



**A CALL TO ACTION:  
THE CRISIS IN FAMILY COURT**

**REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK  
RECOMMENDATIONS FOR LEADERSHIP AND REFORM**

**The Fund for Modern Courts  
Family Court Task Force  
February 2009**

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# **A CALL TO ACTION: THE CRISIS IN FAMILY COURT**

## **EXECUTIVE SUMMARY**

The Fund for Modern Courts established a Task Force on Family Court in the summer of 2008. The goal set by the Task Force was to present to the new Chief Judge an outline of recommendations for reforming the Family Court. The crisis in Family Court was the impetus for the work of the Task Force. After conducting a series of interviews and reviewing previous reports, the Task Force has prepared and respectfully presents the enclosed [A Call to Action: The Crisis in Family Court: Recommendations for Leadership and Reform](#).

The Task Force fully understands that facing the ongoing crisis and emergency now present in the New York State Family Courts present a most difficult task, but it is a challenge that needs to be met. This is especially true while we are facing unprecedented negative economic conditions that will most certainly further flood the already inadequate resources of Family Court.

The critical initial recommendation, most apparent from the interviews the Task Force conducted and from its review of prior reports, is that any reforms can be accomplished only with following:

- **Strong leadership**
- **A comprehensive plan that will provide**
  - Systemic changes
  - Along with innovative programs
- **Management**
  - Capacity, and
  - Strength to implement the reforms.

This Call to Action outlines recommended reforms that, when grounded upon strong leadership, can begin to deliver quality justice in a timely fashion to the families seeking relief in the Family Court. The Task Force offers recommendations in the following areas:

- Administrative leadership
- Allocation of judicial resources
- Courtroom control and case management
- Judicial education and support
- Resources for litigants
- Technology solutions

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## Table of Contents

|   |           |
|---|-----------|
| <b>EXECUTIVE SUMMARY .....</b>  | <b>1</b>  |
| <b>BACKGROUND, PARTICIPANTS AND THE TASK FORCE GOALS .....</b>              | <b>4</b>  |
| <b>ADMINISTRATIVE LEADERSHIP.....</b>                                       | <b>6</b>  |
| <b>JUDICIAL RESOURCES.....</b>  | <b>9</b>  |
| <b>CASE AND COURTROOM MANAGEMENT.....</b>                                   | <b>12</b> |
| <b>JUDICIAL EDUCATION AND SUPPORT .....</b>                                 | <b>16</b> |
| <b>RESOURCES FOR LITIGANTS: ADDRESSING THE LACK OF REPRESENTATION .....</b> | <b>18</b> |
| <b>INCORPORATING THE BEST USE OF TECHNOLOGY.....</b>                        | <b>20</b> |
| <b>CONCLUSION .....</b>   | <b>22</b> |

### Appendices

- A. Davis Polk & Wardwell Report: Survey of Past Reports.** By Amelia T.R. Starr, Esq., Gina Caruso, Esq, and Kathryn Carney Cole, Esq.
- B. Pro Bono Initiative, in cooperation with** William C. Silverman, Esq., Partner and Pro Bono Director, Greenberg Traurig, LLP.

## **BACKGROUND, PARTICIPANTS AND THE TASK FORCE GOALS**

The Fund for Modern Courts' Family Court Task Force<sup>1</sup> (the "Task Force") determined to develop and submit written recommendations to the new Chief Judge in January 2009 that identify critical and key components for positive change to the Family Court that would not require legislative action. The Task Force felt it important to support the Chief Judge in setting Family Court reform as one of his highest and most urgent priorities.

The Task Force interviewed more than 35 active and formerly active participants in the Family Court. As part of the interview process, the Task Force also convened two discussion forums, one in Albany, the other in New York City. The interviewees currently work, or have worked, in different parts of New York State—from as far west as Chautauqua to as far north as Warren County, and from all five boroughs of New York City. Collectively, the interviewees are intimately familiar with Family Courts in rural, suburban and urban areas of the State. Many have spent their entire professional careers working in Family Court. Their dedication and passion to the success of the Family Court system is profound. When the Task Force requested an interview, each and every participant was eager to offer his or her knowledge, concerns and recommendations.

The Task Force interviewed sitting and former Family Court judges, Administrative and Supervisory judges, a member of the New York City Advisory

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<sup>1</sup> The Task Force was established during the summer of 2008. The members of the Task Force are Catherine J. Douglass, Chair, Fern Schair, William C. Silverman, Harlan Levy, Sharon Schneier, Robert Newman, Matthew Crosson, and Victor A. Kovner, *ex officio*. Amelia T.R. Starr, partner, Gina Caruso, counsel and Kathryn Carney Cole, associate, of the law firm of Davis Polk & Wardwell, participated in the interviews and discussion groups, contributed to this report, and provided enormous support to the entire project, including conducting the research for, and creation of, Appendix A. The Task Force called upon the Executive Director of the Fund for Modern Courts, Dennis R. Hawkins, and the Deputy Director and Director of Advocacy, Denise Kronstadt, for day-to-day leadership and support, including crucial drafting of documents and the scheduling and conducting of interviews and focus groups.

Committee on the Judiciary, an elected leader of court personnel, Family Court judges in New York City, Western New York, and the lower Hudson Valley, public defenders in upstate New York and Legal Aid attorneys in New York City, assigned 18-b attorneys from the many counties along the Hudson Valley and New York City, an upstate law school professor, upstate and downstate institutional providers of lawyers for children, legal services attorneys whose combined geographic representation spans more than 10 counties, lawyers, advocates, public policy professionals, survivors and volunteers working with victims of domestic violence, educators, researchers studying Family Court, a California Superior Court judge, and individuals knowledgeable about technology in the courts. All the interviewees were offered anonymity as a means of encouraging an open discussion.

Recurring themes emerged from the interviews. Concerns and recommendations more often than not were shared. One interviewee expressed a widely-held view that, “Family Court cases are the most important cases in the most important court.” Another interviewee sadly spoke for all in observing, “The flaws are just so rife.”

As difficult as it is to imagine, considering the tangled excess of problems in Family Court, optimism exists. The interviewees offered the Task Force an important list of concerns and recommendations. These individuals, people who have spent their careers in the frustrating labyrinths of Family Court, believe that reform of the Family Court is both urgent and achievable. They know that reform requires strong commitment, leadership and direction from the Chief Judge of New York State.

## ADMINISTRATIVE LEADERSHIP

*“A Statewide Administrative Judge for the Family Court would give the Family Court ‘more teeth’ and would elevate the Family Court.”* Family Court Judge

*“The current supervisory landscape for Family Courts existing outside New York City is a ‘patchwork’ at best.”* Supervisory Judge

Strong leadership requires dedication to the goals of reform, a well thought-out plan and the management capacity to implement the reform. New York needs leadership at all levels of the court system to ensure reform of the Family Court.

One way to provide such leadership is to create immediately the position of Statewide Deputy Chief Administrative Judge for Family Court (“Deputy Chief Administrative Judge”). The Deputy Chief Administrative Judge must combine the qualities of vision and substantial management experience. Sharing the enormous responsibilities of this position with other responsibilities does not work. Full time dedication to the Family Court is crucial to the future of Family Court.

The creation of the position of Deputy Chief Administrative Judge for Matrimonial Matters at a time of crisis focused attention and resources on needed reform and accountability in divorce matters. It is now time to devote comparable attention and resources to the Family Court. The crisis facing this court requires nothing less. Those interviewed for this report strongly support the idea of establishing a statewide leader exclusively dedicated to the Family Court. Strong leadership is viewed as critical and prompted one former Family Court judge to comment that the appointed person would have to be both “thick-skinned and strong willed.”

The theme of inadequate supervision and leadership in Family Court was a constant during Task Force interviews. For example, a project director for a domestic

violence program in upstate New York commented that, “OCA has a policy against mediation in domestic-violence cases, but even in cases where domestic violence is clearly identified, there are judges who are using mediation, and there are no consequences. My biggest concern is that there is no accountability. When there are issues, problems, concerns, there’s nowhere to go to try to really resolve them.” This project director and others noted that a phone call to the Office of Court Administration for a “quick fix” of an egregious problem often works, and is appreciated, but this is not a management method that affords true accountability and supervision.

New York currently has administrative judges and supervisory judges for Family Court but many, if not most, also have other administrative responsibilities and carry a full caseload. As a result, these judges cannot perform necessary administrative leadership. While there are some administrative and supervisory judges who do create important oversight procedures and innovations, many do not because of time constraints, disinterest, the lack of strong managerial skills or the well-defined authority to administer or supervise. Good management offers both support for judges and accountability. Even when there is strong administrative and managerial leadership, not all judges are willing to follow procedures established by supervisory judges that are designed to make the courts more effective and efficient. Thus, accountability mechanisms will also need to be adopted to ensure that desired reforms are accomplished.

The interviewees agreed that inadequate management and oversight was one of the most significant problems for the Family Court. One interviewee offered a solution to the problem: “It is necessary to define and establish expectations about judicial performance and to have the administrative judge hold judges to these standards.” The



Center for Court Innovation, in its 2002 report on the New York City Family Court<sup>2</sup> also recognized the importance of the role of administrative and supervising judges as managers and the need to establish “specific, clearly articulated performance expectations for the judiciary” in order to ensure judicial accountability.

The need for leadership and the quality of that leadership cannot be understated. As one judge from California told us, “It is the energy of the leadership that makes it work.”

#### MODERN COURTS RECOMMENDS:

- Establish the position of Statewide Deputy Chief Administrative Judge for Family Court and appoint to this position an individual with extensive knowledge, experience and management qualifications.
- Fill the present vacancy of Administrative Judge of the New York City Family Court by appointing an individual with demonstrated strong leadership, dedication to Family Court and management skills.
- Require administrative and supervisory judges to work cooperatively with, and be responsive to, the direction of the Deputy Chief Administrative Judge. Individuals appointed to these positions must have prior management skills and experience.
- Mandate an annual review of the work of each administrative and supervisory judge so that changes in appointments can be made, if necessary.
- Develop a comprehensive plan that will provide significant and innovative systemic changes to the Family Court including experienced Family Court judges in the planning process.
- Create an advisory or review board of Family Court stakeholders to offer advice and guidance to the Deputy Chief Administrative Judge, to review problematic trends in a specific court or the courts as a whole and to suggest possible solutions.

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<sup>2</sup> “New York City Family Court - Blueprint for Change (2002),” (See Appendix A hereto, Section I.B.)

## JUDICIAL RESOURCES

*“Not enough judges!”* Family Court Judge

*“I think some of the problems we’re seeing are exacerbated by the shortage of Family Court judges. . . . And one the reasons that judges don’t exercise calendar control is that their calendars. . . are out of control. They’re impossible. . . . The frustration on the part of judges is often palpable. . . .”* Director of a legal services program for battered women

The Task Force recognizes that there are simply not enough Family Court judges to meet the ever-expanding caseload<sup>3</sup>. Although legislative action is required to add more judges to the Family Court system,<sup>4</sup> Modern Courts believes that there are ways to re-allocate resources, including the immediate assignment and re-assignment of additional judges to Family Court, and more effective use of other non-judicial resources, until the legislature passes this critical legislation.

The disparity between the number of cases assigned to Family Court judges and other judges in New York State (e.g., Supreme Court, County Court, and Court of Claims) is unconscionable. The clear message to the public is that family matters are not as important as other legal matters. A recent report<sup>5</sup> found that in 2005 the average number of dispositions of Family Court judges (including support magistrates) was 2,120, as compared to 525 for Supreme Court justices in civil matters, 222 for Supreme Court and County Court justices and judges in felony cases, and 63 for Court of Claims judges. Family Court judges should not be asked to handle caseloads that are, at a

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<sup>3</sup> According to the Twenty-Ninth Annual Report of the Chief Administrative of the Courts (2006), the last report available on the NYS Unified Court System’s web site, 127 Family Court judges were responsible for 680,791 new filings in 2006.

<sup>4</sup> The lack of sufficient judges is a major problem for Family Court; the remedy requires legislative action. The Task Force supports the allocation of more state resources for more Family Court judges. In 2007 after careful study, it was recognized that, at a minimum, 39 new judges are needed across the state. Modern Courts will continue to support legislation that seeks to increase the number of judges.

<sup>5</sup> A Report by the Special Commission on the Future of the New York State Courts (February 2007) (See Appendix A hereto, Section I.E.).

minimum, four times as great as other judges and at a maximum ten to thirty times greater.

Effective use of limited judicial resources has to be a priority. Assigning more judges to Family Court is recommended to alleviate the immense caseload burden. All interviewees agreed that the Family Court is vitally important to the families of our state, and, as a consequence, the Family Court is perhaps the most important court in our court system. As one private attorney who practices family law in the Hudson Valley said, “The most important decisions about folks’ lives -- custody of their children -- is being decided in the most under-resourced court in the state system.”

As a result, justices and judges throughout the Unified Court System, whether duly appointed or elected by the people of this State should be called upon to address the crisis in Family Court, as permitted by the New York State Constitution. Outside New York City, judges in the County Court and full time judges of the City Courts may be assigned to Family Court. In New York City, judges in the Supreme, Civil and Criminal courts may be assigned to Family Court. Reassigning judges from other courts to Family Court is essential to alleviate the overwhelming caseloads in Family Court. Supreme Court judges need not even be reassigned, in fact, as Supreme Court has concurrent jurisdiction with Family Court. And, although Court of Claims judges cannot be directly appointed to Family Court, when assigned as acting Supreme Court Judges, they obtain concurrent jurisdiction over Family Court cases, permitting Family Court cases to then be transferred to them as well.

There is no more important assignment than the Family Court. It is a challenging assignment, but with proper support and education, many more judges can and must meet this challenge.

#### MODERN COURTS RECOMMENDS:

With the overall goal of achieving an equitable allocation of caseloads among all courts,

- In New York City, more Supreme, Civil and Criminal Court judges should be assigned to Family Court, as needed.
- Outside New York City, more County Court and full time City Court judges should be assigned to Family Court, as needed.<sup>6</sup>
- Family Court matters that overlap with matters pending in the Matrimonial Part should be immediately and uniformly transferred for adjudication in the Matrimonial Part.
- Policies, practices and proper screening should be established to support the use of Alternative Dispute Resolution, with an emphasis on limiting that use to specific fact-based child and spousal support and visitation matters where no family violence is involved.
- More functions and matters currently handled by Family Court judges that do not involve issues of family violence should be assigned to referees and judicial hearing officers.

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<sup>6</sup> Modern Courts recognizes that in the event the caseloads of lower courts increase because of the economic crisis, assigning more part-time City Court judges or attorney Town and Village court judges to City courts might offer a means to ensure those courts' resources are not drained by Family Court assignments.

## CASE AND COURTROOM MANAGEMENT

*“There’s a real problem in scheduling. . . At any given time thirty people [are] waiting in the waiting room and only three rooms to talk to your clients.”*

Public Defender, Upstate New York

*“People are really denied due process because there are orders that get entered, based on almost nothing, that last for three months, six months. And the judge will say, well, I don’t have the time for you, come back.”* Director of Legal Services program

As a result of the unrealistically large caseload in Family Court coupled with the lack of sufficient judges, court calendars are often unmanageable. Better methods of managing the calendar and processing of cases in the courtroom are urgently needed. The problems are many. For example, those interviewed told the Task Force that future hearing dates for pending cases are often selected based upon the availability of judges and attorneys rather than with an eye to the context of the case or the interest of the litigants. There is excessive re-scheduling of cases and months pass between adjournments. As a result, many times the judge seems to have forgotten what has occurred and revisits issues that have been resolved. In March 2008, the Voices of Women Organizing Project stated that multiple adjournments are particularly detrimental when children have been removed to foster care.<sup>7</sup>

A disgraceful story of the consequence of multiple adjournments was told by one legal services provider as follows:

A judge wouldn’t finish a trial because other cases were waiting. The case (on an order of protection) was adjourned for six months. When we came back our client ended up, after being raped in the interim six months, dropping her case.

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<sup>7</sup>Justice Denied: How Family Courts in NYC Endanger Battered Women and Children (2008) <http://www.vowbwrc.org/>. (See Appendix A hereto, Section I.F.).

Even trials are not scheduled on continuing days. And the lack of finality in decision making, with issues such as visitation coming up repeatedly, appears to be one of the greatest frustrations in Family Court.

One interviewee, a Legal Aid attorney for children (a law guardian), commented that, “Judges who adhere to standards and goals seem to accomplish a lot more during each individual court appearance. It’s easier to do nothing than it is to make something happen, make it move along the way.” Often standards and goals are ignored, however. Either there is no one to enforce them or they are undermined by the lack of resources in the court room.

The Task Force also inquired about those courts that seemed to be well managed (and there were many) and tried to identify the characteristics of the judges assigned to those courts and their approach to case management. The interviewees all agreed that those judges who are in control of their courtrooms, who hold all attorneys who appear in their courts to a high standard in terms of preparation and who treat litigants with dignity, are the most effective. The Task Force interviewed a number of these judges who have excellent reputations. One retired Family Court judge noted that, “Judges are so concerned about being well-received that they are afraid to take control of their own courts.” This judge said that it was essential to utilize certain tools to promote efficiency in the courtroom including, for example, time-certain calendaring, reduced transition times between cases, and consecutive-day trials.

Court attorneys are seen as a crucial element in meeting the case management challenges. One upstate attorney noted, “It is really invaluable for a Family Court judge (to) have a fantastic court attorney [who is] instrumental in helping to move a case along

and really trying to either bring a resolution or letting the litigants and their attorneys know, if you proceed to trial, this is most likely what's going to happen.” An institutional provider in New York City, however, offered the view that some court attorneys can be “outrageous, forcing parties into a room and really threatening them on and off until they settle a case, sometimes [conducting] a mini-tribunal. . . . The amount of pressure the court attorneys often put on litigants to solve cases in ways that often make no sense is very, very problematic.” Model guidelines or policies could and should ensure more constructive use of court attorneys.

Improved, coordinated management and policies within the courtrooms are necessary to alleviate many of the burdens and much of the confusion present in the system. New innovative models should be adopted - models aimed at providing each courtroom with an improved structure, streamlined time management and coordinated appearances of all necessary participants in Family Court matters.

#### MODERN COURTS RECOMMENDS:

- Providing case/resource coordinators (could be court attorneys) to initially review cases.
- Assigning “up front judges” to have preliminary discussions with litigants in an effort to either settle the disputes or streamline the issues for judicial resolution.
- Establishing “time certain” or staggered calendaring and shortening transition times between cases.
- Establishing standards and guidelines that will inform all parties, in advance of each court appearance, what proceeding is scheduled to take place. This way parties are properly prepared for court appearances and the court can prevent unnecessary adjournments.

- Establishing rules that require substantive legal outcomes to be addressed at each appearance and that ensure that progress toward final legal decisions is not undermined by the non-legal components of Family Court matters.
- Providing for consecutive trial days, ensuring that a trial that has begun takes precedence over any other matters.
- Implementing a Zone approach to allow the various Family Court stakeholders to familiarize themselves with an identifiable set of colleagues while also limiting the number of judges before whom they would be required to appear. (Such an initiative would allow for appointed counsel to be more accessible and would, consequently, minimize adjournments and delay.)
- Establishing rules for custody and visitation cases that mandate a particular timetable for hearings and a formal process, akin to the matrimonial rules.
- Extending innovative pilot programs, such as the Shared Goals, Action Steps recently implemented in the Kings County Family Court, to provide a more coordinated system for the management of all cases.



## JUDICIAL EDUCATION AND SUPPORT

*“Training involved three days of judge school -- then being thrown in to either sink or swim.”* Family Court Judge

*“Given the triage environment of Family Court, there should be training whereby everyone who participates in Family Court should be cross-trained.”* Attorney

At present, newly elected Family Court judges are trained for one week at the Judicial Institute in December after the November elections. In addition, those New York City Family Court judges who were newly appointed earlier in the year participate in this training. This means that the latter are often not trained until many months after appointment. The Judicial Institute also holds non-mandatory training programs in the summer, which are attended by approximately 80% of experienced judges and 100% of new judges. There is neither a formal mentoring program nor an established program for new judges to sit along side (“shadow”) an experienced judge to observe the courtroom process. Nor is there any established practice of having new judges begin their service with either a smaller number of cases or with selected cases that may be less complex. One judge believed that a shadow program would be ideal, but observed that it might be impractical because judges have to assume the bench as soon as possible because of the caseload. Similarly having newly-elected or appointed judges observe more experienced judges was acknowledged as a good idea, but again, this would impact the calendar. But overriding these difficulties to ensure adequate initial training and mentoring is what many interviewees believed is highly desirable, as superficial knowledge of the law and of the complexities of court proceedings results too often in uninformed or unwise decisions and in poorly run courtrooms.

## MODERN COURTS RECOMMENDS:

- More mandatory training of both new and experienced judges.
- Cross-training of judges with other participants in the system, setting aside required training days where all relevant participants in the particular Family Court part are expected to attend.
- More training for other personnel in the courtroom.
- Greater supervisory involvement with the training of judges on an ongoing basis.
- A minimum two-week “shadow program” that couples a new judge with an experienced judge.

## **RESOURCES FOR LITIGANTS: ADDRESSING THE LACK OF REPRESENTATION**

*“Having a system that would aid unrepresented litigants before they even get to the petition clerk earlier in the process makes sense.” 18-b Attorney*

Greater access to justice for families and a better managed Family Court system requires far more attorneys to represent litigants in Family Court than exist today. It also requires the development of an array of additional resources to permit unrepresented litigants to fully protect their rights and obtain substantial justice in the daunting legal and procedural system of Family Court.

The lack of free or affordable legal representation creates a serious additional pressure on Family Court judges, a problem unique to that court, because judges are required to spend an inordinate amount of time explaining applicable rights and responsibilities to unrepresented litigants. This lack of attorney resources, which the Task Force acknowledges to be outside the court system’s direct responsibility, results in too many *pro se* litigants. Some of those interviewed believed that the large outstanding number of *pro se* litigants, possibly equaling in excess of 80% of the entire caseload, is the major reason for the continuing crisis in the Family Court system.

Interviewees believe that many unrepresented litigants feel that they are not being heard, do not understand why the judges “do what they do” and, consequently, lack confidence in the Family Court. Although there are a variety of reasons that court orders are not heeded, this lack of confidence in the system raises the additional concern that unrepresented litigants will take justice into their own hands (e.g., non-custodial parents who decide not to pay court-ordered child support).

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

To alleviate the stresses on litigants, judges and other court personnel alike, interviewees recommended strongly that the court seek out private/public partnerships to enhance the human and technological resources available to litigants proceeding *pro se*.

#### MODERN COURTS RECOMMENDS:

- Establishing and supporting in every county self help centers that are staffed by knowledgeable and informed individuals and equipped with relevant print and electronic resources.
- Making widely available instruction guides on how to prepare court submissions.
- Expanding and improving upon the technological capability of the courts, including providing computer terminals in courthouses, so that litigants can prepare petitions.
- Providing better web access so that forms and templates can be completed online and electronically filed.
- Extending Family Justice Centers for domestic violence survivors throughout the state.
- Devoting resources to recruiting, supporting and collaborating with a dedicated *pro bono* counsel panel.<sup>8</sup>
- Re-evaluating the mechanisms for selection and assignment of assigned counsel (18-b) attorneys to cases.

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<sup>8</sup> See Appendix B hereto for one successful model program.

## INCORPORATING THE BEST USE OF TECHNOLOGY

*“There’s been a total inability to create, or, at least, enforce a strategic plan. There is no mechanism even to figure out what kind of outcome we’re trying to achieve, much less getting them accomplished.”* Director of a program supporting alternatives to incarceration for juveniles

*“Why haven’t we built a public/private partnership that can do things like high-impact project management to figure out how long someone has been in court?”* Director of a public interest organization assisting litigants in the Family Court

Vastly improved and expanded technology should be incorporated for multiple functions. This report offers recommendations for technology in better assisting *pro se* litigants. Many of those interviewed also called for improved and expanded data collection regarding Family Court matters. Only with reliable and comprehensive data can a meaningful planning and subsequent analysis occur of the progress and outcomes of Family Court cases. Only with such data can improved systems be designed to accomplish the goals of Family Court.

The need for “more efficient and robust recordkeeping and data collection systems” was one of the major recommendations of a conference<sup>9</sup> organized by the New York County Lawyers Association. The goal of such an approach “would be to gauge the effectiveness and efficiency of Family Court processes and outcomes.”

In addition, to offering the court system the opportunity to construct an effective strategic plan for Family Court, an improved information system would assist judges in making their determinations regarding litigants. For example, one upstate practitioner expressed the concern in the area of orders of protection that, “There’s really no ability for Criminal Courts and Family Courts to talk to each other, through data bases.” Another example (from Appendix A, Section I. F.) of the efficacy of an improved information

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<sup>9</sup> Reforming Family Court in the 21<sup>st</sup> Century—Family Court in New York City in the 21<sup>st</sup> Century: What Are Its Roles and Responsibilities? (See Appendix A hereto, Section I.E.).

system is that it could provide judges with “a centralized clearinghouse for all programs to which a decision maker may make a referral order, accessible in real time ....”

Finally, effective management of resources requires the use of technology to allow for informed allocation of resources and to ensure accountability at all levels in the Family Courts.

#### MODERN COURTS RECOMMENDS:

- Creating and implementing a comprehensive data-collection system that would inform and support the accomplishment of Family Court’s strategic goals.
- Establishing an advisory committee of Family Court practitioners and others to assist the Office of Court Administration in the design and implementation of such a system.

## CONCLUSION

The Fund for Modern Courts, through the work of its Task Force, recognizes that without the additional resources, specifically an increased number of Family Court judges, and the restructuring of the court system through a state Constitutional Amendment, along the lines proposed by the Special Commission on the Future of the Courts, the reforms Family Court so critically needs will be incomplete. And Modern Courts remains committed to accomplishing those two reforms through active advocacy and interaction with the Legislature and the Governor.

But the Task Force believes that the recommendations contained in this report, if implemented by the court system, will address a significant number of the overwhelming problems confronting Family Court today. Modern Courts is committed to supporting the court system's efforts to implement these recommendations and others that are developed by the court system to improve the effectiveness and fairness of Family Court.

It is the intent of the Task Force not only to share this report with the Chief Judge, but to use it as vehicle – a call to action - to secure the support of other groups and individuals, who have expressed their concern about the crisis in Family Court, and to rally public support for the changes that are essential.

Respectfully Submitted,

The Fund for Modern Courts  
Family Court Task Force



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**APPENDIX A  
SURVEY OF PAST REPORTS ON FAMILY COURT**

**By Davis Polk & Wardwell**  
Amelia T.R. Starr, Esq., Gina Caruso, Esq, and  
Kathryn Carney Cole, Esq.

**The Fund for Modern Courts  
Family Court Task Force  
February 2009**



## Appendix A

# A CALL TO ACTION: THE CRISIS IN FAMILY COURT

## Survey of Past Reports on Family Court

### TABLE OF CONTENTS

|  | <u>PAGE</u> |
|--|-------------|
| A CALL TO ACTION: THE CRISIS IN FAMILY COURT .....   | 1           |
| I. PREVIOUS TASK FORCE AND COMMISSION REPORTS .....  | 1           |
| A. Family Court Undergoes Major Operational Restructuring<br>(Family Justice Program—Phases I and II) (1997-98) .....  | 1           |
| Expanding Access to Family Court .....   | 2           |
| New York City Family Court’s “Adoption 2100” .....   | 2           |
| Family Drug Treatment Courts .....   | 3           |
| Combating Domestic Violence .....  | 3           |
| Streamlining Matrimonial Litigation .....  | 4           |
| Modern Case Management .....   | 4           |
| B. New York City Family Court—Blue Print for Change (2002).....  | 5           |
| Creating Institutional Capacity .....  | 5           |
| Enhancing Collaboration .....  | 6           |
| Improving Case Flow and Calendar Management.....   | 6           |
| C. Restoring Public Trust and Confidence: Fiduciary<br>Appointment Reform in New York (2001, 2004, 2005).....  | 7           |
| D. A Court System for the Future: The Promise of Court<br>Restructuring in New York State (Special Commission<br>on the Future of the New York State Courts) (2007)..... | 8           |
| E. The Family Court in New York City in the 21st Century:<br>What Are Its Role and Responsibilities? .....   | 9           |
| Improved Accountability and Information Systems .....  | 10          |
| Policy Clarifications and Reforms .....  | 10          |
| Systemic Reforms and Restructuring.....  | 11          |
| F. Justice Denied: How Family Courts in NYC Endanger<br>Battered Women and Children (2008).....  | 12          |

|      |   |    |
|------|---|----|
| II.  | COURT MONITORING REPORTS.....   | 13 |
| A.   | Observations of Monitors .....  | 13 |
| B.   | Recommendations of Monitors.....  | 15 |
| III. | RECURRING ISSUES IDENTIFIED IN PREVIOUS REPORTS<br>AND PAST RECOMMENDATIONS ..... | 16 |
| IV.  | INITIATIVES IMPLEMENTED SUCCESSFULLY IN OTHER<br>STATES.....                      | 18 |
|      | Conclusion .....  | 27 |
|      | INDEX OF REPORTS .....  | 28 |

# **A CALL TO ACTION: THE CRISIS IN FAMILY COURT**

## **Survey of Past Reports on Family Court**

In an effort to synthesize and distill previously commissioned evaluations of the New York Family Court system and proposed recommendations and initiatives relating to the same, Davis Polk & Wardwell reviewed 17 reports, including seven Court Monitoring Reports.<sup>1</sup> A summary of the issues identified and remedial initiatives recommended in each report are set forth in this memorandum.

### **I. PREVIOUS TASK FORCE AND COMMISSION REPORTS**

#### **A. Family Court Undergoes Major Operational Restructuring (Family Justice Program—Phases I and II) (1997-98)**

In the late nineties, because of increasing caseloads, limited resources and numerous *pro se* litigants, matters in the Family Court system were viewed as rarely reaching a timely disposition. Adding to the perceived inefficiency of the system were family court attorneys who were faced with competing demands on their time. To try to better meet the challenges posed by Family Court cases with available resources, the New York State court system in 1997 launched its “Family Justice Program” (the “FJP”). The FJP announced a comprehensive set of initiatives designed to eliminate delays and adjournments, reduce the number of scheduling conflicts and increase the continuity of trials in the system. The initiatives introduced in Phase I of the FJP were addressed at expanding access to the Family Court, streamlining the foster care system, providing services to families dealing with substance abuse problems, combating domestic violence,

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<sup>1</sup> The commissioned reports reviewed are: Family Court Undergoes Major Operational Restructuring (Family Justice Program, Phases I and II); New York City Family Court—Blue Print for Change; Restoring Public Trust and Confidence: Fiduciary Appointment Reform in New York; Report of the Commission on Fiduciary Appointments; A Court System for the Future: The Promise of Court Restructuring in New York State (Special Commission on the Future of the New York State Courts); Reforming Family Court in the 21st Century; and Justice Denied: How Family Courts in NYC Endanger Battered Women and Children. Because the competency and accessibility of law guardians are not perceived to be persistent problems in the Family Court system, a summary of The Preliminary Report of the Chief Administrative Judge pursuant to Chapter 626 of the Laws of 2007 is not included in this memorandum.

The monitoring reports we reviewed are: 1998 Report on the Family Court in Monroe County; 1999 Report on the Family Court in Rockland County; 2000 Report on the Family Court in Schenectady County; 2001 Report on the Family Court in Albany County; 2003 Report on the Family Court in Saratoga County; 2004 Report on the Family Court in Suffolk County; and 2006 Report on the Family Court in Dutchess County.

and streamlining matrimonial litigations. Phase II of the FJP focused upon case management. A summary of the initiatives follows:

*Expanding Access to Family Court*

In order to strike a balance between the public's interest in access to the courts and individual litigants' interest in maintaining privacy, public access to Family Court became the rule. Closure was authorized only when the evidence in a particular case indicated closure was necessary. It was hoped that expanded access would enable the public to judge the effectiveness of the public agencies that play an important role in the court's child protective, juvenile justice and family violence caseload, resulting in greater accountability.

In addition to expanding access for the public at large, the FJP also sought to expand access for individual litigants. Specifically, the FJP hoped to better accommodate those litigants with work or child care responsibilities. To this end, a twice-weekly night court session for the filing of family offenses, custody and visitation matters or for the hearing of child support cases was implemented in Kings County. A Queens County Family Court Satellite Office was also opened, where self-represented litigants could seek temporary orders of protection through a video link to the main courthouse.<sup>2</sup>

*New York City Family Court's "Adoption 2100"*

Originally named "Adoption 1700", "Adoption 2100" was one of several initiatives<sup>3</sup> seeking to expedite the permanency process for New York City's foster children. Because thousands of New York's foster children were identified as lingering in the foster care system while awaiting permanent homes, the New York City Family Court in 1997 challenged all participants involved in the adoption process to work collaboratively to make the system more efficient. The Court proposed a concrete goal: finalizing 1,700 foster care adoptions within a three-month period ending June 30, 1997.

The goal was ambitious, reflecting more than double the number of adoptions completed within the comparable time frame in 1996. Moreover, by statute, adoption petitions required multiple reports (such as home studies, medical reports and child abuse clearances) to be prepared by various agencies and submitted to the Court before the judiciary's work could commence. The challenge, however, was met and by the end of the target period, the Court had

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<sup>2</sup> Despite these initiatives, similar measures were not instituted on a broad-based scale and as of May 2008, evening and/or weekend calendars were an "accommodation" sought after frequently.

<sup>3</sup> Other efforts included dedicated Parts for reviewing the status of children freed for adoption but not yet adopted, and new procedures to promote the filing of adoption petitions immediately after the entry of an order terminating the birth parents' parental rights.

completed 2,100 adoptions—thus the reason for the name change to “Adoption 2100.”

Despite this and other initiatives seeking to expedite the permanency process, additional and continuing initiatives are needed. In late 2002, a study was undertaken to assess the permanency planning process. More recently, in May 2008, the Voices of Women Organizing Project noted that multiple adjournments inherent in Family Court are particularly detrimental when children have been removed to foster care and advised that the need to make the process more efficient remains a priority.

#### *Family Drug Treatment Courts*

Drug abuse is a factor in many neglect cases filed in New York’s Family Courts. Traditionally, such family court matters were handled like other child protective cases: the court adjudicated the charges and closed the case with a dispositional order directing the child protective agency to provide services to reunite the family. The child protective agencies, however, were often overburdened or ill-equipped to deal with cases involving substance abuse, ultimately resulting in lengthy stays in foster care and reducing the chances of returning the children to their birth parents.

In 1997, drawing on the experience of the criminal Drug Treatment Courts, a Family Drug Treatment Court was proposed, where parents would be promptly assessed for substance abuse issues, referred to treatment and their progress monitored by a court-based case management team. The first pilot Family Drug Treatment Court opened in Suffolk County Family Court in December 1997 with Judge Nicolette M. Pach presiding. In March 1998, a second pilot—under the direction of Judge Gloria Sosa-Lintner—opened in Manhattan Family Court. The goal of these Parts was to ensure that drug addicted parents received appropriate services and encouragement to rehabilitate them within reasonable time frames, thus reducing the time their children would spend in foster care.

The Family Drug Treatment Courts were perceived as beneficial and pilots demonstrated success in assisting parents attain sobriety. Since 1997, other counties statewide have opened Family Treatment Courts.

#### *Combating Domestic Violence*

The FJP included several measures to improve the Family Court’s ability to respond to the growing demands placed upon the Family Court by domestic violence victims. To this end, a pilot Family Court Domestic Violence Part was established in Manhattan. In the Part, victim advocates assisted *pro se* litigants at all stages of the proceeding. Respondent referrals to batterers’ programs and substance abuse treatment were also emphasized. Additional dedicated Parts were implemented later that year.

On the technology front, Family Court continued to expand its Domestic Violence Registry, a statewide database of orders of protection and warrants issued in domestic violence cases that could be accessed by designated law enforcement and court personnel. In June 1997, a new application of the system was introduced so that judges could more quickly access Registry information via the Unified Court System's "CourtNet" intranet system.

### *Streamlining Matrimonial Litigation*

In November 1996, the state court system announced the appointment of the Honorable Jacqueline Silbermann to the then-newly created statewide post of Administrative Judge for Matrimonial Matters. Under Judge Silbermann's leadership, the court system worked to make matrimonial litigation less costly and fairer for litigants. In counties with high caseload volume, dedicated Matrimonial Parts were opened to help ensure consistency and expertise in the handling of these often complex matters. In New York County, special Matrimonial Enforcement Parts were established to ensure that emergency motions to enforce maintenance and support orders were promptly heard without disrupting pending matters. The state court system also continued to explore new case processing methods to expedite divorce litigation. In Westchester County, for example, a pilot Differentiated Case Management program was implemented, with cases assigned to one of three "tracks"—each with its own time frame for completion of discovery and motion practice—depending upon the complexity of the matter. Several Alternative Dispute Resolution ("ADR") pilots were also implemented, which featured early non-binding neutral evaluation to help parties conduct informed and realistic settlement discussions.

Because the lack of uniformity among the counties regarding filing requirements for matrimonial actions had also been a source of confusion and delay for attorneys and *pro se* litigants, a single set of forms was developed and made available in both hard copy and electronic format, along with a booklet providing line-by-line instructions for completing the forms.

### *Modern Case Management*

A function-based case management system was implemented in New York City in 1998<sup>4</sup> to replace the Individual Assignment System ("IAS"), within which one Judge heard all types of cases and all cases involving the same family. The IAS had been perceived as inefficient. Modern case management initiatives channeled the 20 disparate types of court proceedings into four specialized, complimentary Family Court Divisions, based on the nature of the proceeding:

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<sup>4</sup> In New York City, the function-based Parts in New York County and Bronx County Family Courts became operational in April 1998. The Kings County and Queens County Family Courts became operational in the Autumn of 1998 and Family Courts outside of New York City established programs throughout the remainder of the following year.

- Child Protective/Permanency Planning Division;
- Juvenile Delinquency/PINS Division;
- Domestic Violence/Custody Division; and
- Support/Paternity Division.

The separation of the New York City Family Court into four Divisions with a specialized, function-based structure was believed to increase uninterrupted trial time, allow for the appropriate assessment of cases, and reduce scheduling conflicts for attorneys and service providers by limiting the number of Parts in which an attorney must appear.

**B. New York City Family Court—Blue Print for Change (2002)**

In September 2002, the New York City Family Court embarked upon a year-long study designed to assess the permanency planning process. The goal was to develop a “Blueprint for Change” that would offer a coordinated plan for improving the processing of abuse and neglect matters in the Family Court system. Over the course of the year-long study, the Blueprint for Change Team (the “Team”) reached out to stakeholders to discuss strategies for reform. In addition to reaching out to knowledgeable local participants, the Team conducted a comprehensive review of national best practices in the field of permanency planning. Ultimately, the Team articulated a set of goals for Family Court and a framework for how those goals might be implemented. The overarching themes identified as areas in need of improvement were: (1) institutional capacity; (2) collaboration; and (3) case management.

*Creating Institutional Capacity*

In response to stakeholder observations, the Team deemed it necessary to ensure a level of institutional and administrative support sufficient to facilitate and coordinate reform efforts. In order to strengthen and streamline administrative leadership in Family Court, the Team recommended:

- *Engaging in data collection and analysis to promote judicial accountability.* Specifically, the Team recommended the Family Court system establish specific, clearly articulated performance standards for the judiciary presiding over abuse and neglect matters;
- *Clarifying the role of supervising judges.* It was recommended that the administrative role and authority of supervising judges, including their authority over judicial personnel, be clearly articulated and defined. It was further recommended that ongoing training, executive coaching and mentoring opportunities be provided; and

- *Developing an internal capacity for multi-disciplinary training.* The recommendation envisioned, where possible and appropriate, the inclusion of foster children, parents and foster care providers in such training.

#### *Enhancing Collaboration*

Inter-agency collaboration in permanency matters is recognized as invaluable. Thus, the Team suggested that the Family Court system develop and communicate principles of the Family Court and distribute these principles to all support agencies and necessary participants. In addition to fostering improved communication, the Team believed it critical that the Court work with law guardians to increase children's understanding of the court process.

#### *Improving Case Flow and Calendar Management*

The Team also believed it imperative that the Family Court system develop a case management process that was logical, coordinated and efficient. To this end, the Team suggested the following improvements:

- *Improving communications with litigants.* Recommendations included: (a) setting a clear expectation that attorneys meet with clients before each hearing; (b) implementing accountability mechanisms regarding counsel; (c) ensuring that educational materials regarding the Court process, purpose and expectation for each hearing are available and accessible to litigants; and (d) taking steps to ensure that children of appropriate age are informed about the process and feel connected to it;
- *Using referees and case coordinators.* Recommendations included: (a) clarifying the role of referees and developing a mechanism to streamline communication and information sharing among judges, referees and other members of the team; (b) clarifying the role of case coordinators and instituting regular meetings among coordinators; (c) conducting a study to determine the impact of referees and coordinators on the timeliness and efficiency of the case process;
- *Improving calendar management.* Recommendations included: (a) instituting a time-certain beginning and ending calendar; (b) developing strategies that would promote sequential trial time, including the use of improved technology and teleconferencing; (c) instituting time standards for court hearings according to hearing type and purpose; (d) documenting time-savings and other improvements from new case processing strategies implemented in Queens County Family Court; and (e) conducting a study to evaluate specialization and attorney Part assignments and their impacts on the quality of case processing and outcomes. If in-court time-savings



were documented, it was recommended that pilot initiatives be expanded to additional locations;

- *Adopting oversight accountability guidelines.* To improve accountability and timeliness, it was recommended that the Family Court adopt strict time standards and pursue a non-continuance policy. Recommendations included: (a) instituting a strict timeline for all court events and scheduling court hearings in accordance with those timelines; (b) exploring how to implement trial management techniques that would foster expeditious completion of trials; (c) establishing minimum expectations for each individual court event (e.g., expected level of attorney preparation, what information case workers are expected to bring and what issues are expected to be addressed); and (d) enhancing the sanctioning power of the Family Court when professionals do not meet practice expectations and professional conduct standards; and
- *Improving the quality of court orders.* At the conclusion of each hearing, it was recommended that the Court generate a detailed and case-specific order to include all relevant findings and expectations, with timelines included. Recommendations included: (a) providing child protection judges with guidelines for generating detailed court orders and then requiring dissemination to all parties, including respondent parents; and (b) conducting a study to investigate whether technological innovations could advance the creation of these orders and make them more understandable.

C. **Restoring Public Trust and Confidence: Fiduciary Appointment Reform in New York (2001, 2004, 2005)**<sup>5</sup>

In January 2000, Chief Judge Kaye, acting in response to observations of the press that New York’s fiduciary appointment system had problems,<sup>6</sup> established a three-part system to address stakeholder concerns. First, she appointed the Special Inspector General for Fiduciary Appointments. Next she provided a directive to administrative judges to take direct responsibility for the

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<sup>5</sup> New York’s fiduciary appointment system is relevant to the Family Court system insofar as it relates to guardians *ad litem* who are appointed to protect the interests and rights of children involved in litigation. Moreover, the principles enunciated here for purposes of fiduciary appointments may be instructive for purposes of enunciating principles for the appointment of law guardians. Although three different reports were generated by the Commission on Fiduciary Appointments (in 2001, 2004 and 2005), the three reports are discussed collectively within subsection C, and only insofar as the reports have relevance to the Family Court System.

<sup>6</sup> These observations included that monitoring of the appointment process was inadequate, allowing abuses of the system, including concerns that appointments were more often based upon favoritism and other inappropriate factors than upon the qualifications that particular appointments require of individual fiduciaries.

appointment processes in their respective districts. Finally, Chief Judge Kaye established the Commission on Fiduciary Appointments to study the perceived problems. The Inspector General was given authority to investigate violations of existing fiduciary rules and recommend referrals in appropriate cases to disciplinary and law enforcement officials. The Commission was directed to examine existing rules and procedures and to make recommendations for improvement.

The Report of the Commission identified three broad areas in need of improvement: (1) the qualification of individuals on fiduciary appointment lists; (2) the appointment process itself; and (3) the need for appointment oversight. In response to these recommendations, the system was revamped. For example, broad categories of individuals became ineligible for appointment as a matter of course, including political party leaders, their relatives and law firms, former judges and their relatives, and relatives of higher-ranking court employees. Explicit prohibitions were also adopted regarding the appointment of disbarred or suspended attorneys and criminal offenders. New rules also required the Chief Administrative Judge to establish appointment lists by category and to set qualification and training standards for inclusion on such lists. Use of the lists in the appointment process was required unless special circumstances were found to authorize a waiver.

The state court system also instituted administrative mechanisms to support the new appointment system. For example, the position of fiduciary clerk was established in each judicial district to supervise and monitor appointments throughout the judicial district. In that role, the fiduciary clerk was responsible for overseeing the filing of all forms by judges and appointees and for ensuring the accuracy of data regarding appointments and compensation awards.

A series of operational initiatives, some of which were necessary to implement the new rules, also enhanced the fiduciary appointment process, including online training and required course curricula, and automation of necessary forms, which allowed for faster, more efficient and more accurate collection of fiduciary appointment data.

**D. A Court System for the Future: The Promise of Court Restructuring in New York State (Special Commission on the Future of the New York State Courts) (2007)**

In July of 2006, Chief Judge Kaye appointed the Special Commission on the Future of the New York State Courts (the “Commission”) to assess the effectiveness of New York’s court structure and to propose appropriate reforms. The Commission found the court structure—which consists of eleven separate but

overlapping trial courts—“archaic” and complicated and the source of much confusion, inefficiency and unnecessary expenditures.<sup>7</sup>

After months of study, the Commission published a report in February 2007, detailing a plan for reform, which included a recommendation that the State’s trial courts merge into a two-tier structure—a statewide Supreme Court and a series of regional District Courts. While the Commission recommended that the Supreme Court include certain specialized divisions, including a Family Division, so as to preserve the expertise that many judges and attorneys have gained through their practices, the Court would be one of general jurisdiction and its judges would be empowered to hear all parts of the multi-faceted cases filed therein each year.

The Commission concluded that its restructuring proposal would save significant funds annually in terms of productivity, lost wages, attorneys’ fees and related costs, and would eliminate the need for litigants to make redundant court appearances, file unnecessary papers and briefs, and experience delays caused by courthouse backlogs and inefficiencies. In April 2007, then-Governor Eliot Spitzer proposed a constitutional amendment to restructure New York’s court system that substantially mirrored that proposed by the Commission. To date, the State Legislature has not endorsed a constitutional amendment to allow the restructuring.<sup>8</sup>

**E. The Family Court in New York City in the 21st Century: What Are Its Role and Responsibilities? (2007)**

In October 2006, the Justice Center of the New York County Lawyers’ Association hosted a series of conferences to analyze the issues facing the New York City Family Court System. During the course of the conference series, stakeholders offered recommendations on how to address these issues and improve the Family Court System. While the recommendations spanned a wide range of topics, three broad categories of recommendations emerged: (1)

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<sup>7</sup> Contributing to the complicated structure is the provision of the State Constitution that limits the number of Supreme Court Justice positions that may be allocated by the Legislature to each Judicial District. Efforts to deal with a shortage of judges resulting from this limitation—such as the temporary assignment of judges from the Court of Claims, County Court, Surrogate’s Court, Family Court and New York City Civil and Criminal Court to the position of “Acting Supreme Court Justices” (“Acting JSCs”)—illustrate the problem. The overlapping trial courts include the Supreme Court, Court of Claims and Surrogate’s Court, which each sit in all sixty-two counties statewide; County Courts in each county outside New York City; Family Courts in New York City and in each of the fifty-seven counties outside the City; a New York City Civil Court; a New York City Criminal Court; District Courts for parts of Long Island; a separate City Court for each of the sixty-one cities outside New York City; and Town and Village Justice Courts in most towns and villages statewide.

<sup>8</sup> A unified court system comparable to the one proposed by the Commission was implemented with success in California. For a further discussion of California’s system, please see infra at IV.A.

improved accountability and information systems; (2) policy clarifications and reforms; and (3) systemic reforms and restructuring.

### *Improved Accountability and Information Systems*

It was believed by conference participants that the Family Court must be accountable to the community it serves. To this end, participants indicated that improving the quality of interaction among the agencies, institutions, and actors that comprise the Family Court system and increasing the transparency of the Family Court system as a whole is a necessary step. Specific issues discussed in this vein included the need for more efficient and robust record keeping and data-collection systems in order to minimize duplication, facilitate consistency and encourage interaction among the agencies and stakeholders in the Family Court system. It was suggested that the OCA implement a comprehensive data-collection system that would be use to gauge the effectiveness and efficiency of the Family Court processes and outcomes.<sup>9</sup> It was further suggested that an information system be devised to provide a centralized clearinghouse listing the availability of vacancies for programs to which a decision maker may make a referral order.

Additional recommendations included establishing performance measures and revising and improving the selection, conduct, performance and evaluation of judges, including through annual performance evaluations, shorter terms of appointment, and increased supervisory authority for Administrative Judges. Other stakeholders believed it useful to collect participant feedback through an Ombudsperson's Office.

### *Policy Clarifications and Reforms*

The policy clarification and reforms discussion focused upon organizational reforms that could be implemented within the discretion of the Family Court, the agencies working with the Court, or the judicial administrative system. The purpose of the discussion was to identify means for increasing the efficiency of the Family Court and to correct for deficiencies in the Family Court's functioning. The discussion identified three problems perceived to be most challenging to the Family Court system: case overload,<sup>10</sup> lack of adherence to due process requirements,<sup>11</sup> and the need to improve cultural competency.<sup>12</sup>

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<sup>9</sup> The data that should be collected included, but was not limited to, timely assignment of counsel; court adjournments and reasons therefore; rate of remands; grant or denial of motions; types of dispositions; and timely educational attainment.

<sup>10</sup> Family Court stakeholders believed that too many cases are being brought to court for resolution, causing the Court to use its limited resources less effectively and also adding to delays. The stakeholders indicated that the Family Court's principal focus should be on the adjudication of disputes and the provision of access to court-ordered remedies. In order to achieve this, the stakeholders suggested implementing a randomized case review to consider issues of legal merit, whether legal proceedings are appropriate, and whether the standards being applied are consistent

### Systemic Reforms and Restructuring

The concerns raised by stakeholders regarding systemic reforms are unlikely to be remediated without action by the state legislature. Nonetheless, a discussion of the issues and recommended reforms bear mention here. The discussions primarily focused upon the structure of the Family Court system and how changes may facilitate better results and outcomes. The Family Court stakeholders endorsed merging the Family Court with the New York State Supreme Court as the single most effective step toward giving the Family Court full legitimacy and authority within the state judiciary. Short of merger, however, the following reforms were suggested as ways to improve the Family Court system:

- Family Court judges should be appointed to positions of acting New York State Supreme Court judges, so that they would have the same authority and resources as New York State Supreme Court judges;
- Strengthening the authority of Family Court judges under the New York Family Court Act (section 255) to give them greater authority to order the services and assistance of publicly funded agencies; and
- Restructuring the Family Court so that there is one forum to handle intra-family disputes with sufficient resources to provide fair, timely and competent resolution of disputes.

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with Family Court policies. It was further suggested that Judges should mandate placement decision-making conferences, that timely legal services must be available to respondents, and that standards and goals must be clarified and reviewed.

<sup>11</sup> Stakeholders believed that the strain on resources and lack of clear policy and oversight erode due process and professional standards. As a result, stakeholders believed it necessary to devise a set of recommendations aimed at the behavior of Family Court actors to ensure that their actions remain within the boundaries of the relevant legal and ethical rules and devise ways to eliminate delay. While these issues were noted to be of concern, consensus was not reached on how to remediate the issues. For instance, trial delays and the difficulty faced in obtaining trial time were noted to be an issue. Yet participants were unable to reach a consensus on how to eliminate delay.

<sup>12</sup> Stakeholders expressed concern that the culture of the Family Court often clashes with the culture of the communities it serves. Specific recommendations offered as a means to remedy this concern included, but were not limited to: litigants being assured the service of interpreters; review of the Court hiring process to consider principles of community representation within the workforce; litigants should receive copies of all records and motions in their own language; and additional community meetings comparable to town hall lines should be convened.

**F. Justice Denied: How Family Courts in NYC Endanger Battered Women and Children (2008)**

The Voices of Women Organizing Project (“VOW”)<sup>13</sup> authored a report in response to accounts of Family Court situations that domestic violence survivors perceived as endangering their safety and/or welfare. VOW launched the Battered Mothers’ Justice Campaign in 2003 and, working closely with Urban Justice Center’s Human Rights Project, developed a documentation project to collect quantitative and qualitative data on the experiences of battered women in the New York City Family Courts. According to the Project, the accounts illustrated the need for oversight and repair. Issues included: inadequately trained attorneys and judges; inadequate court facilities where victims felt unsafe;<sup>14</sup> and inaccurate translation services, often resulting in inaccurate records or incomplete justice. VOW’s recommendations included:

- Ensuring that cases are resolved in a timely manner by scheduling times-certain for cases to be heard and allocating sufficient time thereto; adhering to check-in time, unless good cause is documented; and limiting adjournments, especially when children are removed to foster care;
- Scheduling evening and weekend calendars in each borough’s Family Court to accommodate working parents and teens in foster care who cannot attend scheduled hearings during school hours;
- Requiring judges to routinely meet with the child(ren) at issue in a given case, unless there is a compelling and documented reason not to;
- Appointing Family Court judges to five-year terms (rather than the current ten-year term), and placing domestic violence experts on the Mayor’s Advisory Committee on the Judiciary;
- Scheduling judicial evaluations every two years by an independent committee using predetermined benchmarks and making the results public;
- Creating more supervised visitation programs and training staff to understand the dynamics of domestic violence;
- Creating an independent review panel to review complaints about law guardians;
- Mandating law guardians to attend training in child development and children’s responses to domestic violence;

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<sup>13</sup> VOW is a grassroots advocacy organization comprised of survivors of domestic violence who are working to improve the systems that battered women and their children rely upon for safety and justice.

<sup>14</sup> Specifically, victims stated that waiting rooms were far too cramped to give them any sense of security and the rooms in which settlement conferences were held were too small. Victims also felt uneasy when their confidential addresses were revealed in the courtroom.

- Devising minimum standards for law guardians aimed at ensuring: an appropriate amount of time is spent with the child client in a quality interaction; a limit is placed on the number of cases a law guardian can carry; the law guardian meets with each parent and observes his or her interaction with the child(ren);
- Rotating law guardian assignments through a published list, to ensure that assignments are fair and impartial;
- Creating the position of a domestic violence resource coordinator on staff at each Family Court;
- Improving safety measures by ensuring that elevators are working, bathroom locks are functioning, and security guards are stationed in waiting rooms and outside the courthouse to patrol the line of individuals waiting to gain access;
- Requiring all Family Court judges to attend the three-day National Judicial Institute on Domestic Violence seminar;
- Directing funds from the 18B panel to institutional providers of legal services with expertise in domestic violence (such as inMotion, Sanctuary for Families, and specialized Legal Services programs); and
- Ensuring that lawyers with expertise in domestic violence are included on the 18B panel.

## **II. COURT MONITORING REPORTS**

In court monitoring projects, lay volunteers (“Monitors”) observe proceedings in court for a period of several months. The Monitors use specially-designed forms to evaluate the courts’ performance, including the ability of the judges<sup>15</sup> and the physical conditions under which the courts operate. The Monitors’ findings are published in reports which are distributed widely. The reports that were reviewed for the purpose of this memorandum were the culmination of hundreds of courtroom observations in Monroe, Rockland, Schenectady, Albany, Saratoga, Suffolk and Dutchess counties between 1998 and 2006. Through their observations, the Monitors suggested ways to increase efficiency and reduce delay, lessen inconvenience to the public, increase the apparent sense of “fairness,” and deal with the large numbers of children who often accompany adults to court. Below are summaries of the observations and recommendations made by the Monitors.

### **A. Observations of Monitors**

(i) *Judges.* Monitors indicated that the quality of judges ranged from very capable (compassionate, patient, accommodating of scheduling needs, and able to

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<sup>15</sup> The evaluations are not based on judicial decisions or legal knowledge, but rather the demeanor of the judge, and his or her attitude toward litigants, attorneys, and court personnel, efficiency in carrying out duties, and ability to maintain control over the proceedings.



maintain control of their courtroom) to seriously lacking (temperamental judges who were impatient, flippant, sarcastic, overly casual in tone and often rude to those appearing). Many judges were praised for having the best interest(s) of the child(ren) at issue and others were noted as being able to deftly handle complex issues. Individual judges were recognized for their desire to expedite the process for families, their quick scheduling of reappearance dates and as striking an appropriate balance between professionalism and human understanding.

(ii) *Hearing Examiners/Judicial Hearing Officers*. A similar range of abilities was reflected in the evaluations of hearing examiners and judicial hearing officers (JHOs). Many were deemed to be hardworking and compassionate, while others were described as “appearing rushed,” “easily frustrated” or “burned out.” As a general matter, however, Monitors applauded the abilities of the hearing examiners and JHOs and found them fair and firm and willing to be creative in proposing solutions. One concern raised repeatedly by the Monitors was the problem inherent in attempting to control increasing caseloads with part-time personnel vested with limited jurisdiction, such as JHOs.

(iii) *Counsel*. Generally, attorneys received high praise for their efforts to provide proper representation under difficult circumstances. The two main criticisms of counsel in Family Court (whether private or public attorneys) were that the attorneys were frequently late or inadequately prepared. In either instance, the end result was lengthy delays and a high adjournment rate. The Monitors expressed opinions that the quality of performance was adequate but the attorneys were stretched too thin to represent their clients effectively.

(iv) *Social Services and Support Agencies*. These agencies were generally commended for the work they achieved with limited resources. The agencies’ work was described as “adequate,” but it was noted that necessary paperwork for hearings was often incomplete or late. In Schenectady County, Monitors harshly criticized the Department of Social Services (“DSS”) for a variety of perceived deficiencies, including: slowness in accomplishing goals for clients; inadequate preparation for court conferences; and seeking multiple adjournments without concern for delay. In Suffolk County, the Monitors criticized the Department of Probation for being ill-prepared and continually the cause of delay in proceedings.

(v) *Other Issues*

- *Delays and Adjournments* were noted to be a recurring problem. Contributing factors included counsel’s inadequate preparation or litigant’s/counsel’s failure to appear. Delays sometimes occurred as a result of heavy caseloads and the need for attorneys and social service agencies handling several cases to shuttle back and forth between courtrooms. Other causes of delay included: (a) the failure to effectuate service on litigants; (b) support agencies not being adequately prepared to proceed; and (c) detained litigants not being transported in a timely fashion.



- *Audibility*, or lack thereof, was a source of continual frustration for the Monitors. It was noted that microphones were available in many courtrooms for recording purposes but were not used for amplification.
- *Facilities* and their inadequacy was a continual source of frustration for the Monitors. Specifically, Monitors criticized the size and design of waiting areas, especially the lack of adequate seating and the lack of conference space available to attorneys and clients, which forced individuals to meet in public areas to discuss potentially privileged matters. Other issues included: (a) the lack of adequate signage or personnel to direct litigants through the courthouse; (b) the disrepair of the restrooms, including that some were occasionally non-functional, lacking functional locks or lacking in basic sanitation; (c) the lack of handicap accessibility (including whether individuals with physical disabilities could actually access the court, given the small size and cramped nature of many of the facilities); (d) the small size of hearing rooms, requiring opposing—often adversarial—parties to appear in cramped quarters and face each other across a conference table; (e) the lack of daycare facilities for children and/or a lack of staff available to operate existing Children’s Centers.

**B. Recommendations of Monitors**

- The State Legislature should enact Chief Judge Kaye’s court restructuring proposal;
- The State Legislature should create additional judgeships because ever-expanding caseloads force judges to dispense “assembly-line justice;”
- The State Legislature should pass a constitutional amendment providing for non-partisan merit selection of Family Court judges;
- The State Legislature should increase compensation for assigned counsel, and ensure adequate funding for support agencies servicing the Family Court;
- The Legislature and the Office of Court Administration (“OCA”) should provide for full automation;
- Sheriffs should work with the Family Court to coordinate efficient transfer of litigants in secure detention;
- An information desk staffed with court personnel should be made available to the public to minimize confusion and aid in navigating the courthouse and signage should be improved;

- Petitioners should be screened more thoroughly to ensure they are assigned to the proper judge, hearing examiner, or JHO and to dispose of non-judicial cases before seeing a judge;
- To discourage “no-show” litigants, petitioners who fail to appear and who do not provide a valid excuse should be charged a nominal fee to refile a petition;
- Additional waiting areas and conference spaces should be constructed with adequate seating to provide litigants with privacy and to prevent noise interference with court proceedings;
- Additional steps should be taken to make the facilities accessible to individuals with physical disabilities;
- Counties should establish a child care center within easy reach of the Court if one does not already exist;
- The Court should assess the cause of delays and consider ways to reduce them. Suggestions included: the use of a telephonic or computerized system in which litigants and attorneys could call or log in on the day or their scheduled appearance and be advised of delays; expansion of the use of video/teleconferencing; provision of additional court staff to meet with parties prior to appearances in order to secure necessary information and determine whether their case can be disposed of prior to appearance; implementation of staggered calendars to reduce waiting time; and provision of additional staffed magnetometers to reduce waiting time and speed processing; and
- The Court should better maintain its facilities.

### **III. RECURRING ISSUES IDENTIFIED IN PREVIOUS REPORTS AND PAST RECOMMENDATIONS**

While each report summarized supra identified issues within the Family Court system, we identify here the four issues that were consistently cited as needing improvement and which can be addressed through administrative action. These issues are: (1) inadequate court facilities; (2) need for better coordination among courtroom participants; (3) lack of sufficient training; and (4) lack of readily-available templates or “best practices” for practitioners.

Regarding facilities,<sup>16</sup> specific areas of concern include: (1) inaudibility of proceedings; (2) inadequate waiting areas, including that their size is too small,

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<sup>16</sup> Issues with facilities were identified in every Monitor Report.

there is inadequate seating, and they are not ADA-compliant; (3) lack of children's center or staff in existing children's center; (4) either shortage of or lack of conference areas, thus forcing clients and attorneys to discuss privileged topics in earshot of others; and (5) basic functions compromised (unclean restrooms, inadequate ventilation, cramped quarters posing a security risk, etc.).

Regarding coordination,<sup>17</sup> a common concern was the lack of efficiency generally perceived in Family Court. Specific issues identified include: (1) counsel often late or inadequately prepared, resulting in lengthy delays and high numbers of adjournments; (2) lack of adequate staffing to direct litigants, resulting in delays caused by late appearances; (3) need for better coordination with agencies serving the Court (Legal Aid, Probation, etc.) to ensure adequate coverage; and (4) need to improve calendar management.

Regarding training,<sup>18</sup> a consistent area of concern is that judges (and to a lesser extent practitioners) are not adequately trained to handle Family Court matters. Consequently, not only may justice be compromised, but so too efficiency.

Finally, there is a perceived need for internet-based and hard copy templates<sup>19</sup> to eliminate a lack of consistency and uniformity in forms, processing and intake among the Family Courts, which results in delays.

Each of these four issues can be addressed administratively and, if addressed, would likely eliminate inefficiencies in the currently overburdened system. Past recommendations, which are discussed more fully supra, include:

*Facilities.* Establishing a child care center within easy reach of the court, improving daily and ongoing maintenance, and using microphones for amplification purposes.

*Coordination.* Devising a notification system (call-in or computerized) through which litigants and attorneys can notify the Court, even on the day of their scheduled appearance, that they will not be appearing or will be late in appearing, so that the docket can continue without delay; expanded use of video/teleconferencing; hiring and assigning additional court staff to meet with parties prior to appearing before the judge; imposing a nominal surcharge on the

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<sup>17</sup> Issues regarding coordination were identified in every Monitor Report, as well as in New York City Family Court—Blueprint For Change (2007).

<sup>18</sup> Issues regarding training were identified in the following reports: Monroe County Court Monitor, Report to the Family Court (1998); Development of New Fiduciary Appointment System (2004); and New York City Family Court—A Blueprint for Change (2007).

<sup>19</sup> Issues regarding the lack of process uniformity among Family Courts were identified in the following reports: Monroe County Court Monitor, Report to the Family Court (1998); and Development of New Fiduciary Appointment System (2004).

next-filed document by “no show” litigants, absent good cause shown; improved signage in the courthouse; and undertaking a study to determine why litigants fail to appear (e.g., failure of respondents to be properly served, transport issues in the case of detained litigants, etc.) and devising solutions to address these issues.

*Training.* Require newly-appointed judges to attend a mandatory education program designed to address the legal—both substantive and procedural—and practical issues likely to be faced by virtue of the assignment; conduct training needs assessment, including among litigants (foster children and families); require an orientation period for newly-appointed judges, to include mandatory observation of practice by more experienced Family Court judges; provide for continued support by creating a mentoring system in which newly-appointed judges are paired with more experienced judges; articulate performance expectations; and develop a mechanism to communicate performance data to the public.

*Templates.* Create practical, user-friendly forms that are consistent from county to county and available to the Bar online and elsewhere; develop a uniform system of early screening to assist the Court in assessing the complexity of a case and the need for agency involvement; develop uniform statewide protocols for representation of children (eligibility and oversight, minimum standards); and create and maintain a list of attorneys approved by the Court to act as counsel for litigants and interested parties.

#### **IV. INITIATIVES IMPLEMENTED SUCCESSFULLY IN OTHER STATES<sup>20</sup>**

According to the American Bar Association (“ABA”), family law cases represent the largest and fastest-growing segment of state civil caseloads. In the 1990s, family law cases were estimated to constitute over one-third of the civil cases handled by the nation’s courts. And, as evidence from New York demonstrates, cases in Family Court increased from 231,670 to 239,552 over the last ten years. According to the ABA (Presidential Working Group, 1993) there has also been an increase in the extent to which:

- single families confront multiple issues that are being handled concurrently as separate cases across several judicial officers;
- adversarial methods address the legal issues, but not the underlying interpersonal issues in family disputes that need to be tackled to avoid a recurrence of the problem;

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<sup>20</sup> The initiatives undertaken in each of the other states identified herein were evaluated by the American Institutes for Research under contract to the California Administrative Office of the Courts. This evaluation was done in conjunction with a literature review created to prepare for California’s own unified family court pilot project.

- families lack legal counsel and familiarity with legal procedures;
- court decisions in family law matters need to be monitored after disposition; and
- courts need to coordinate with social service or treatment agencies in family law cases.

As many states have noted, addressing these issues is complicated by the lack of coordination in the courts' effort to adjudicate multiple or repeat issues involving the same family. The fragmentation in managing cases, combined with the lack of an information-sharing protocol among judges and court staff, frequently give rise to conflicting orders, duplicative services, and general inefficiencies. As a result, many states have reached a consensus that unified family courts are the best solution to address these concerns. This move toward a unified system is analogous to the recommendation of Chief Judge Kaye, but cannot be implemented administratively in New York.<sup>21</sup> Summaries of initiatives implemented in other states, including the oft-cited initiatives from California, Ohio and Pennsylvania, follow below.

#### **A. California**

In March 2000, the Judicial Council of California ("JCC") proposed a strategic plan describing a long-range vision for the State Court system. A subsequent three-year operational plan identified a unified family court system as a priority project. Specifically, the operational plan mandated the establishment of at least six mentor courts working toward unification of proceedings in family, juvenile, and probate guardianship.

The JCC allowed the Superior Courts throughout the state to design and implement their own respective projects based on local needs. Courts in eight counties were selected and supported as they put their plans into effect, and were then designated "mentor courts" to other jurisdictions interested in program replication. The mentor courts each outlined differing approaches and staffing patterns, and incorporated different types of information-sharing and service components, based on their own local needs.

#### **Program Goals**

Each mentor court was required to design a program that would achieve the following ten objectives:

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<sup>21</sup> As discussed more fully in "A Court System for the Future: The Promise of Court Restructuring in New York State (Special Commission on the Future of the New York State Courts)", in order for New York to adopt a unified court system, a constitutional amendment would be necessary. To date, such an amendment has not found support in the New York State Legislature.

1. Establish local rules/protocols for identifying families who have cases in more than one division or courtroom;
2. Establish local rules/protocols for information-sharing of existing orders so as to avoid conflicting orders;
3. Establish local rules/protocols for notifying court-connected services (family law facilitators, mediators, evaluators, attorneys, social workers, probation officers, and victim advocates) that members of a family with whom they are working are involved in other related court matters;
4. Create formal calendaring methods to coordinate court appearances and improve access for litigants, such as establishment of time-certain hearings;
5. Devise case-tracking methods to expedite cases where appropriate and to reduce unnecessary delays;
6. Establish local rules/protocols to reduce the number of times children are required to testify about an issue in different court matters;
7. Establish local rules/protocols addressing security for family and juvenile court participants, domestic violence victims, and staff;
8. Establish local rules/protocols for providing services and referrals for families with mental health and substance abuse concerns;
9. Establish local rules/protocols addressing how cases should be handled when a family has two or more cases within the same division or in multiple divisions; and
10. Demonstrate accessibility of services, including programs for self-represented litigants, use of interpreters and volunteers, and facilities designed to meet the needs of families and children in the courts.

#### *Program Evaluation*

The ten program objectives were achieved by all the mentor courts and two of the ten objectives (reducing the number of times children testified and improving security for court participants) were often in place before the mentor court program was initiated.

A number of significant results were common among the mentor courts at the end of the three-year implementation stage, including increased levels of public trust and confidence in the courts, greater access to the courts for litigants, heightened safety, fewer conflicting orders, increased service coordination with less duplication, increased quality of dependency exit orders, greater court-community collaboration and intra-court communication, better judicial decision

making, more user-friendly judicial culture, higher levels of satisfaction among judges, and heightened awareness of legal issues related to case coordination.

Because of the diverse nature of the courts involved in the project, one single program cannot be identified as more successful than others. Evaluators believe, however, that the most successful courts were those that had: established judicial support and leadership early-on; involved court and community stakeholders in the planning phase; assessed technological capacity and addressed issues when possible; allowed sufficient time to implement the program; addressed legal issues during the planning process; identified and defined relevant and appropriate case types and “family members” in advance; dedicated staff to the project; created a coordinated administrative structure that spanned various case types; educated court staff and judicial officers; designed a program based on local court needs and culture; encouraged and institutionalized methods for cross-communication among case types; developed formal policies, rules, or protocols; and sought technical assistance from other unified family courts, or Unified Courts for Families Deskbook.

## **B. Ohio**

In June 1999, the Ohio Supreme Court and Department of Job and Family Services funded four Unified Family Court pilot initiatives. The courts that were selected to participate in the pilot initiative were located in Clermont, Fayette, Lorain, and Mercer Counties. The four pilot courts were supported by 18-month grants beginning in June 1999 and ending in December 2000.

### *Pilot Project Goals*

Each county had different goals for its pilot project. The court in Fayette County identified an intake officer, who began intake screening for new cases with children to identify prior or concurrent cases involving family members. A report summarizing the multi-family cases was given to the judge hearing the new filing. The judge could then agree to consolidate cases across court divisions if it seemed in the best interest of the family members, especially the children. In addition to new intake procedures, the Fayette County court sought to link the information systems of the courts, better coordinate family services, and expand the availability of ADR services in juvenile cases.

The court in Lorain County increased the number of judges and magistrates in its Domestic Relations Division from six to nine. Planning began for integrating case management systems and eventually merging the Domestic Relations, Juvenile, and Probate courts to create a true unified family court. The Lorain County court also planned to expand and improve resources for the Family Division, revise local rules to support better case management, and develop programs to increase public access to the courts.

Mercer County’s court system included a General/Domestic Relations Division and Probate/Juvenile Division. Under the pilot project, the two divisions



proposed to share a magistrate for family law cases and expand services available to families.

Clermont County's Common Pleas Court included a Domestic Relations Division and a Probate/Juvenile Division. Under the pilot project, these divisions planned to improve their respective automated case management systems to share information, integrate reception and *pro se* services through a shared magistrate, expand mediation in family cases, and enhance the capability to conduct custody investigations.

#### *Pilot Project Evaluation*

The evaluation reviewed case records in a total of 1,654 family cases across the four counties. Within these four counties, the percentages of family cases linked to prior cases were substantial. All four of the pilot projects attempted to expand ADR services, especially mediation. Overall, 90% of clients surveyed reported satisfaction with the mediation process. A large majority considered the process to be fair and useful for enhancing communication.

Fayette County became the first Ohio County to systematically screen at intake for related family cases across all court divisions and increased referrals to mediation by 43% during the project. The intake officer position helped overcome barriers to coordination. A new family services coordinator improved the working relationships among the Probate/Juvenile Court, social service agencies and local schools, guardians *ad litem* and custody investigation services, as well as the tracking of court order actions.

Lorain County initiated a public discussion about the merging of courts to create a true Unified Family Court, started a comprehensive overhaul of local Juvenile and Domestic Relations rules to create a consolidated set of Family Court rules, initiated front-loaded case processing for divorce cases that significantly reduced average case closure times, developed parenting seminars for unmarried parents, and expanded mediation services.

Mercer County's Family Court Magistrate helped coordinate the handling of divorce, custody and parentage cases, and increased the services provided to families in divorce cases from 14% of families in 1998 to 43% during the grant period.

Clermont County's Domestic Relations and Probate/Juvenile Divisions planned to share a magistrate in the custody area and fully automate the collection of information concerning related family cases. Unfortunately, the partnership between the two courts weakened, at least partially due to staff changes in one of the courts. The county government also delayed approving a grant to cover additional staff needed by the project, mirroring funding problems faced in Lorain and Mercer Counties. The automated information system enhancements were never initiated.



### C. Pennsylvania

#### *Pilot Project Elements*

Pennsylvania's efforts to develop a Unified Family Court provide one of the most recent examples of successful initiatives. The Supreme Court of Pennsylvania selected Allegheny County as a "pilot county" to implement the Unified Family Court model in December 2002.<sup>22</sup> The Allegheny County Family Division (adult and juvenile sections) now combines all elements of the traditional juvenile court functions (delinquency and probation, child protection and dependency, domestic violence, termination of parental rights, adoptions, mental health hearings) and adult family court functions (child and spousal support, divorce and equitable distribution, child custody, domestic violence) into one system.

Under the model, each judicial district is required to establish a Family Court Filing Unit, through which all actions for divorce, annulment, child custody, paternity and protection from abuse shall be commenced. All actions in the Family Court involving identical parties are entered on the Court's docket under the same primary case number. To the extent practicable, two or more actions in Family Court involving the same parties and common questions of law and/or fact should be consolidated for hearing or trial. The model further provides for continuing education for Family Court personnel in substantive family law, relevant procedural rules, domestic violence, child development, family dynamics, addictions and treatments, asset valuation, and community resources.

In connection with the model, Family Division judges in Allegheny County created a third senior administrative office, called the Office of Court Services for Children. The judiciary has also implemented numerous cross-systems procedures and programs designed to promote the most efficient use of Family Court resources and provide a less fragmented court experience for children and families.

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<sup>22</sup> The model for Pennsylvania's Unified Family Court system was outlined by the Supreme Court Domestic Relations Procedural Rules Committee, and then established as Rule 1931 of the Pennsylvania Rules of Civil Procedure. The Court's ultimate goal, as stated by the Committee, is "to make it easier for the public to gain access to the family court system and to ensure that family matters are concluded fairly and expeditiously."

### Pilot Project Evaluation

The Unified Family Court project is recent and ongoing, and formal evaluation of the project is not yet available. The Honorable Kim Berkeley Clark of the Allegheny County Family Division, however, notes that the judiciary remains committed to engaging in a collaborative process with other systems, the Bar, government agencies, treatment providers, consumers, experts in child development, family dynamics, mental health, substance abuse, and other stakeholders. The Allegheny County Family Division plans to continue its evolution as a Unified Family Court.

#### **D. Colorado**

##### Pilot Project Elements

In September 2000, Colorado created a unified Family Court pilot project in its 17th Judicial District. Under the project, a number of cases with dependency and neglect filings were randomly assigned to the new Family Court Division. Once assigned to the Family Division, all cases related to a particular family (dependency filings, as well as delinquency, truancy, adoption, relinquishment, family-related misdemeanors, restraining orders, DUI charges, mental health, and domestic relations cases) were consolidated and handled by a single judge.

After a family's cases were consolidated, the Family Court Facilitator organized a conference of all parties. This meeting was intended to promote information-sharing and early case assessment and planning. Two Multi-Disciplinary Review Teams (MDT) were then tasked with reviewing the plans developed by case workers, and offering recommendations about additional or different services that the family might need. A comprehensive report was then written up and distributed to the Court and each individual in the case.

##### Pilot Project Evaluation

A broad consensus existed among evaluators and stakeholders that consolidating cases and relying upon a one-family/one-judge model created a more informed bench, offered a better opportunity to respond to the needs of the case, and could have benefits when a family's problems were severe or compliance issues arose. The Family Court Division reportedly helped identify and increase awareness of an individual family's needs, and led to the provision of better and coordinated services, including more court-ordered counseling and mental health services.

Certain changes were recommended, including: allowing greater flexibility in deciding which cases to consolidate, employing greater flexibility in scheduling; and lengthening judicial rotations into the Family Court to provide for deeper experience and continuity. Furthermore, the evaluation showed that while the Family Court increased the number of matters dealt with per hearing, it did not reduce the total number of hearings per family.

**E. Indiana**

*Pilot Project Elements*

In 1999, the Indiana Supreme Court received funding from the Legislature to develop and implement pilot family court projects in Johnson, Monroe, and Porter Counties. By Supreme Court rule, the Unified Family Court could exercise jurisdiction over any and all other cases involving a family that had a current juvenile case before the court.

Under the pilot project in Johnson County, families with juvenile and other cases were referred to Family Court by the Family Court case manager. Once the Family Court assumed jurisdiction, the case manager scheduled all matters relating to that family before the same judicial officer. The case manager also completed a family information form to serve as an early case assessment tool, which in turn assisted the Court in scheduling case events and in identifying appropriate services.

The Monroe County pilot project adopted a “one family/one judge” court to multi-case families. A Family Identification Form required judges, other court personnel, attorneys, agencies and litigants to describe case characteristics, and these forms were then used by the Family Court coordinator to identify and review pending cases, and submit them to the appropriate court. Cases over which the Family Court exercised jurisdiction were managed by the coordinator, who assisted with case scheduling, service referrals, settlement conferences, and the monitoring of court orders.

Porter County developed a “one family/one case manager” coordination system. The pilot project court accepted families with multiple cases before the county courts so long as children were involved. Once an attorney appearance form was filed to refer a case to the family court coordinator, the coordinator conducted a search of electronic databases to identify cases belonging to the family, and if the acceptance criteria were met, assigned the cases to a Family Court case manager. The case manager created a report that summarized relevant events and orders within the family. These reports were then shared with relevant courts and others needing the information. A monthly Family Court roster was maintained for the entire county court that summarized scheduled appearances for family court litigants.

*Pilot Project Evaluation*

Evaluations of the projects revealed that many families who came to court had more than one case pending within the system, and that most of the cases involved divorce, children in need of services, juvenile delinquency, and protective orders. The projects experienced a number of challenges, including inadequate staffing levels; the absence of a user-friendly, automated case management, information and tracking system; and limited alternative dispute resolution resources. The projects did, however, experience some success.

Information collected in the party appearance and Family Information Forms provided timely information that fostered efficient case management and effective provision of services, and the simultaneous scheduling of multiple case matters before the same judge appeared to reduce the number of court appearances.

**F. Kentucky**

*Pilot Project Elements*

In 1991, Kentucky established a pilot Unified Family Court project statewide. As of 2002, 14 pilot projects existed throughout Kentucky, encompassing 26 counties. The jurisdiction of these pilot project courts encompassed most family-related matters, and these matters were coordinated using a “one family/one judge” method. Each pilot project was headed by a Chief Judge and supported by a Family Court Administrator, who organized and managed all non-judicial affairs. The Administrator assisted in case flow management while acting as a general liaison among court officials, the public, and community agencies.

*Pilot Project Evaluation*

The first evaluation of Kentucky’s pilot project, completed in 1993, declared the project a success. Surveyed attorneys believed that family legal issues should be adjudicated before a single court, that the pilot project court was therefore an improvement, and that this improvement came in part from the court’s link to social services and mediation services. Litigants held similarly positive opinions, generally feeling that the court-ordered services helped solve their legal problems, the adjudication process had a good effect on their children, the court’s rulings met family needs, and that the judge treated them respectfully.

Numerous findings emerged from later evaluations that suggested there was nonetheless room for improvement. Specifically, the findings articulated a need for court staff to establish alliances with social service agencies and other community institutions. Other recommendations included close coordination between existing courts and family courts in order to ease transition, additional family court personnel to manage the judicial and therapeutic role played by the court, increased training, improved court facilities, and reduced turnover in court staff.

**G. New Hampshire**

*Pilot Project Elements*

In May 1995, the New Hampshire legislature passed a bill creating Unified Family Court pilot projects in two counties. The purpose of the projects was to identify and consolidate family and juvenile cases belonging to the same family before a single judge. The project teams in each county included a supervising judge, other judges and marital masters, a coordinator, case managers, and other court personnel. Coordinators were responsible for overseeing the

processing of cases, monitoring the customer services provided by staff, and providing technical assistance. Case managers were responsible for providing information to *pro se* litigants, ensuring cases were processed in a timely, efficient manner, and assisting judges and masters to prepare litigants for hearings.

The goals of the pilot project were to:

1. Assure equal attention and priority for family law cases to achieve prompt and fair resolution of all cases files;
2. Minimize the adversarial nature of divorce by emphasizing ADR;
3. Make the courts more geographically accessible;
4. Make the court process easier for litigants to understand;
5. Assign cases involving the same family to the same judicial officer; and
6. Staff the Family Division with judicial officers specially selected and trained to deal with family issues.

#### *Pilot Project Evaluations*

Evaluations of the pilot projects presented results for each of the projects' six goals. In sum, some goals were met while others were not. It was noted that dispositions in Family Division cases were reached substantially earlier under the pilot project than previously. Litigants also praised the Family Division for making the process easy to understand and use. Finally, about half of those surveyed reported that Family Division judges and magistrates appeared trained in family matters, but indicated that additional training should be a priority.

#### **Conclusion**

Commissions, scholars, lay monitors and others have studied and evaluated previously the New York Family Courts, and have identified areas in need of reform and suggested ways to increase efficiency, lessen inconvenience to the public, and increase the apparent sense of "fairness" in the system. The areas repeatedly identified as most in need of reform, which can be remedied administratively include court facilities, coordination among participants, judicial and support staff training and uniform forms and processes. While previous recommendations go beyond administrative action, including adoption of the unified court system by Chief Judge Kaye variations of which have been launched as pilot programs in other states, the above issues could be addressed immediately and make a dramatic impact on litigants' experience in Family Court.

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**A CALL TO ACTION:  
THE CRISIS IN FAMILY COURT**

**REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK  
RECOMMENDATIONS FOR LEADERSHIP AND REFORM**

**APPENDIX B  
PRO BONO INITIATIVE**

In Cooperation with William C. Silverman, Esq.  
Partner and Pro Bono Director,  
Greenberg Traurig, LLP

**The Fund for Modern Courts  
Family Court Task Force  
February 2009**

**Appendix B**

**A CALL TO ACTION:  
THE CRISIS IN FAMILY COURT**

Pro Bono Initiative

**Family Court Clinic**

The project, which is called the Family Court Clinic (“the Clinic”), began in November 2006, and was spearheaded by the Honorable Joseph Lauria, Administrative Judge of the New York City Family Court, and William C. Silverman, Esq. of Greenberg Traurig with five law firms and Citigroup working out of Brooklyn Family Court. The Clinic now has expanded to Manhattan and is comprised of the following 17 law firms as well as the legal departments of Pfizer, Citigroup and Bank of America:

Cooley Gooward Kronish  
Kaye Scholer LLP  
Dechert LLP  
Greenberg Traurig, LLP  
Orrick, Herrington & Sutcliffe LLP  
Reed Smith LLP  
Strook & Strook & Lavan LLP  
Cadwalader, Wickersham & Taft LLP  
Dickstein Shapiro LLP  
DLA Piper  
Proskauer Rose LLP  
Ropes & Gray LLP  
Shearman & Sterling LLP  
Skadden, Arps, Slate, Meagher & Flom LLP  
Weil Gotshal & Manges LLP  
White & Case

At its essence, the project is a partnership between private firms and the New York City Family Court (with the strong support of former Chief Judge Kaye) to assist



unrepresented litigants. It is accessible to both litigation and transactional attorneys, and, as described below, there is substantial support from Court personnel.

Pro bono attorneys – the Clinic has over 200 now in the project - provide advice and counsel in 30-minute sessions to unrepresented litigants in Family Court on various issues including child support, visitation, custody, guardianship and paternity. Attorneys help litigants at the Clinic but do not take any work back to the office, do not make court appearances, and do not represent the litigants outside of the one-time sessions.

The Clinic asks firms to make a commitment to staff the project at least one day per month for 12 months. Generally, that commitment requires five to 10 attorneys from each firm. If a firm cannot make this kind of commitment, the Clinic will accept alternative commitments on a case-by-case basis. For example, commitments from smaller firms even if they are reluctant to make the full one day per month commitment are acceptable. The Clinic will team firms up according to their capacity to send attorneys, so no firm should shy away from participating in the Clinic. The Clinic does ask that, whatever the level of commitment is, it last for at least one year.

Once a firm has made the decision to join, it should contact William C. Silverman, Esq. ([silvermanw@gtlaw.com](mailto:silvermanw@gtlaw.com) or (212) 801-3148) who will alert the Court and make sure the firm receives additional information, including the training materials and DVD's. The new firm will be eased into the existing schedule. Before taking its own day, the new firm will be teamed up with existing, seasoned project attorneys so the new attorneys will be in a position simply to observe the first couple of times. At all times, there is a court attorney (devoted solely to the project) present at the Clinic to screen the cases and answer any questions the pro bono attorneys may have.

The Court provides periodic live training for new participants (now available on DVD) along with written materials. The training is conducted by judges as well as court personnel responsible for training judges. Also, the Clinic will arrange opportunities for the new attorneys to watch proceedings by “shadowing” judges. Although not required, most attorneys find this to be a fascinating and helpful part of the training.

Every few months or so, the Court issues a schedule, detailing which days correspond to which firms. It is then the firm’s responsibility to ensure its days are covered. If the firm has to skip a day, the court attorney will arrange for another firm to cover.

In sum, this project is an effective and efficient way for the private sector to address the urgent needs of the unrepresented. This project has been extremely well received by the clients, and for pro bono attorneys, it affords them an excellent opportunity to make a big impact with a manageable time commitment.

At its December 17, 2008 Board meeting the Fund for Modern Courts adopted a resolution to support the efforts of the Family Court Task Force to engage partners from major firms who serve or have served on Modern Courts’ Board to approach their firms for a commitment to participate in the Family Court Clinic. The resolution authorized the Task Force to take the necessary steps to accomplish the goal of increased pro bono participation by law firms in the Family Court Clinic. Efforts to recruit additional firms for the Clinic are proceeding.