have no way of coordinating or even communicating with each other on matters of such great import to her. Clearly, the merger of Supreme [Court] and Family Court proposed in Judge Kaye’s court restructuring proposal would greatly improve service to the public in cases such as this.”

Recent Operational Changes

Since the end of the monitoring period, new practices and technology have been introduced. Forms, including those used by self-represented litigants, have been simplified; a family file system has been established in which all matters pertaining to one family are kept together; and a team system has been instituted in which each judge has a permanently assigned court staff trained as to all of the functions of that part. Also, the introduction of computers with internet access and fax machines in the courtroom allows access to instant information and accelerates the productions of orders.

Facilities

Since the monitors' last evaluation of the Albany County Family Court in 1991, the court has seen a 60% increase in its caseload. Monitors found that the facility on Van Tromp Street is no longer adequate to handle the heavy traffic that enters the court each day. In 1999, Albany County's Court Facilities Committee promulgated a new court facilities plan that included construction of an entirely new facility for the Family Court. The monitors' findings, summarized below, underscore the urgent need for new and greater space.

Space shortages existed throughout the entire facility. The monitors began by evaluating the sufficiency of each courtroom and hearing room; their assessments follow.

Judge Tobin's Courtroom

Monitors generally found that "Judge Tobin could use a somewhat larger courtroom." According to one monitor, "Judge Tobin's court is the smallest of the three courtrooms, but was adequate in size, except in one case (. . .) where there were a number of people from different agencies attending, in addition to the family, and there were not enough chairs for everyone." On another occasion, the same monitor commented, "Judge Tobin's courtroom, as noted before, is small, and was crowded at times today, with not enough seating for all in attendance." Other monitors agreed: "Pleasant, [but] at times a bit too small, when a case has many parties"; "at times, all chairs, plus, [were] filled, large numbers of family members and court-related personnel [were] in [the] room, [and the] courtroom seems smaller, [with] fewer chairs, than other courtrooms"; "not much public seating [was] available – slightly cramped." One monitor observed, the seating arrangements for the family members in several cases was just sufficient. The size of the courtroom is just adequate." Another added, "[Judge] Tobin needs a much larger room. Her room is really too small." One monitor concluded, "While courtroom space limitations may only be an occasional problem, that should be considered in future planning for this court."

Judge Tobin's courtroom was not always comfortable. Monitors noted that, as in Judge Maney's courtroom, visibility can be a problem. While one monitor found Judge Tobin's courtroom "bright and pleasant," others found the light "a little glaring from the windows." It also was frequently warm and stuffy. In one instance, a monitor reported, "[f]or [the] first hour, [there was] 'no window open because of outside noise' (per the judge), [and it was] quite close and warm until [the] air conditioning came on." On another occasion, a monitor commented that it "was close and stuffy today." This monitor added, "Better ventilation and temperature control would make the room more comfortable. Air quality and temperature was again uneven. The waiting area outside the courtrooms was cold, while the main waiting area, which was fairly crowded today, was hot and stuffy."

However, monitors praised Judge Tobin for her efforts to make the room as comfortable as possible. One commented, "It's pleasant enough, and Judge Tobin adds [a] personal touch with a vase of flowers." This pleased another monitor, who noted that "[s]he

also brings flowers from her garden to put on her bench. A nice touch.” One monitor concluded, “This court[room] is an improvement over the court[room] in the ‘old’ building.”

Judge Maney’s Courtroom

Monitors generally agreed that Judge Maney’s courtroom was “nice, clean and bright, [and] adequate for most proceedings.” One monitor described it as of “modest size, adequate for [the] cases brought, clean, light, [and] in good repair.”

However, monitors had difficulty observing proceedings at certain times of day. One commented, “The light from the windows was glaring.” Another noted, “[The] window’s brightness hurt my eyes.”

Another monitor reported that the courtroom was “excessively air-conditioned and quite cold after sitting any length of time.” On another occasion, the same monitor added, “I found it cold, sitting for a full morning, but didn’t notice any discomfort in others.”

One monitor also noted that “Judge [Maney’s] phone rings [during proceedings] – a blinking light might be better.”

Judge Duggan’s Courtroom

Overall, monitors found Judge Duggan’s courtroom to be “clean and neat,” although “small.” They reported that the “lighting was good,” the “air conditioning [was] good,” and the room “was not crowded or cluttered.”

Monitors were divided on the amount of space in Judge Duggan’s courtroom. One declared that the room was “[l]arger than other courtrooms in [the] Albany County Family Court [that] I have seen.” Another described the space as “[n]ice, and efficiently used!” According to another, there was “adequate seating for family members.” However, one monitor observed, “It could be a bit more spacious!”

Nonetheless, monitors approved of the use made of the space. One monitor commented that it was “well-lighted and nicely appointed, with art work relating to children and families. It is efficiently organized to fully utilize computer access, and Judge Duggan keeps a supply of books for reports he sometimes assigns kids to do and toys he offers to those small children who appear in his courtroom.” Another found that it was “nicely decorated, [with] framed, tasteful paintings, [and] wallpaper and paint [that] match to create a sense of warmth. Yet another added, “It’s a pleasant courtroom, with the judge’s personal touches, and nice family-type photos on the walls.”

Monitors also noted that the room was “not as bright as the other two courtrooms, which have an eastern window exposure. Space is used efficiently, including for computer equipment, which the judge uses for maximum efficiency.” However, one

monitor “found the room cold after sitting any length of time, and noticed clerks were wearing sweaters.”

Hearing Rooms

Monitors repeatedly criticized the hearing rooms, noting that they were uniformly small, with poor ventilation and temperature control. They found that “the entire hearing examiners’ area seems short on space.” One monitor commented, “The main waiting room was crowded this morning, and again, I noted clients and attorneys huddled into corners for lack of conference areas.”

One monitor reported, “Ms. Malaczynski’s hearing room is small and feels cramped [when] respondents, petitioners, attorneys, and observers are all present.” This monitor found the room “nicely appointed, however, and well-lighted, with two good-sized windows and overhead lights,” but also “found the room cold.”

Mr. Reilly’s hearing room suffered from similar deficiencies: “This hearing examiner’s room is small – making it crowded at times. Also, without any windows, it has a closed-in feeling, and can become warm and stuffy during the course of a long morning, such as this one.”

A monitor added, “The room of the hearing examiner had no outside window, [and] the room was small, [but] well-lighted. I could hear very well. If only four people or so come in at one time, it is adequate.” However, another disagreed: “The room is very cramped. It was awkward for the monitors to have to face the principals involved.” This monitor concluded, “The hearing examiner’s room could be larger.”

Mr. Reilly's used the hearing room previously occupied by Ms. Rossetti. While observing her, monitors expressed similar criticisms: “This room is small, and although the artificial light is adequate, the lack of windows makes it feel closed-in, stuffy, and rather unpleasant to be in for any length of time.” According to another monitor, the “[r]oom was adequate for [the] proceeding [I] witnessed – but smaller than desirable. It was clean, [with] no windows, [and] full of furniture. [The hearing examiner] did not have adequate space to spread [her] files (she used [the] floor).” However, this monitor found that the room maintained a “[c]omfortable temperature on a hot, rainy day.”

Another monitor noted that, outside the hearing room, “[t]he waiting room was packed, not comfortable, and very warm – which was mentioned, as people came into cooler space. Since there was little elbowroom, some people did not have forms filled out that might have expedited time in court. If forms are available to clients, there ought to be an area on which one could sit and write.”

After visiting Judge Tepedino’s hearing room, one monitor commented, “This is a small, clean, decent courtroom.” Again, however, the monitor added that “[m]ore room is desirable – especially when cases include a variety of services, representatives, and relatives.” Another noted that there “may be a need for some conference area.”

Severe Overcrowding

Monitors repeatedly noted that the Albany County Family Court suffered from a severe shortage of space. The overcrowding extended from courtrooms to waiting areas, and created uncomfortable conditions both for those visiting the court and for those who work there. A lack of conferencing space also forced attorneys and clients to meet in corridors, in the corners of public waiting areas, and in the back of courtrooms, creating distractions and jeopardizing attorney/client privilege.

Complaints were rampant. One monitor observed, “The general waiting area was extremely crowded this morning. Just before lunch, I noticed attorneys and clients were huddled in corners, trying to create a little privacy for conferencing.” On another occasion, a monitor noted that, “although wait areas were not ‘maxed’ out” on this day, “[l]awyers [and] clients [were] having discussions in any corner available.” The monitor insisted, “[The court] need[s] to provide some privacy for conferencing outside the court area.”

One monitor disagreed, commenting, “The waiting room seems fine – I recall it being very cramped the last time we were here.” However, other monitors consistently emphasized that additional space was essential to the effective operation of the court: “The waiting area is not large enough. There is also more need for private consultation space.” Others added that “the waiting area can get very crowded and conference space is very limited,” and “[t]he court needs more spacious waiting areas and more spaces for attorney client conferencing.” In addition, they found that the overcrowding affected temperature control and air quality. One declared, “This court needs more space and a better, more evenly-regulated ventilation system.” On another occasion, a monitor commented that the court needed a “better balance of air conditioning and ventilation – some areas are cold, others warm and close.”

Finally, monitors again emphasized the need for larger hearing rooms. One observed, “The hearing examiners definitely need more space. The hearing rooms are small.” Another added, “[The court] needs a little more space in [the] hearing rooms. The waiting area is crowded and heats up.”

Audibility

Lack of audibility was a constant problem in the Albany County Family Court. Monitors repeatedly observed that they “[c]ould not hear [litigants, and] sometimes could not hear attorneys.” They noted that litigants “have no microphones,” and recommended that microphones be provided for all participants in each courtroom and hearing room.

In addition, monitors reported other factors contributing to poor audibility: “[The] swinging gate [is] noisy [and] distracting,” and it is “noisy outside courtroom.” One monitor commented, “The room is pleasant enough, but at times prone to penetration of outside noise from the hallways.” This monitor added that the court needs “better control of outside noise – mostly from attorneys waiting in the hallway, talking to clients.” On another occasion, a monitor added, “Today, much noise penetrated from hallways. In the

absence of a better, more insulated facility, perhaps court personnel outside the courtrooms need to be more strict about enforcing quiet in the hallways outside the courtrooms.”

Other Facilities Problems

In addition to the overwhelming need for additional space, monitors observed a variety of miscellaneous facilities problems during the course of their observations. One monitor reported that an “elevator rug is a tripping [hazard]” because it is “rumpled.” Another recounted an episode in which “extreme rains the day before” necessitated the closing of the children’s center, because the “lowest level of [the] courthouse was flooded.” A third observed that “the clerical area and file storage area are also inadequate and crowded.” Another noted, “There was no one at [the] table in [the] waiting area where ‘you must sign in’ to direct court clients at the beginning of the session, when people need some guidance.”

Finally, monitors reported that restroom facilities frequently were in appalling condition. One monitor noted that there was “[o]nly one toilet on each floor. They start out clean, but by the end of [the] day, they are a mess and out of supplies. Given the large number of people using [the] courthouse, one per floor is grossly inadequate.” Another added, “[There is only one toilet [on] each floor,” and on the “first floor, [there is] no baby-changing facility,” although the “second floor has one.”

Monitors were very pleased to see the changing table in the second-floor restroom. One noted, “When we were here last, a security guard asked me to put in the report that there should be a changing table in the bathroom. I’m pleased to see there is one.” Another was “[g]lad to see a changing table in [the] ladies’ room for changing diapers.”

However, monitors felt strongly that repairs and daily maintenance needed improvement. One monitor commented, “During the middle of the day, when I used the ladies’ room, the towel holder was folded down from the wall, preventing access to the toweling.” Monitors also added that “[t]he bathroom was out of toilet paper in the middle of the day,” and “[the] bathroom should be checked for supplies more frequently.”

X. RECOMMENDATIONS

1. ***The New York State Legislature should pass, and the Governor should sign, 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 monitors frequently observed cases that were fragmented between the Family Court and the Supreme Court, or the Family Court and a criminal court. They also witnessed the disruption that results from such overlapping jurisdiction, when there is frequently no communication between the courts, and no coordination among the proceedings. 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 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 Albany 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.

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

As the caseload of the Albany County Family Court has expanded, so has the court's attendant need for space. The monitors found it commendable that the County was mindful of costs to taxpayers. However, they strongly believed that the County should be equally mindful of the fact that the current Family Court facility was never intended to be more than a temporary solution; moreover, in less than a decade, the court had outgrown its facilities. The small size of the hearing examiners' rooms raises potential security hazards. The waiting rooms become so crowded that litigants and their families have no place to sit, and the poor ventilation and temperature control result in overheating. Conferencing space is non-existent: Attorneys and their clients must conduct discussions in public waiting areas, corridors, and the backs of courtrooms, jeopardizing attorney/client privilege.

While the monitors commend the County for its recent efforts to find new facilities, they believe that those who use the Family Court can no longer wait. The monitors urge the County's immediate compliance with the mandate of the State Court Facilities Act of 1987, via construction of adequate facilities to house the Albany County Family Court. They also emphasize the necessity of providing for future caseload growth, access for those with physical disabilities, access to parking, and proximity to other courts and agencies.

4. *The County should improve housekeeping and maintenance in the Albany County Family Court.*

The monitors were appalled by the condition of the restrooms in the Albany County Family Court. It was clear to the monitors that there are not enough restrooms to serve the high volume of traffic in the court each day. As a result, they felt that it was doubly important that the existing restrooms be properly maintained. However, they repeatedly noted that, by the middle of the day, such basic supplies as toilet paper were gone, and the rooms were "a mess." In addition, monitors reported that ruffled carpet in an elevator created a safety hazard, and after heavy rains, the lower level of the court was flooded and unusable. Monitors were convinced that such safety hazards and deficiencies in essential maintenance and housekeeping created an environment for staff and litigants that is lacking in basic human dignity. They urged the County to rectify the situation immediately, by allocating sufficient resources and staffing to ensure proper maintenance.

5. *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. In addition, agencies frequently failed to communicate with court personnel. 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.

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

Delays and adjournments in the Albany 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.

Monitors believe that there is an urgent need to reduce the number of non-appearances in the Albany 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.

To help reduce delays and adjournments resulting from non-appearances and to adjudicate cases in a more timely and efficient manner, monitors recommend that a funding source should be found to allow the Albany County Sheriff's Department to hire additional process servers.

ACKNOWLEDGMENTS

The Capital District Court Monitors and the Fund for Modern Courts wish to thank Judge Tobin, Judge Maney, Judge Duggan, Ms. Malaczynski, Mr. Reilly, Ms. Rossetti, and Judge Tepedino 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. We also would like to thank Judge Tobin and Judge Duggan for their thoughtful comments, which resulted in a more accurate report.

Special thanks also go to Chief Clerk William Person for his 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 Thomas Keegan 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 and Modern Courts Deputy Director Barbara E. Reed, with editorial assistance from the monitors.

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