

Colorado Courts' Recommendations for Family Cases

An Analysis of and Recommendations for Cases Involving Families

A Discussion Paper

Colorado Judicial Branch
Prepared by the Court Improvement Committee
for the
Colorado Supreme Court Commission on Families in the Colorado Courts
May 2001

Preface

This report has been prepared by an internal committee of the Colorado Judicial Branch called the Court Improvement Committee. In this report, the Committee, which consists primarily of Colorado judges and magistrates, offers its input regarding of the needs of the courts as they relate to families. The report proposes several recommendations. The purpose of the report is to prompt statewide discussion and deliberation of the recommendations. The release of the report launches a year-long process, led by the Judicial Branch Commission on Families in the Colorado Courts, to solicit responses to the Committee's recommendations. The Commission will consider responses to the report, the report itself, and propose its own recommendations in the spring of 2002. The role of Commission members during the coming year is to facilitate this process. The Commission has not yet taken any position regarding the recommendations in this report. It looks forward to and will consider responses from all who use the courts and are inclined to provide their thoughts and input. Public hearings will be held throughout the state this summer. Written responses may be directed to the Commission on Families in the Colorado Courts, c/o The Office of the State Court Administrator, 1301 Pennsylvania St., Ste. 300, Denver, CO 80203 or to resa.gilats@judicial.state.co.us.

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Executive Summary

Families come into contact with Colorado courts in a variety of ways. Whether it is through a divorce proceeding, a dependency and neglect matter, or juvenile delinquency, to name only a few, the Colorado courts have become intimately involved in the lives of tens of thousands of Colorado families. In recent years, the involvement of courts in the lives of families has risen significantly; such that over 50 percent of the cases on Colorado's court dockets are family-related matters. The Judicial Branch has made substantial efforts to address these needs over the past several years; however, the Branch recognizes that, as family-related cases increase and the unique needs of families in the courts become more complex, a more comprehensive approach is needed.

In September of 2000, Chief Justice Mary Mullarkey charged the Judicial Branch's Court Improvement Committee with the task of examining and assessing national and state efforts in the area of family law, as well as making recommendations to improve the ways Colorado courts serve families. The Court Improvement Committee members are judges, magistrates, and court staff who have extensive experience with issues related to families and the courts. To address its charge, the Committee met frequently during the last several months to review and discuss research, identify problems facing the courts, and formulate recommendations. The Committee documented its work in a report, for which this is the Executive Summary.

At the same time that she charged the internal Court Improvement Committee with its tasks, the Chief Justice also created a "Blue Ribbon Commission," the **Commission on Families in the Colorado Courts**. Once the Court Improvement Committee presents its report to the Blue Ribbon Commission, that Commission will carry this project forward to a point where it will make final recommendations to the Supreme Court, the Governor, and the General Assembly by June 2002. The Commission will be soliciting responses to the report recommendations through public hearings and meetings with local judicial districts, county commissioners, bar associations, county attorneys, social services agencies, private service providers, and users of the system from throughout Colorado.

This report is an important launching point for the public hearings and discussions with members of all the communities mentioned above, as well as for discussions among the Commission members. It is intended to give the reader some background on national trends; other states' efforts; Colorado court structure, initiatives and programs; and the Court Improvement Committee's specific recommendations and rationale for its recommendations. The report is organized according to these topics.

The Committee has made 19 recommendations, grouped under four overarching principles. While the report includes many details concerning the background for and implementation of each principle and recommendation, the primary components of the principles and recommendations are highlighted below:

- **Principle 1: Professional Expertise**

The Supreme Court should lead the Branch in prioritizing mechanisms that develop the expertise of judges, court facilitators, and other staff necessary to support the vision and goals of this project. The Supreme Court should actively foster and monitor the commitment of judges, court facilitators, and other staff.

Six recommendations:

- Equal weight should be given to family law background when selecting new judges.
- Chief judges should be required to assign experienced judges to family cases.
- Judges should be assigned to three-year terms with staggered rotations.
- The Branch should provide appropriate training to all personnel involved with family cases.
- The judicial performance commissions should receive training and then develop evaluative criteria that will measure a judge's understanding of and commitment to the principles that govern family cases
- The court should encourage judicial leadership in the community.

- **Principle 2: Timely, Efficient and Less Adversarial Processes**

Judicial districts should implement mechanisms to facilitate timely resolution of family issues in the least costly and least adversarial method possible.

Five recommendations:

- Rules and statutes should be amended to provide a non-adversarial alternative.
- The Branch should establish a Family Rules Committee.
- The Branch should establish a Family Oversight Committee.
- Judicial districts should implement a unified family division or adopt procedures that reflect the principles of a unified division.
- Judicial districts should implement procedures that facilitate coordination and communication.

- **Principle 3: Enhance Coordination**

In order to avoid fragmentation and enhance safety, court and probation improvements should be made to ensure early management, coordination, assessment, and provision of services in cases involving families.

Five recommendations:

- Identify cases involving families; consolidate or transfer cases to one judicial officer; or coordinate cases that must proceed independently.

- Improve the ICON automated case management system.
- Provide information to appropriate parties and agencies.
- Provide family judges with sufficient staff.
- Streamline and coordinate statutes pertaining to restraining orders.

- **Principle 4: Legal and Ancillary Services**

Improve legal services and provide local leadership to improve ancillary services in the community.

Three recommendations:

- Ensure competent and qualified public attorneys are assigned to these cases.
- Judicial officers should provide local leadership.
- County and state funding should be adequate to provide necessary services.

I. Overview of Committee's Charge

In September of 2000, Chief Justice Mary Mullarkey directed an internal Judicial Branch committee, the Court Improvement Committee (CIC), with the task of examining and assessing national and state efforts in the area of family law, as well as making recommendations to improve the ways Colorado courts serve families. The many legal issues that bring families into Colorado courts are not easily resolved and lead to complex and sensitive emotional, economic, cultural, and educational challenges for litigants and Colorado's communities. Furthermore, family-related matters now comprise over half of Colorado's court dockets. With these increases in volume and complexity, the Chief Justice has said it is time for the Branch to take a comprehensive look at the issues.

The members of the CIC have extensive knowledge of innovations across the nation and the state, and a detailed understanding of varying approaches that judicial districts have implemented to handle family cases. Many Committee members have participated in previous projects in this area. To meet its charge, the CIC met frequently during the last several months to review and discuss research and to formulate recommendations, which respond to identified problems. The CIC was asked to document its work in a report. At the same time, the Chief Justice created a "Blue Ribbon Commission," the **Commission on Families in the Colorado Courts**.

The 33-member Commission has committed to present final recommendations to the Supreme Court, the Governor, and the legislature by the end of June 2002. The CIC's report is to serve as a launching point for the work of the Commission, which will be considering the recommendations and conducting public hearings to solicit responses to the report recommendations.

The CIC's specific charge is to:

- Compile a summary of other states' reform efforts in the area of family law;
- Analyze caseload statistics, workload requirements, and case-processing practices currently in place within each judicial district;
- Provide analyses and critiques of various Colorado reforms and pilot projects in the family area;
- Look at "innovative" approaches courts developed in collaboration with their communities to provide expanded services to families in the legal system;
- Provide the Committee's view of the proper approach to family cases in the courts, including statutory and rule changes; and
- Identify resources that would be required to fulfill the vision of how the system ought to be.

The Commission's charge is to:

- Review the findings and recommendations contained in the CIC's report;
- Expand on the findings and recommendations of the CIC through meetings with local judicial districts, county commissioners, bar associations, county attorneys, social services agencies, private service providers, users of the system and the general public; and
- Provide to the Supreme Court, the General Assembly, and the Governor a strategic plan containing necessary statutory and rule changes, funding suggestions, and administrative improvements that will assist Colorado's courts in better serving families and children.

II. Organization of the Report

The remainder of this report is divided into four sections: section **III. National Research and Trends**, section **IV. Colorado Research: Problems Revealed**, section **V. Local Initiatives and Resources**, and Section **VI. Recommendations**. In addition, there are several appendices, which are referenced in the text and listed in the Table of Contents.

To complete the first three of these sections, the Committee reviewed many reports, articles and analyses. In some cases, the review of these materials is included in the Appendices so as not to interfere with the flow of the report. The Committee's recommendations, however, are contained entirely within the report in section VI.

The CIC has adopted 19 recommendations that have been framed according to four overarching principles. The Recommendations section of this report explains the Committee's rationale for this framework, presents the principles and recommendations, and provides Committee commentary for each recommendation.

III. National Research and Trends

The problems facing Colorado courts as they try to serve families are shared by virtually every state in the country. Themes of lack of coordination, resources, and information sharing are common. All states face a problem of families having multiple matters in one or more courts. The Committee reviewed and discussed numerous publications and research of progressive initiatives from states across the nation. A summary of these articles and initiatives is provided in Appendix I of the report. Within the summary, the Committee responds to specific concepts from four states—Hawaii, Florida, Oregon, and New York—and discusses the merits of the concepts as they might apply in Colorado.

IV. Colorado Research: Problems Revealed

Colorado Court System

The Colorado court system consists of the Supreme Court, an intermediate Court of Appeals, district courts and county courts. Each county has a district court (general jurisdiction) and a county court (limited jurisdiction). Specialized probate and juvenile courts, created by the Colorado Constitution, exist in the City and County of Denver. In all other districts, juvenile and probate matters are heard in the district court. Colorado statutes also authorize locally funded municipal courts with jurisdiction limited to municipal ordinance violations. The Denver County Court functions as both a county court and a municipal court and is administered by the City and County of Denver. During the fiscal year (FY) 2000, 118 district judges and 101 county judges served Colorado's twenty-two judicial districts.¹ In addition, there are 59 magistrates handling district court and county court matters.

District courts have jurisdiction over:

- Domestic relations matters filed pursuant to Title 14 of the Colorado Revised Statutes;
- Juvenile matters filed pursuant to Title 19 of the Colorado Revised Statutes (the Children's Code), which include dependency and neglect cases, delinquency matters, adoptions, relinquishments and paternity cases;
- Mental health matters filed pursuant to Title 21 of the Colorado Revised Statutes;
- Probate matters;
- County court appeals;
- Civil disputes over \$10,000;
- Water claims; and

¹ Denver County has 17 judges. In FY 2001, two district court judges were added for a total of 120 district judges.

- Felony criminal cases.

In addition, district courts have concurrent jurisdiction with county courts over misdemeanor and traffic matters.

County courts have jurisdiction over:

- Criminal misdemeanor and traffic offenses;
- Preliminary hearings in felony filings;
- Alcohol and game and fish violations;
- Civil disputes where the amount in controversy is under \$10,000, exclusive of fees and costs;
and
- Small claims proceedings.

Although county courts do not have jurisdiction over domestic relations matters, county courts do have statutory authority in alleged domestic violence matters to enter orders of protection (restraining orders) and orders regarding the temporary care and control of children.

Most often, urban judicial districts use specialized docketing systems in which district court judges' dockets include specific case types (i.e., criminal, civil, domestic relations or juvenile). Historically, **some** districts employ one or two year rotations for the civil and criminal divisions and one-year rotations for the domestic and juvenile divisions^[vs1]. Family law cases often involve emotionally-charged issues concerning intimate aspects of family relationships. In many jurisdictions, an assignment to a juvenile or domestic relations docket is viewed as highly undesirable, in part because, as previously stated, these matters are thought to involve social relationships and not legal issues. Despite the complexity of family-related cases, new judges often begin their appointment with a juvenile or domestic relations docket.

In those judicial districts that do not use specialized dockets, a general case assignment system is used whereby the judges preside over multiple case types at any given time. While the Denver District Court does use specialized docketing, the rotations do not include assignments of juvenile, probate and the City and County of Denver county and municipal courts.

Court Structure and Families

Multiple Judges, Conflicting Orders

As a result of the two-tiered court structure and specialized dockets, families who face multiple court filings frequently find themselves appearing before several judges on several different dates. Consequently, judges who preside over each case are unaware that there are other matters pending before other judges within the same district or other judicial districts. The absence of critical information too often results in judges entering orders that conflict with those of one or more judges in other cases involving the same family.

Municipal Courts

In addition, Colorado has more than 200 municipal courts, which exist independently of the state court system, including the district and county courts. Jurisdiction for municipal courts is authorized by state statute, state constitution, and municipal charters and ordinances. Although municipal court jurisdiction is limited to violations of municipal ordinances, collectively these courts handle thousands of cases involving families and juveniles. With a few exceptions, municipal courts' handling of juvenile, family or other case types are not regulated or governed by the Supreme Court. Despite the fact that municipal courts deal with many of the same families that have cases in county and district courts, an extensive study of municipal courts' practices and case handling has not been conducted to date. A unique opportunity to

coordinate all levels of cases involving families will be presented when the City and County of Broomfield becomes part of the 17th Judicial District in November of 2001.

Lack of Communication, Coordination, and Collaboration

When family cases are resolved in court, families are generally required to undergo multiple assessments and complete treatment plans or terms and conditions of probation. These requirements frequently overlap, are duplicative of requirements in other cases, or conflict with the requirements in other cases. The lack of communication, coordination and collaboration, which is systemic under the current court structure, is both cost ineffective and overloads families with requirements that cannot reasonably be met. **Perhaps most important, this structure creates gaps in much needed services and treatment. These gaps can place children and other innocent individuals at risk, circumvent accountability, and frustrate efficient, just and speedy resolution of disputes.**

Monitoring Compliance

An additional obstacle for juvenile and domestic violence cases is the court's obligation to oversee and monitor the compliance of numerous family members with court requirements. A primary function of the court in juvenile cases is to ensure that the "best interests" of the child are being met. In domestic violence cases, the court has an obligation to consider victim safety while balancing the rehabilitative needs of the offender. There are several distinguishing factors that affect courts' abilities to meet mandated goals in these cases. For example, in a juvenile delinquency case, the judge addresses potentially conflicting statutory mandates of "the best interests of the juvenile" with that of maintaining public safety. Similarly, in domestic violence cases, victims often return to the court to request elimination of court sanctions such as restraining orders or domestic violence treatment requirements when they have reconciled or

otherwise resolved their conflict with the other party. However, by statute judges must require treatment and impose restraining orders. Often, a judge knows that the best interest of the victim is separation from the perpetrator. Further, the economic and cultural effects of what the court sanctions must be taken into consideration when looking at the welfare of the victim. As a result of these and other similar factors, many of the family-related case types require significant amounts of court time. The ongoing maintenance of these cases that results from the unique challenges of families and the current structure of the courts is both inefficient and costly.

Allocation of Court Resources to Family Matters

In considering the impact of family cases on the court system, it is important to note the amount of time required for judges, magistrates, court facilitators, court staff and other professionals to work with these cases from filing to final disposition. Colorado uses a “Weighted Caseload” system to determine the judge and staff need of each case-type handled by the courts. This system accounts for the time it takes to handle the “average” case. These caseload standards have been recently revised to allow judges to spend more time on family, civil and criminal cases in order to improve the quality of judicial services. The table below shows the current standards for district court case-types, in minutes per case. For example, the amount of time a judge spends on the average dependency and neglect case is 200 minutes over the life of that case.

Case Type	Approximate Number of Minutes per Case (Judge and Magistrate Time)	
	Urban Courts	Rural Courts
Dependency and Neglect	200	200
Criminal	144	152
Civil	136	140
Juvenile Delinquency	92	98
Domestic Relations	89	93
Probate	49	49
Mental Health	27	27
Juvenile	26	26

The weighted caseload standards are used to identify the need for judges. Each case-type standard is multiplied by the number of filings in a district. Because of the mix of docketing systems utilized by the various courts (i.e., specialized, mixed or partial specialization), an assessment of the current allocation of judges by specific case types is not possible. However, based upon the current standards and filings, the weighted caseload model indicates that approximately 50 district court judges and magistrates should be assigned to family cases. This represents approximately one third of all judge and 60 percent of magistrate resources currently available statewide. Chief judges should honor this need when making judicial assignments. A table containing the judge resources and magistrate need in each case type, by district, is contained in Appendix II.

Adversarial System

Colorado families involved in courts face a complex and foreign system. Compounding the challenges of the system are the additional problems resulting from the fact that these families are usually in conflict. While the traditional adversarial process may be desirable to determine past historical facts, it may cause irreparable damage to family relationships, which are necessarily linked for many years in the future. Those responsible in the private and public

sectors for working with these families must recognize that the legal matters that bring families into the court system involve issues that are not easily resolved within the traditional confines of court structure, rule, and law. The Court Improvement Committee recognizes the need to reduce the adversarial nature of the court process in many cases as necessary to ensure the viability of future life-long family relationships.

New Challenges for Judges

There have been substantial changes in the law concerning domestic relations, domestic violence, and juvenile areas in the past five years. The courts are responsible for enforcing the requirements of these changes. However, the application of these laws to the unique emotional and legal needs of each family member are often complicated and fragmented. For example, the Colorado Revised Statutes mandate the allocation of parental responsibilities, rigid juvenile sentencing requirements, and expedited permanency placement for abused and neglected children who may not be prepared for permanency placement. Colorado judges face judicial challenges for which their experience and training have not always prepared them.

Office of the Child's Representative

Children exposed to the court system are typically the subject of dependency and neglect, domestic relations or delinquency cases. In dependency and neglect cases, the court appoints a Guardian Ad Litem (GAL) for the child who is an attorney required to represent the child's best interest. In domestic relations cases, the child is usually the subject of a parental responsibility dispute (formerly known as a custody dispute). In these cases, the court may appoint an attorney to represent the child's best interest, referred to as the child's representative (Child's Rep.). In delinquency cases in which there is a parent/child conflict or a complicated out of home placement issue, the court may also appoint a GAL.

The Colorado model for appointing attorneys to represent children is not as effective as it could be. Some of the problems identified include attorneys who:

- Represent children are not as competent as other attorneys in the court room;
- Lack necessary and special training in children and family issues;
- Are underpaid and/or carry too high of a case load to effectively represent the child;
- Never meet with the child they represent;
- Do not have time or choose not to participate in all the different agency staffings concerning the child;
- Do not conduct an independent investigation on the child and instead rely on reports from the caseworker or other professionals involved; and
- Adopt all recommendations made by the social services department for the child (commonly referred to as rubber-stamping).

To address these and other concerns, in 2000 the Colorado General Assembly adopted legislation creating a new state agency devoted to improving child advocacy in the courts, the Office of the Child's Representative (OCR). The intent of the statute authorizing OCR, Section 13-92-101, C.R.S., is to give Colorado's most vulnerable children a voice in the court system and empower them with competent and effective counsel. The statute acknowledges past failed efforts in this area: "... to date, the state has been sporadic, at best, in the provision of qualified services and financial resources to this disadvantaged population", Section 13-19-102, C.R.S. To that end, effective July 1, 2001, the OCR is charged with a number of mandates including ensuring high quality GAL services, investigating different models of attorney services and recommending models that best serve children and establishing statewide minimum practice and training standards for GALs.

V. Local Initiatives and Resources

In the process of identifying obstacles and making recommendations for improvements, the Committee felt it important to consider the unique needs of individual courts and note the approaches devised at the local level for meeting these challenges. The Committee looked extensively at current efforts within each of Colorado's 22 judicial districts and examined these for effectiveness as well as the feasibility of replicating such programs statewide. Several of these efforts, their location, and evaluative information are provided below. A detailed summary of specific information for each judicial district is provided in Appendix III of this report.

This section concludes with a discussion of resources in three areas—juvenile, domestic relations, and domestic violence. These areas have had increases in filings during the last several years, further challenging the Judicial Branch as it tries to meet the growing needs placed upon the courts.

Court-Related Projects

Family Court Facilitators

Court facilitators working in the juvenile area have proven to be an invaluable resource for the courts, families and other professionals working in the juvenile law area. Court facilitators are now funded in eleven judicial districts. The court facilitator is responsible for a variety of functions, including: tracking and monitoring cases to ensure compliance with statutory time frames, functioning as a liaison with other involved agencies and the community, and providing education concerning court processes and expectations for families and professionals involved in the dependency and neglect system. An extensive evaluation of the court facilitator position in juvenile cases is contained in Appendix IV.

As a follow-up to the success of the case facilitator position piloted in juvenile cases, several districts also began to use domestic relations case facilitators and pro se assistance coordinators. These positions provided substantial support to the 60 to 80 percent of parties in domestic relations cases who did not have attorney representation. Additionally, in cases with attorneys, the facilitator can help the parties to identify the real issues in dispute and dispose of other issues, set court time for immediate hearings as necessary and ensure the fair, efficient progress of the case to resolution. Facilitators have also been able to reduce delay by monitoring deadlines within cases and reviewing paperwork for appropriateness and completion prior to filing.

Simplified Dissolution/Divorce with Dignity Pilot Project

During 2000, the Simplified Dissolution/Divorce with Dignity Pilot Project was piloted in three judicial districts in Colorado. The project continues during 2001, and is currently being implemented in a total of six judicial districts. This project was the culmination of years of work by many state and local committees. The project was aimed at:

- Minimizing the use of the adversary system;
- Resolving conflict;
- Using faster, cheaper, and simpler methods;
- Maintaining responsibility for decision-making in the family;
- Establishing the expectation of cooperative dissolution and responsible parenting during and after dissolution; and
- Invoking the traditional adversarial system to resolve conflict only when a party requests assistance or to protect a party or a child. This program utilized a system of informal conferences among the judge, case manager, parties, and attorneys and

relaxed Rules of Civil Procedure to emphasize cooperation among parties in resolving their cases. A preliminary evaluation of this program has been completed indicating that the above goals are being met by the project. The interim report on the pilot project is attached to this report and can be found in Appendix V.

Court Improvement Project

The Court Improvement Project is responsible for ensuring that Colorado courts are handling the dependency and neglect caseload in a manner that appropriately meets federal and state statutory requirements.² Federal and state statutes mandate courts handling dependency and neglect cases to address the following areas: timeliness of court proceedings; reasonable efforts; addressing the health and safety needs of children; addressing permanency needs of children early in the dependency and neglect case; and ensuring that the safety of children is of paramount concern. The Court Improvement Project is committed to meeting these requirements in a non-adversarial and outcome-based court environment that better serves the needs of children and their families than the traditional adversarial model. A status report of the Court Improvement Project can be found in Appendix VI.

Mediation and Other ADR Programs

Colorado judges and magistrates are strong advocates for the appropriate use of mediation and other forms of alternative dispute resolution (ADR) such as mediation-arbitration (med-arb), arbitration, or settlement conferences by a judge. Mediation is the most commonly used process in domestic relations cases. The State Court Administrator's Office of Dispute Resolution (ODR) currently has 48 contract mediators who are available to provide services in

² Dependency and neglect cases, often referred to as D&N, are cases of abuse or neglect of children. A D&N case is a civil case that does not involve the criminal prosecution of parents; rather, parents who are involved in an

21 of the state's 22 judicial districts. Parties may also choose to access mediator services provided by the private sector. Currently, nine of the state's judicial districts mandate the use of mediation in contested domestic relations cases. Other districts incorporate appropriate referrals to mediation and other forms of alternative dispute resolution into their case management system. Still other districts refer cases to mediation, parenting coordination, or other forms of ADR on a case-by-case basis.

ODR developed a model domestic relations post-decree multi-door program in the Second Judicial District (Denver) that became fully operational in 1999. Magistrates in that program screen their cases and refer cases to one of five "doors." The "doors" include ADR processes or continuing the case in the litigation track. The ADR processes available include mediation, ADR settlement conferences by senior judges, parenting coordination, child support worksheet conferences, or child support negotiation conferences provided by the county.³ This program was recommended for replication in other districts in the Best Practices Report of the Multidisciplinary Committee, which is included as Appendix VII.

Currently, ODR administers the federal Access and Visitation Grant for Colorado. This grant allows ODR contract mediators to provide mediation services free to indigent parents with parenting issues and at a reduced cost to low-income parents. Approximately ten percent of the domestic relations caseload, the majority of both unmarried parents mediation, and the dependency and neglect court caseload statewide, involves indigent parents. This statewide grant also allows ODR to provide parenting coordination services in some high-conflict cases. A successful model program using experienced family law attorneys and mental health

allegation of physical, emotional or sexual abuse of their children are held responsible for making positive changes in their families. Children involved in these cases are placed under the jurisdiction of the juvenile court.

³ Please see Cynthia A. Savage, *Post-Decree Multi-Door Courthouse: A Pilot Program for the State*, 27 The Colorado Lawyer 109 (1998).

professionals has been established for post-decree cases in Denver District Court as part of the Post-Decree Multi-Door Courthouse Program.

Other ODR programs under the federal grant include providing curricula and training of presenters to expand parenting education programs—including three separate programs for high conflict parents, never-married parents, and lower conflict parents—to rural and underserved judicial districts; outreach to coordinate ADR programs to Native American and other populations; and assistance to supervised parenting programs in organizing a statewide training conference. ODR is almost entirely a cash-funded service with fees set by the Supreme Court. ODR can only expand its services to the indigent and low-income population if it receives such grants as the federal Access and Visitation Grant on a continuing basis or begins to receive ongoing legislative financial support.

Resources specifically for the provision of mediation services in dependency and neglect and paternity and child support cases have been available through social service agencies and limited grant funding. It is expected that these sources of funding will no longer be available within the next two years. Alternative means for providing this service is being explored. A recent evaluation of mediation in dependency and neglect cases indicated that such mediation is highly effective. The resolution rate is approximately the same as other types of mediation. In addition, mediated and non-mediated plans were found to be similar, but compliance rates were higher with mediation.⁴

⁴ Please see Nancy Thoennes, *Dependency Mediation in Colorado's Fourth Judicial District*, 30 The Colorado Lawyer 41 (2001).

Adams County Family Division Pilot

The 17th Judicial District designated a Family Court Division comprised of one family court judge, one family court magistrate, and several family court case facilitators. The goal of the Family Court Division Pilot is to “create an environment where agencies and individuals work together to improve the delivery of services to families who need them.” The district supports the philosophy that one centralized decision-making authority will promote consistency and improved outcomes for families.

The 17th Judicial District is currently in the process of conducting an evaluation of the Family Court Division to assess whether the integrated court processes produce the intended outcomes for families and result in a more efficient and effective court handling of family cases.

Education and Training

The State Court Administrator’s Office, in conjunction with judges, magistrates and other agencies, implemented a variety of training and educational opportunities for judges and magistrates. The Department of Human Services provides a limited number of scholarships each year to judges and magistrates for attendance at the annual Child Welfare Conference. Various other agencies and professional organizations have begun to realize the importance of judicial training and the Judicial Branch is often invited to participate. The State Court Administrator’s Office provides an annual Family Issues Conference that is optional for judges and magistrates who handle family-related cases. In the past, training areas included federal and state “Adoption and Safe Families Act,” juvenile case processing directives, domestic relations case management, cycles of domestic violence, case law updates, and child development. This conference was made possible through grant funding in the juvenile and domestic violence areas.

Probation Related Projects

The Colorado Judicial Branch is responsible for the administration of adult and juvenile probation services in each judicial district. The Office of Probation Services within the State Court Administrator's Office has worked in partnership with local probation departments to develop and implement a variety of programs in the family law area. These programs are grounded in the restorative justice philosophy⁵ and have effectively fostered collaborative approaches among the courts, probation, district attorneys, human services and the treatment community. These programs are not available in every probation department but efforts continue to develop the resources and support necessary to expand these approaches across the state and to evaluate their effectiveness.⁶

Reparative Boards/Accountability Boards and Sentencing Circles

Each of these approaches, though different in style, fosters community involvement and input. Members of these boards and circles bring the offender to the table with members of the affected community to discuss the crime and its negative consequences. Members typically identify appropriate sanctions that help to repair the harm to the victim and community created by the crime. Often, services are also offered to help the offender reintegrate back into the community.

Family Group/Community Group Conferencing

Family or community group conferences are sometimes held with the victim, offender and other affected parties coming together in a safe place to discuss the crime and how they have been harmed by it. The victim and offender, while being supported by their families and

⁵ Restorative Justice principles incorporate community involvement in the criminal justice process, with efforts that strive to meet the needs of victims of crime and foster sentences aimed at repairing the harm to the community.

⁶ Appendix III contains information about available court, probation and community programs by judicial district.

communities, are able to work together to discuss solutions and ideas in which the offender can make amends and repair the harm.

Victim Offender Mediation/Reconciliation Programs

This process, held in a structured and safe environment, provides the opportunity for interested victims to meet with the offender and have a mediated discussion about the crime and its impact.

Victim Impact Panels and Victim Empathy/Impact of Crime Classes for Offenders

In this setting, crime victims have the opportunity to share their victimization and perspectives of the impact of crime on their lives and the lives of their families and friends. Many times these impact panels are incorporated as part of a series of classes for offenders that instruct offenders on the impact of the various types of crime on victims, communities and families.

Apologies and Apology Letters

Often formal apologies and apology letters can be beneficial to the healing of both victim and offender. They allow the victim to understand the reasons they were victimized while giving the offenders an opportunity to make amends and explain their involvement in the crime.

Meaningful Community Services and Useful Public Service Programs

These structured work programs help the offender to understand the impact of the crime by being directly involved in the repair of damage from the actual crime or crimes similar to that which they committed. Examples are: graffiti education and removal programs, direct service to victims of crime and service in the communities affected by crime.

Restitution Programs

There are many ways for offenders to pay restitution owed to victims. Programs allow offenders to learn a trade by making artifacts such as tables, clocks and ceramic items and then selling them at conferences and gatherings to help collect money for their restitution. There is also a collections investigator in each judicial district who can help offenders budget money and make payments toward restitution owed.

Truancy and Attendance Review Teams and Mentorship Programs

These teams bring together teachers, probation staff, parents, community resource officers and the student/offender to discuss the attendance issues of the student/offender. The goal is to help them understand the importance of education and provide a safety net for those students with special needs.

Drug Court Programs

Several probation departments have partnered with the local court to implement juvenile and adult drug courts. These courts apply swift sanctions for juvenile drug offenders that offer treatment and other services to help the juvenile as well as provide consistent judicial monitoring and oversight.

Community Assessment and Evaluation Programs

Community Assessment Centers (Juvenile Assessment Centers) offer a centralized place for a continuum of care to juveniles and their families. A risk and needs assessment and treatment referrals are made. Community evaluation teams are established in many jurisdictions to staff cases and provide better service delivery, thereby eliminating onerous and duplicative treatment plans.

Victim/Community Orientation and Probation Cross-Training

These programs offer education and information about the judicial process and probation to victims, community members and various community agencies. This orientation and training is designed to encourage community involvement in the various above-mentioned probation programs.

Domestic Violence Initiatives

Colorado courts and probation are engaged in a number of initiatives dedicated to improving cases that concern domestic violence. The objectives are to increase offender accountability and improve victim safety through increased community collaboration: in other words, “a coordinated community response.”

Since 1997, four pilot jurisdictions (Adams County, Larimer County, Weld County and Denver County) have been engaged in a risk assessment process for domestic violence offenders. The objective of the program is to screen and assess all domestic violence offenders to create better sentencing and supervision guidelines for offenders. The pilot jurisdictions are part of a process of validating two instruments. The screening and assessment tools enhance criminal history information, intimate partner violence history, and identification of child witnesses for the courts and probation. In many instances, the court receives a pre-sentence report in misdemeanor cases, a service generally reserved for felony cases.

A report about the validation of the instruments is due by the end of March 2001. The report will also highlight some of the strengths and areas for growth in processing domestic violence cases. The database compiled as a result of the project provides a mechanism for obtaining expanded statistical information about domestic violence offenders and case processing, something that currently is very limited.

In a number of jurisdictions (Adams, Denver, El Paso, Jefferson, La Plata, Mesa, Pueblo, and Weld), the courts, in conjunction with the District Attorneys' offices, implemented "Fast Track" programs. These programs are designed to speed up sentencing in domestic violence cases to encourage the offender to enter domestic violence treatment quickly. Every person convicted of domestic violence is required, by statute (C.R.S. §18-6-800.3), to attend domestic violence treatment. National research has shown that reduced time between the date of offense and the date of treatment entry improves the successful completion rate of treatment.

Resources in Juvenile, Domestic Relations, and Domestic Violence Cases

Juvenile Cases

There has been a significant increase in the number of juvenile related cases, including paternity matters, filed over the last ten years.⁷ Resources for improved court response and handling of juvenile cases have been available in the past five years through various sources of temporary grant funding and legislative provisions. These resources provided the necessary funding districts needed to pilot improved and innovative approaches in juvenile cases including truancy, dependency and neglect, delinquency, and paternity and support. However, Colorado courts continue to struggle with assessment, treatment and service issues for the juvenile population. Particularly difficult is the application of therapeutic jurisprudence in dealing with juvenile delinquency and domestic violence matters.⁸ Judges are placed in the difficult role of protecting the safety of our communities while ensuring that the best interests and permanency needs of children are being met. In addition, as judges face their responsibilities in the juvenile

⁷ In FY 1990, a total of 23,731 juvenile cases were filed and in FY 1999, this number was 37,214 resulting in a 56 percent increase.

⁸ Therapeutic jurisprudence is discussed in Appendix I and is regarded as an approach that views the law as a healing agent.

area, it has become increasingly clear that they are required to play a role they did not expect and for which they were not provided with adequate training or education.

Domestic Relations Cases

Although the filings of domestic relations cases increased only ten percent in the last ten years,⁹ statistics indicate that one out of every two marriages ends in divorce. Furthermore, unmarried couples with children who have issues involving parental allocation and responsibility are involved in Colorado courts through a variety of other court actions. Most significant in domestic relations cases is the significant increase in the numbers of parties filing domestic relations actions *pro se*, i.e., without attorney representation. The increase in *pro se* filings has resulted in the need for increased judicial case management. In the domestic relations area, courts have not had the benefit of supplemental grant and budget allocations. With limited resources, certain districts, in partnership with the State Court Administrator's Office, have been able to pilot several innovative approaches in the domestic relations area, such as the Simplified Dissolution/Divorce with Dignity Pilot Project. See Appendix V. These programs have demonstrated improved efficiency, handling, and accessibility of the courts to individuals proceeding through the domestic relations process. Again, judges are faced with unique challenges in handling domestic relations caseloads underscoring the need for ongoing training and education.

Domestic Violence Cases

The number of domestic violence cases has been increasing steadily for the past five years. As discussed in the Probation Related Projects section above, many courts have

⁹ In FY 1990, a total of 29,014 domestic relations cases were filed and in FY 1999, this number was 31,885 resulting in a 10 percent increase.

implemented expedited procedures. Probation-annexed treatment programs for cases involving domestic violence to ensure that adequate screening, validated risk assessment, treatment, and safety of victims were occurring. Resources to make these improvements have been available through various grants awarded to the Office of Probation Services. As identified in the other areas of family law, training and education are of particular importance for judges and magistrates who handle any type of family case. There has been a tendency for many to believe that only judges who handled restraining orders were in need of specialized domestic violence training. However, as we continue to see issues of domestic violence in juvenile, domestic, and criminal drug cases, the need for improved judicial training and education has become increasingly apparent.

VI. Recommendations

The Committee discussed the merit of making recommendations that would take into consideration all family related case types,¹⁰ i.e., a comprehensive approach. It decided that families involved extensively in our court system would benefit considerably from such comprehensive recommendations. The Committee relied upon definitions of “family law” and “family court” contained in national research, which can be found in Appendix I. For other working definitions, see the Glossary.

¹⁰ These case types include but are not limited to, domestic relations, domestic violence, mental health, probate, delinquency, dependency and neglect, truancy and paternity and support.

In May of 1998, the American Bar Association sponsored a *Summit on Unified Family Courts: Exploring Solutions for Families, Women, and Children in Crisis*. Colorado Supreme Court Chief Justice Anthony Vollack appointed a team of Coloradans to attend the summit, provide feedback on national efforts involving children and families, and make recommendations to the Supreme Court. The Colorado team was comprised of a Supreme Court justice, a district court judge, a county attorney, a Colorado Bar Association—Family Law Section representative, a children’s advocate, private family law practitioners, and State Court Administrator’s Office staff. The Supreme Court considered the recommendations of the Colorado Team and drafted a set of *Principles Governing the Handling of Family Cases*.¹¹ These principles focused on judicial leadership, information, case management, representation, and family-friendly facilities.

In 1999, the Supreme Court asked each chief judge to evaluate the extent to which his or her individual district was using procedures consistent with these principles and propose a course of action that would embrace these concepts. The Committee took into consideration these responses when making its recommendations and found that local independence, local accountability, availability of judges, and other resources are key factors in considering reform. The “other resources” were identified as social workers, mental health providers, probation officers, substance abuse counselors, medical attention and public transportation (particularly in rural areas).

¹¹ These Principles are included as Appendix VIII.

To focus specific recommendations, the Committee adopted four overarching principles, each of which addresses a particular, identified problem or set of problems. The Committee believes that these recommendations add value and that they merit consideration for all cases involving families. The Committee also recognizes that the Judicial Branch currently handles many of these cases in an appropriate and timely manner. The implementation of any recommendations made by the Committee--and ultimately the Commission--will require those responsible for implementation to be aware of and consider the policy implications and costs that are inherent in promoting an enhanced “service model of justice.”

Principle 1: Professional Expertise

The Supreme Court should lead the Branch in prioritizing mechanisms that develop the expertise of judges, court facilitators, and other staff necessary to support the vision and goals of this project. The Supreme Court should actively foster and monitor the commitment of judges, court facilitators, and other staff.

Recommendations and Commentary

Recommendation No. 1: Given that 50 percent of cases filed in Colorado courts involve family issues, judicial nominating commissions and the appointing authority when determining qualifications for new applicants should give at least equal weight to experience in family law as they give for experience in civil and criminal law.

Committee Comment

The current structure in nominating commissions does not take into consideration family law experience. Commissions seem to place more emphasis on the number of high

profile criminal jury trials in which an applicant has participated, rather than his or her experience handling complicated family related cases.

Recommendation No. 2: The Colorado Supreme Court shall require chief judges to assign, to the extent possible, experienced judges to dockets with family law cases who are committed and who volunteer to serve in this area.

Committee Comment

Family cases are not necessarily the cases that judges voluntarily choose to handle because the emotional content is so stressful. Therefore, judges who are willing and committed to this area should be allowed to handle family area cases. In addition, the family law area should not be a training ground for judges. While the Committee is sensitive to the local needs and community priorities of districts, chief judges should be responsible for ensuring that judges assigned to the family area demonstrate the expertise and commitment to deal with family related cases in an effective and just manner.

Recommendation No. 3: Chief judges should assign judges handling family law cases for at least a three-year term before a rotation may occur. Rotation should be staggered to ensure that family division judges are experienced in cases involving families.

Committee Comment

While the Committee is sensitive to the local needs of judicial districts, a minimum three-year rotation in the family law area is necessary to ensure that judges who are committed and experienced in this area effectively oversee family related cases. Family-related cases are complex and involve an educated understanding of various non-traditional judicial approaches.

Recommendation No. 4: The State Court Administrator's Office shall provide appropriate training in the fundamentals of family law, child development, domestic violence, dependency and neglect, and delinquency to judges assigned for the first time or who have not heard family matters for several years. The training shall be provided to a judge when assigned to family cases or within a reasonable time frame. The legislature should be asked to fund resources necessary to provide such training.

Committee Comment

The Judicial Branch budget contains minimal funding for education and training of judges in this area. Yet the incidence of divorce (one out of every two marriages will end in divorce) would suggest that priority should be given to this training. While the Committee is sensitive to the scarcity of resources, particularly in the training area, the Committee believes strongly in the necessity of training to implement substantial reform in this area.

Recommendation No. 5: The State Commission on Judicial Performance is encouraged to develop evaluative criteria and educational opportunities that take into account the unique issues involving the handling of family cases for the members of the Judicial Performance Commission.

Committee Comment

The nature of family law cases is characterized by emotionally-charged parties dealing with a number of issues that reach beyond the scope of traditional legal matters. Judicial Performance Commission members need to take into account the unique issues involved in family related cases.

Recommendation No. 6: The Colorado Supreme Court is encouraged to further amend the Judicial Code of Conduct to encourage judges to be actively involved in community activities that foster services to children and families.

Committee Comment

The Committee recognizes that judges can serve an important leadership role in their communities. Judges can act as a catalyst for coordinating and improving ancillary services provided to families at risk or currently involved in the legal system. Although the recent revision of the Judicial Code of Conduct is a progressive step, there still exists a significant level of concern amongst some judges that participation in some types of community efforts is in violation of the Canons of the Judicial Code of Conduct.

Principle 2: Timely, Efficient and Less Adversarial Processes

Judicial districts should implement mechanisms that facilitate timely resolution of family issues in the least costly and least adversarial method possible.

Recommendations and Commentary

Recommendation No. 7: Court rules and State statutes should be amended to provide a non-adversarial alternative to the procedures currently required. These areas include the Uniform Dissolution of Marriage Act, the probate code sections regarding guardianship, and sections of the Children's Code including dependency and neglect, delinquency, and paternity and support. There shall be a presumption that parties will follow the least adversarial process except where good cause is evident. Less adversarial processes may differ by case and should not be presumed to be exclusively mediation. Parties must show cause to deviate from nonadversarial procedures. Traditional court procedures, including discovery and formal hearing or trial, shall [§2]not be unreasonably withheld if warranted by the circumstances of the case but should not be

universally applicable. Amendments of these rules will provide that chief judges of judicial districts have authority to adopt non-adversarial procedures for the types of cases to which these articles pertain.

Committee Comment

The traditional adversarial environment is not equipped to handle the legal issues that bring families into courts. The Committee recognizes the importance of and need for less adversarial procedures. However, the Committee also recognizes the need for attorneys working with families to pay particular attention to their legal role as “counselors” of law. The Committee makes this recommendation because currently statutes and court rules in these areas contemplate that the traditional adversarial process is the only process that will withstand appeal and protect the rights of parties. This recommendation would invert that presumption and authorize other ways for trial courts to conduct court proceedings, while still preserving substantive due process and efficient case management. This recommendation would give judicial districts legal authority to change their procedures. *[S3]/[S4]/[S5] p*

Recommendation No. 8: The Chief Justice shall establish an oversight Family Rules Committee that would recommend rules and statutory changes as well as recommendations for training and education for judges and other professionals handling family law cases.

Committee Comment

This committee could promulgate rules specific to the Colorado Children’s Code and the Dissolution of Marriage Act. Currently, most of the Supreme Court’s procedural rules for trial courts pertain to due process requirements and not to case management or

different methods of dispute resolution. Any rules promulgated by this committee would be subject to the approval of the Supreme Court.

Recommendation No. 9: The Chief Justice shall establish a Family Law Oversight Committee that would be responsible for the evaluation and oversight of compliance with judicial districts' efforts in this area.

Committee Comment

The establishment of this committee would be helpful to the Supreme Court in their oversight responsibility of judicial districts' compliance with family law reform. The Judicial Branch Oversight Committee would assess judicial district compliance, consider the impact of changes in statutes, rules, and procedures on judicial districts and identify shortcomings in current delivery of services.

Recommendation No. 10: Each district should implement a unified family division or adopt procedures that require judges to coordinate court procedures involving the same family. This coordination would maximize judicial efforts, avoid inconsistent court orders, and avoid multiple court appearances by the parties on the same issues.

Committee Comment

Because the judicial districts vary greatly in size and resources, a one-size-fits-all approach is unworkable. Nevertheless this requirement would require districts to improve the way they do business with families' cases to achieve improved outcomes for families.

Recommendation No. 11: Each judicial district should use court facilitators, case management strategies and information systems to better manage family cases.

Committee Comment

The Committee considers the districts deficient in the area of management and information strategies that will benefit families. Historically, most family cases are managed on an individual case basis with little attention to the family's other cases.

Principle 3: Enhance Coordination

In order to avoid fragmentation and enhance safety, court and probation improvements should be made to ensure early management, coordination, assessment, and provision of services in cases involving families.¹²

Recommendations and Commentary

Recommendation No. 12: Each judicial district should identify cases involving families to determine the appropriate case management approach, whether it is certification of issues, consolidation or transfer of cases to one judicial officer within the same jurisdiction, or coordination of cases that must proceed independently.

Committee Comment

In order to implement the recommendations concerning case management by judges and court staff, the Committee feels that each judicial district should have in place a uniform policy and procedure for appropriate case management.

Recommendation No. 13: The State Court Administrator's Office should make necessary improvements to the Integrated Courts Online Network (ICON) system to monitor and coordinate cases within family divisions and judicial districts. In addition, ongoing training for court staff related to this effort should be provided.

Committee Comment

¹² A fundamental component of up-front and early case management by the courts in family cases is the early and up-front availability of ancillary services. See Principle 4.

The Committee considers the need for ICON improvements to be an integral part of court reform in the family area. Often, important information concerning affected families would greatly assist judges and court staff in handling these cases is evident. However, the ICON system is not currently capable of providing this information in an efficient and easy to use format for courts. Any improvements to the ICON system should be made to ensure that the information system has the capability to:

- Monitor key case events and highlight these events in a report format;
- Maintain a complete history of the family's involvement in the court system statewide; and
- Capture statistical data needed for reports that are easily retrievable.

Recommendation No. 14: Procedures shall be established by the State Court Administrator's Office and local courts to ensure that information regarding families is coordinated and made available to appropriate parties and agencies. The Public Access Committee shall establish procedures to ensure that public access to electronic information for family cases, including domestic relations matters, balances the public right to information against the privacy interests of the parties.

Committee Comment

Currently some cases have confidentiality protection. If courts are going to integrate cases, necessary procedures need to be in place to protect the privacy rights of litigants. This information is very private and public access has the potential for damaging consequences to parties. While agencies and professionals working with families should have access to all relevant information, privacy rights should not be compromised. For

example, the Committee recognizes the restriction on the publication of juvenile names has an adverse effect on the public's understanding of juvenile delinquency.

Recommendation No. 15: Judges handling family cases must have sufficient case management staff to develop and implement differentiated case management procedures to coordinate all cases involving a single family, to coordinate and monitor services provided to each family, and to measure courts' effectiveness in this area.

Committee Comment

The Committee considers necessary court staff to be another essential component of meaningful court reform. Court staff is often the first encounter that families have with the courts. It is necessary to ensure that there is a sufficient and well-trained court staff to assist judges in better meeting the needs of families.

Recommendation No. 16: The statutes should be amended to streamline and coordinate language pertaining to restraining orders to provide for clarity, uniformity, ease of enforcement, compliance and consistency.

Committee Comment

The Committee recognizes the confusion of professionals, law enforcement, and litigants in restraining order statutes. This issue merits further examination to determine appropriate statutory revision in this area.

Principle 4: Legal and Ancillary Services

Improve legal services and provide local leadership to improve ancillary services in the community.

Recommendations and Commentary

Recommendation No. 17: The Supreme Court shall work with appropriate entities to develop standards that will ensure that the public agency attorneys assigned to family cases are competent and qualified attorneys. Furthermore, these attorneys will handle each stage of every case. These positions should be adequately funded and otherwise valued to attract and retain the most qualified individuals in those offices.

Committee Comment

The Committee discussed the need for the selection and retention of qualified, well-trained, and committed attorneys. Just as competent, committed and qualified judges are expected to handle family related cases, attorneys should also demonstrate these qualities.

Recommendation No. 18: The court should provide leadership to support efforts by communities, agencies, and professionals to develop additional resources for service and treatment of families.

Committee Comment

As stated in Recommendation 6, the Committee discussed the need for judges to provide “leadership” within their communities to support efforts in the area of family law reform. Judges provide leadership everyday from their positions on the bench; they should be encouraged to share their vision and commitment to families beyond their daily courtroom responsibilities. The Committee does not feel that judges’ ability to provide impartial justice and fairness are compromised by judicial involvement in community reform.

Recommendation No. 19: The legislature should consider funding the county and state at levels adequate to provide services that are needed to achieve the best interests of the child including health, welfare, safety, and education.

Committee Comment

The Committee discussed the importance of awareness, commitment, and understanding on behalf of state and local representatives of government to strongly advocate for adequate funding for local treatment and service entities to better respond to the needs of families involved in our legal and social services systems.

Appendix I

National Efforts and Highlighted State Initiatives

Appendix I—National Efforts and Highlighted State Initiatives

Definitions of Family Law and Family Courts

The Committee spent significant time reviewing the definition of “family law” as it pertained to their charge and as it pertained to “family courts.” In reviewing the national research, the Committee relied heavily on an article by Barbara Babb that was part of the American Bar Association’s Section of Family Law Spring 1998 Family Law Quarterly, published in conjunction with the ABA’s Summit on Family Courts held in May 1998. In her article, *Where We Stand: An Analysis of America’s Family Law Adjudicatory Systems and the Mandate to Establish Unified Family Courts*, Babb provides the following definition of family law:

Family law in this article means a comprehensive approach to family law subject-matter jurisdiction, including jurisdiction over cases involving divorce, annulment, and property distribution; child custody and visitation; alimony and child support; paternity, adoption, and termination of parental rights; juvenile causes (juvenile delinquency, child abuse, and child neglect); domestic violence; criminal nonsupport; name change; guardianship of minors and disabled persons; and withholding or withdrawal of life-sustaining medical procedures, involuntary admissions, and emergency evaluations.

In the same publication, the concept of family courts was explored and identified as having the following components: (1) adjudication of all family related matters including domestic relations, dependency and neglect, paternity, adoption, juvenile justice (delinquency), substance abuse, domestic violence, and guardianship; (2) the availability of numerous social and other support services; (3) one judge, one family; (4) case management; and (5) use of technology for uniform, shared record keeping.

Report on Trends in the State Courts, 1999-2000 Edition, National Center for State Courts

This report, generated by the National Center for State Courts, highlights trends in therapeutic jurisprudence and discusses the tension between specialization and consolidation of courts within the state court system. Therapeutic jurisprudence, as it is sometimes called, is an approach that views the law as a healing agent. The National Center finds that the role of judges, the proliferation of specialty courts, the expansion of court services, and the increasing use of ADR have each been influenced by the concept of therapeutic jurisprudence. The report cites examples of therapeutic drug courts, family drug courts, juvenile drug courts, and domestic violence courts as court initiatives that apply the philosophy of therapeutic jurisprudence. One domestic violence court in Washington has been created through court and community collaboration. The objectives of this court include “holding the offender accountable, ensuring the safety of victims and their children, and improving victim satisfaction with the justice process.”¹³

The National Center publication outlines two contradictory trends, specialized courts and the consolidation of courts. States such as Arkansas, California, Georgia, Michigan, and New York are engaged in consolidation efforts. Other states are implementing specialized courts designed to meet the specific needs of one particular family law case. The report purports that specialization and consolidation may not necessarily be working at cross-purposes. The report notes that “increasing courts’ flexibility to use resources effectively is a goal of consolidation and the creation of specialized courts might be a manifestation of such flexibility.”¹⁴

Toward Transformation: Changing Court Practices by Colleen Danos of the National Center for State Courts, 2000

¹³ National Center for State Courts, Report on Trends in the State Courts 1999-2000 Edition 3 (Anne Skove, ed. 2000).

¹⁴ *Id.* at 4-5.

This article contributes considerably to the theoretical discussion about court improvement and reform in the family law area. In a presentation provided to the Court Improvement Committee, three pieces from this article were highlighted and include:

- **The Emergence of Problem-Solving Courts: The Changing Role of the Judge.** This portion of the article focuses on a new model of judging associated with therapeutic jurisprudence. The model makes distinctions between the traditional court process and a transformed process that is characterized by planning, collaboration, a foundation based on social science principles, the concept of judges as coaches, post-adjudication emphasis, and a strong Alternative Dispute Resolution (ADR) philosophy.¹⁵
- **The Concept of Collective Judicial Nexus.** Another concept described in the article is one where the judiciary is seen as a complex dynamic system that includes activities and interaction of all types between and among the law, the courts, the public, public servants, non-profit organizations, transformational and street level leadership, and social, economic and technological forces. Danos also articulates this concept through “touch point” interaction and communication. Touch point interaction is “communication, information and knowledge exchange within and beyond the nexus that leads to innovation, transformational touch points, transformational alignments and transformational justice.”¹⁶
- The article also suggests **common barriers to transformation and tools for overcoming such barriers.** Examples of these barriers include acquiescence to the status quo, fear of change, taking initiative, or making mistakes, who gets credit for what, communication difficulties, cynicism and lack of leadership, teamwork, trust, support, persistence, follow-

¹⁵ Colleen Danos, Toward Transformation: Changing Court Practices, Address Before the American Political Science Association 15 (August 31-September 3, 2000).

¹⁶ *Id.* at 15-16.

through, and training. Danos suggests that the first steps in overcoming barriers are raising awareness and cultivating attitudes of openness toward experimentation, improvements, and change. In general, the barriers themselves imply the necessary action for overcoming them.¹⁷

Janet Johnston, Building Multidisciplinary Professional Partnerships with the Court on Behalf of High-Conflict Divorcing Families and Their Children: Who Needs What Kind of Help?

This law review article builds on collective understanding of families in the courts and the need for court responses that promote a less adversarial process, when appropriate. The article advocates that the court process should not circumvent family relationships after case resolution. This article focused on a set of questions the author raised as she articulated the framework of family court efforts. These questions are: (1) How can this fractured family coordinate its resources and care for the children after the parents' separation? (2) How can we protect, reconstitute, and restore the positive parts of parent-child and family relationships wherever possible? (3) How can these parents make ongoing cooperative decisions through their children's growing-up years? (4) What help will these parents need from the community to raise their children? The author provides a summary of the continuum of processes available to courts and professionals that should assist in assessing the most appropriate intervention for families involved in family related cases. Regardless of the type of process employed, the author emphasizes the importance of coordination between court-based intervention and community based services to avoid further fragmentation of vulnerable families.¹⁸

¹⁷ *Id.* at 18.

¹⁸ Janet Johnston, *Building Multidisciplinary Professional Partnerships with the Court on Behalf of High-Conflict Divorcing Families and Their Children: Who Needs What Kind of Help?*, 22 U. Ark. Little Rock L.J. 458 (2000).

National Review of Family Courts

Across the country states are continuing to examine families in the courts and ways in which the judiciary can improve the response to and handling of these cases. These efforts by states, including the District of Columbia, fall into one of four categories as summarized below.

No. 1--States that have family courts, divisions, or departments throughout the state. In 1998, there were 10 states (Delaware, Florida, Hawaii, Massachusetts, New Jersey, New York, Rhode Island, South Carolina, Vermont, and Washington) and Washington, D.C. in this category.

No. 2--States that have family courts, divisions, or departments in selected areas of the state. In 1998, 14 states were in this category (Alabama, Colorado, Kansas, Louisiana, Mississippi, Missouri, Nevada, New Mexico, Ohio, Oklahoma, Oregon, Pennsylvania, Texas, Wisconsin).

No. 3--States with family court or division pilot projects or legislative mandates to implement family courts. In 1998, 9 states were in this category (California, Georgia, Illinois, Kentucky, Maine, Maryland, Michigan, New Hampshire, and Virginia). Two states in this category, Michigan and Virginia, were identified as states implementing family courts according to legislative mandate. Michigan has since implemented family divisions in circuit courts throughout the state.¹⁹ This raises the number of states with family courts, divisions or departments from 10 to 11, plus Washington, D.C. Virginia handles family matters primarily through juvenile and domestic relations district courts in each city and county. Divorces, however, are handled by the circuit courts, which have exclusive authority to hear matters involving disputes over \$15,000. Virginia remains difficult to categorize. However, Virginia appears to be primarily unified with its juvenile and domestic relations courts.²⁰ If Virginia is counted in the first category, the total is 12 states, plus Washington, D.C. Also, California is heavily engaged in implementing family court initiatives. San Diego Superior Court launched the Family Violence Solutions Center in April 1999. The center is a standalone center offering support services and consistent judicial oversight at one location. California is also involved in the publication of an information and activity book for children. The Committee was not surprised to learn that states across the nation grapple with the concept of family court and its feasibility statewide and by jurisdiction.

No. 4--States with no specialized or separate system. This final category included 17 states (Alaska, Arizona, Arkansas, Connecticut, Idaho, Indiana, Iowa, Minnesota, Montana, Nebraska, North Carolina, North Dakota, South Dakota, Tennessee, Utah, West Virginia, and

¹⁹ Michigan's One Court of Justice, (visited Nov. 1, 2000) <http://www.supremecourt.state.mi.us/trial/circuit.htm>.

²⁰ Virginia Commission on Family Violence Prevention, (visited Nov. 1, 2000)
<http://www.courts.state.va.us/fvp/main.htm>.

Wyoming). However, additional research revealed that even within these states, there are efforts to introduce family courts or components of family courts.

In summary, at least 36 states and Washington, D.C. have implemented some component of the family court model, if not full family courts throughout the entire state.

Highlighted State Efforts—Committee Response

The Committee identified several states that implemented progressive court reform efforts in the area of family law. Although there are demographic, statutory and systemic differences in each of these states, the reforms that were undertaken merited a close examination by the Committee. The states include Hawaii, Florida, Oregon and New York. Each of these states implemented family courts or is considering the implementation of family courts on a statewide basis.

Hawaii

Description

The mission of the Hawaii Family Court is to provide a fair, speedy, economical, and accessible forum for the resolution of matters involving families and children. In Hawaii's First Circuit, juvenile services are provided by the Juvenile Intake and Family Crisis Services Branch. This branch provides intake, screening, and counseling services to juveniles and their families with the hope of diverting them from the judicial process, when possible. A second branch within the First Circuit, the Children and Youth Services Branch, provides juvenile probation officers who monitor and supervise juveniles who have been adjudicated for violations and status offenses. This branch also includes the foster parenting program. A third branch, the Detention Services Branch, administers a twenty-four hour secure facility and a non-secure facility. In addition, an Adult Services Branch provides services to reduce or ameliorate family problems

experienced by adults. The Court Management Services Branch administers the Hawaii Family Court. This branch also oversees the guardian ad litem program.²¹

The Family Court hears all legal matters confronting children, such as delinquency, waiver, status offenses, abuse and neglect, termination of parental rights, adoption, guardianship, and detention. The Family Court also hears traditional domestic relations cases, including divorce, nonsupport, paternity, uniform child custody jurisdiction cases, and miscellaneous custody matters. Domestic violence is a top priority for the Family Court.²²

Creation

Hawaii established family courts in all its circuits by statute in 1965.

Evaluation

Hawaii's statute does not specifically address evaluation measures. However, Haw. Rev. Stat. §571-5 creates a board of family court judges, which is charged, in part, with making recommendations for rules of court governing procedure and practice as well as remedial legislation. In addition, Haw. Rev. Stat. §571-6 (3), while not specifically labeling the activity evaluation, does assign to employees of the family court the charge to make recommendations for improvement in court services.

Committee's Response

Hawaii created a family court for its most populous circuit that is very similar to Denver Juvenile Court. The Hawaii Family Court has limited jurisdiction, although broader in many respects than Denver Juvenile Court's jurisdiction.

²¹ Family Courts (visited Oct. 30, 2000)<http://www.state.hi.us/jud/trials2.htm>.

²² *Id.*

The Hawaii Family Court makes that court responsible for services to families, which Colorado has clearly kept within the Executive Branch of Colorado's state and county governments. Hawaii has mandated the family court in its First Circuit to provide services to families, including crisis intervention, counseling, detention, diversion, non-secure out-of-home placement, to name a few. Colorado, on the other hand, responded to these needs by providing some services through the Executive Branch of Colorado government (e.g., DYC detention facilities, state-funded out-of-home placements). Also, the Executive Branch funds local efforts for services and collaboration with the Judicial Branch (e.g., SB94 projects in each of the 22 judicial districts).

If Colorado were to follow the Hawaii model, the state would have to shift funding and authority to the Judicial Branch. In the last ten years, the Colorado legislature has instead encouraged cooperation and collaboration by the Judicial Branch to assist in getting local and state services established.

Finally, a significant difference in structure between the Hawaii model and Colorado is that the Hawaii model separates children into categories (e.g., delinquent, dependent and neglected). Also, the Hawaii model establishes separate branches of its family court to address these separate categories of children and families with separate services provided by each branch.

Colorado has not done this to date. Colorado law distinguishes cases involving children by behavior and conduct of parents (e.g., delinquency and dependency and neglect). However, Colorado authorizes the courts to order a full range of services and has equal authority over the involved families regardless of the type of action (e.g., delinquency and dependency and

neglect). The primary exception, of course, is that delinquent children can suffer various kinds of incarceration.

The Committee believes that for Colorado to use Hawaii's model of utilization of division of services, categorization of children and families, and division of family courts into various branches would only serve to increase current fragmentation, inefficiencies and hardship on families.

The Colorado Supreme Court embraced a family court principle that seeks to consolidate families' cases before one judge or magistrate. To divide family issues into branches as Hawaii does would be contrary to the Supreme Court's stated objectives and harmful to families. The Committee recommends against this approach.

The committee believes there are two appealing aspects of the Hawaii family court model. First, Hawaii gives the family court authority to bundle families' cases. Bundling of family cases is workable in Colorado if the family court is not divided into competing, formalized branches. This authority would serve the Colorado Supreme Court's objective to achieve the family court principles.

Second, the Hawaii model creates a board within its judicial branch apparently empowered to address family court issues. Such a board in Colorado might be of assistance to the Colorado Supreme Court without undermining the court's authority and may provide some uniformity and initiative to future family court efforts in the state. The Committee recommends these two features to the Commission for its consideration.

Florida

Description

Florida is poised to adopt model family court recommendations. On June 29, 2000, Florida's Family Court Steering Committee filed its recommendations for a model family court with the Supreme Court. Florida held a comment period to receive comments from interested persons on the recommendations. The comment period closed on December 1, 2000.²³

Florida's effort, called Family Initiative, has been guided by its mission. The Family Initiative's mission is to provide families and children with an accessible and coordinated means of resolving legal matters in a fair, efficient, and effective manner. The mission statement continues, "In addition to adjudicating disputes and providing alternative methods of dispute resolution, the Family Initiative will assist in meeting the needs of families and children involved in the court system by offering appropriate court-related services and linkages to community service providers." A report²⁴ to the Florida Supreme Court by the Family Court Steering Committee outlined recommendations for reform in the following areas:

- philosophical approaches that culturally integrate concepts of therapeutic jurisprudence and coordinated case management;
- structural, jurisdictional and administrative reforms that would result in improved handling and oversight of family law cases;
- court and community annexed programs designed to offer up-front, responsive and coordinated services to families;
- case management reforms that would ensure timely court responses and coordinated case management;

²³ Notice: Proposed model family court plan. The Florida Bar News, Sept. 1, 2000, at 4.

²⁴ In re Report of the Commission on Family Courts, 633 So.2d 14, 18-19 (Fla. 1994).

- technological reforms that would better facilitate the availability and exchange of information; and
- judicial leadership and educational reforms that would prioritize needs of families involved in the court system through enhanced judicial education and commitment and ensure availability of education and awareness about court processes and services to the public.²⁵

Creation

The Florida Supreme Court directed the Family Court Steering Committee to develop recommendations on the characteristics of a model family court in 1994. The Florida Supreme Court is currently seeking input from interested persons before formal statewide implementation occurs.

Evaluation

The recommendations made to the Florida Supreme Court include an evaluation component. Evaluation efforts contained in these recommendations encourage the court to compile aggregate data and use this data to evaluate the progress of all cases in the family divisions. The data will be used to make reports, determine compliance with time standards, and to evaluate how well the family division is operating.

Committee's Response

The flexibility of the Florida model takes into consideration differences between judicial districts including budgets, geography, number of judges, limitations on court staff, and other resources and varying docket structure. Some of the components called for in the Florida plan

²⁵ *Id.*

are already in place in Colorado. For example, judges and magistrates are provided the opportunity to receive training at the Family Issues Conference each year. However, this training is optional and there are not mandatory requirements for attendance. Some Colorado courts offer referral and resource centers, but this is not statewide. The Florida approach in addressing this issue is of merit for consideration in Colorado. Although guiding principles, concepts and statutory intentions govern the administration of justice in the family law area on a statewide basis, implementation and policy is vested to local judicial districts.

Oregon

Description

The Oregon legislature adopted enabling legislation to establish family courts in 1993. The statute authorizes family courts but does not mandate them. Subsequent to the legislation, two judicial districts were provided limited funding as “pilot sites.” One of the pilot sites, Deschutes County, was examined for its appropriateness and applicability in Colorado. The objective of the Deschutes County pilot program was to coordinate cases among family members throughout the judicial process. The approach used for achieving this goal was the implementation of a family court coordinator.

Of note in Deschutes County is that it appears to be the first jurisdiction in the country to coordinate human services as well as court procedures. On February 1, 1996, the presiding judge issued an order requiring coordination of human services among family members. Under the new system, families appearing before the family court are referred to a screening team that includes representatives from service agencies, schools and legal counsel. This team determines whether a coordinated treatment plan would be beneficial to the family. If so, families are referred to a multidisciplinary treatment team for coordination of services. The family court

advocate facilitates meetings of the screening and treatment teams. The advocate often mediates disputes between family members and team members and serves as a liaison to the court.

Creation

Enabling legislation to establish family courts was adopted in 1993 and local court order of Deschutes County authorizing coordination of human services amongst families was signed in 1996.

Evaluation

In September 1995, the Oregon legislature authorized the use of federal funds to expand the family court concept and to “pilot” the concept set forth above. As a condition of funding, the legislature required a program evaluation and presentation of the findings during the 1997 legislative session. However, funds were not authorized for this purpose. As a result, a limited evaluation was conducted on data collected from February 1996 to December 1996 from a variety of information sources, including: a database used to track families, mail surveys sent to family members, and screening team members and telephone interviews. An article summarizing the findings of the evaluation appeared in the Spring 1998 volume of the Family and Conciliation Courts Review.

The evaluation concluded that families do benefit from court-imposed coordination of services. Courts achieve better results when judges and providers see a complete family picture. The coordination in Deschutes County led to resource sharing, innovative problem solving, and early intervention. Another benefit to this approach was that services were not duplicated. This report also found that schools are an integral part to the effectiveness of this process.²⁶

²⁶ Hon. Stephen N. Tiktin & Ernest J. Mazorol III, *Family Court Coordination of Human Services, Deschutes County, Oregon*, 35 Fam. And Conciliation Cts. Rev. 342 (1997).

Committee's Response

The Family Case Facilitators currently employed in juvenile cases in Colorado assumed a portion of the role of the Oregon model. In addition, the Adams County Family Court Project integrated the concept of multidisciplinary team and coordinated treatment and services into their pilot project. Results of this project will be particularly helpful in determining the feasibility of this type of approach in Colorado.

The major difference between the Deschutes County model and the aspects that have been implemented in Colorado appears to be the cooperative relationship between the courts and human services departments in Deschutes County. Many judicial districts and counties experience tension over court-ordered, county-paid services for juveniles and families. The level of coordination required to successfully implement a program model like Deschutes County might be a significant obstacle for some counties of the state. If this model is to be successful, comprehensive training, attention to implementation, and evaluation of the impact on families, courts and social services departments will be necessary.

A program such as this is reliant upon availability of resources for personnel costs of the court facilitator position. If this approach were to be implemented throughout the state, a standard for resource allocation should be developed and resources should be made available for courts to fill these positions in an equitable fashion.

New York

Description

New York created a Family Court over 30 years ago. The Court was established to take action in the lives of children, parents and spouses. The court has a wide range of powers to fit the particular needs of the people who come before it. In New York City, each of that city's

boroughs has its own family court. New York's family courts have jurisdiction over the following proceedings: child abuse and neglect, support proceedings, child custody, distribution of marital property, conciliation, proceedings concerning physically handicapped and mentally defective or retarded children, paternity, termination of custody based on neglect, proceedings concerning whether a person is in need of supervision, and proceedings concerning juvenile delinquency. The Association of the Bar of the City of New York has played an important role in the community by publishing its Introductory Guide to the New York City Family Court. The guide provides an overview of the Family Court structure and procedures.²⁷

Most Family Court hearings are heard by judges; however, hearing examiners hear support and paternity cases. Each family court building has a child waiting area where children may wait while a case is being heard in court. Four counties within the New York City area have supervised children's centers that provide free drop in childcare for parents who use the court.

New York maintains an extensive domestic violence website. This website provides numerous links to the criminal justice system, forms, and many other resources. The website address is www.opdv.state.ny.us. New York's domestic violence project focuses on two key components of the family court model that have been identified in current or future reforms in Colorado. These components include community coordination and unique needs of rural communities. Information about New York's rural domestic violence project is available through the website.

The domestic violence project in New York prioritized the need for enhanced community collaboration. The domestic violence website links to an important report published by the Urban Institute, a nonpartisan economic and social policy research organization that specifically

²⁷ New York State Family Court (visited Oct. 22, 2000) <http://www.courts.state.ny.us/fcindex.htm>.

addresses community coordination. This report was written at the request of the U. S. Department of Health and Human Services and was designed to examine the following issues:

- how model systems of comprehensive and coordinated community-based domestic violence service delivery have developed in different communities;
- the legal, policy and community contexts in which the systems operate;
- the goals of the coordination efforts and approaches used to meet the goals;
- barriers to coordination and how they have been addressed;
- strengths and weaknesses of the coordination effort;
- the role of laws and policies in helping or hindering coordination efforts; and
- issues in planning, implementing and evaluating coordinated services.²⁸

Six model community systems were examined. The model communities were Baltimore, Maryland; Kansas City; Missouri; Carlton County and Northern St. Louis County, Minnesota; San Diego and San Francisco, California. The Urban Institute's report describes the community efforts extensively.

The study found that these communities used a variety of strategies to reshape their response to domestic violence but that some common elements were important to the success of those efforts. The report includes a description of the role of significant factors in creating change: key events, leadership, coordinating committees, and advocacy. The report emphasizes the importance of ongoing monitoring and communication among community agencies. The report outlines important considerations for institutionalizing changes in a community's response to domestic violence and for sustaining such change over time.²⁹

²⁸ Sandra J. Clark et al., *Coordinated Community Response to Domestic Violence in Six Communities: Beyond the Justice System*, 6 (downloaded version) (October, 1996).

²⁹ *Id.*

The report highlights three features of institutionalizing change: (1) keeping the momentum going, (2) changing the environment through growing professionalism, and (3) funding issues. The study found that specialized units requiring additional resources because of the higher level of service were perceived as less institutionalized. The risk of losing resources for services seems to be less in programs that simply reorganized staff and reallocated resources to handle domestic violence cases. Much of the report discusses features of mechanisms for systems change. These include: (1) specialized staff and units, (2) training, (3) laws and policies in theory and in practice, (4) removing the burden from battered women, (5) holding batterers accountable, and (6) health care providers. The final chapters of the report suggest future considerations and direction.³⁰

Creation

Enabling legislation to establish family courts was adopted by statute in 1962.

Evaluation

New York's statute does not specifically address evaluation requirements or measures. These efforts seem to be developed programmatically by individuals and organizations that have taken the initiative to study the needs of court customers and made efforts to address those needs. For example, in the area of domestic violence, a statewide needs assessment was conducted of domestic violence service providers regarding efforts to coordinate a community response to domestic violence. The results are posted on New York's website.

A literature search revealed a recent law review article that addresses New York's Family Justice Program. The program is New York's action plan for addressing unprecedented levels

³⁰ *Id.*

and complexity of family-related cases in its courts. While the article details the components of the program, it does not include a discussion of an evaluation of New York's program.

Committee's Response

The Committee believes there are aspects of the New York family court model that merit consideration. Although the Committee does not feel that a family court model would be feasible in every judicial district, tools that are used by the New York family court to better address the needs of families should be considered. For example, the New York courts works closely with community organizations and agencies to provide coordination of services and care for families under the court's jurisdiction.

Appendix II

District Court Judge and Magistrate Need by District and Casetype

This appendix is available electronically as a separate Excel document.

Appendix III

Judicial District Summaries

This appendix is not yet available. It will be posted
when it is available.

Appendix IV

Court Facilitator Position Evaluation

This appendix is available electronically as a separate document.

Appendix V

Simplified Dissolution Pilot Project Interim

Report Executive Summary

**Interim Report
on the
Simplified Dissolution Pilot Project**

February 2001

Submitted to the:

**Colorado Supreme Court
Domestic Relations Study Group**

EXECUTIVE SUMMARY

The Simplified Dissolution Pilot Project is the product of many statewide initiatives and committees in the area of family law and was developed by the Colorado Supreme Court's Domestic Relations Study Group. The work of the Study Group commenced in 1998, in response to recommendations made through the Responsible Fatherhood Task Force that litigation in family cases should be discouraged in favor of more productive, less expensive alternatives. The Study Group undertook a lengthy and thorough evaluation of current practices both nationwide and internationally to gain as wide a perspective on the dissolution process as possible. Through this research the Divorce With Dignity Program, used in Minnesota and by a judge in Colorado Springs, was identified as meeting the goals set out by the Group of minimizing the use of the adversary system; resolving conflict; being faster, cheaper and simpler; maintaining responsibility for decision-making in the family; establishing the expectation of cooperative dissolution and responsible parenting during and after dissolution; and, invoking the system to resolve conflict only when a party requested assistance or to protect a party or a child. For pilot implementation and evaluation purposes, the Study Group modified the Divorce with Dignity Program from one in which participation is voluntary to a system of random selection of pilot and control cases from all dissolution, separation and allocation of parental responsibility cases filed in the participating courtrooms beginning in January 2000.

Three sites were selected for implementation of the pilot project in 2000: Denver, Arapahoe and El Paso. The judges in the three Denver and one Arapahoe Courtrooms used the modified, Simplified Dissolution model, while the judge in El Paso continued with the Divorce with Dignity model. The general rules applicable to both versions are:

1. Early informal initial status conference with the court (within 30 days of filing if possible), and continuous contact with the court;
2. No motions shall be filed unless authorized by the court;
3. Rule 26.2(a)(1) initial disclosures shall be exchanged by the parties;

4. No formal discovery beyond initial disclosures unless authorized by the court; and,
5. One expert per disputed issue as agreed to by the parties, or, if no agreement, as appointed by the court as special master pursuant to C.R.C.P. 53.

The process of initial conferences, follow up conferences, and permanent orders on the record was virtually identical in all three districts.

Input on the project from members of local bar associations was obtained through "brown bag" lunches held by the judges and a case facilitator. Through this process, the rules of the pilot were clarified for attorneys and modifications to the original model and orders were made to address legitimate concerns raised by the bar. Communication among the bar, judges and case facilitator have continued throughout the pilot year, culminating in a Family Law Section survey of its members regarding the pilot model. The pilot model and initial data were presented at the January 2001 Family Judge's Conference to a mixed audience of judges, magistrates and other professionals working with families.

Data was collected on pilot and control cases filed from the commencement date in each district through October 31, 2000. While data collection on all cases is not yet complete, it is anticipated that the final database will include information on approximately 2,000 total cases (pilot and control). Based on the initial data collected (approximately 725 cases), it appears that the Simplified Dissolution/Divorce with Dignity Pilot Project has been successful in meeting its primary goals of efficient and appropriate case resolution. Overall, the most common resolution in pilot cases was one in which the parties appeared with a stipulated agreement (34%). Also, in 25% of cases in the pilot group, the parties filed a non-appearance affidavit after having met with the judge and/or case facilitator. Because the initial and subsequent conferences were spent educating parties regarding the dissolution process and the impact of the decisions made, assisting parties in identifying issues in need of resolution and facilitating parties' collaboration on reaching a resolution, it is believed that parties who have met with the judge and resolved their own disputes will have made more informed and appropriate decisions.

In addition, the time to resolution is less in the pilot cases. It seems that much of this can be attributed to early identification of cases that do not require court attention beyond simply ensuring that paperwork and timelines are met, thus preventing cases from becoming "lost" and freeing judge time for spending time with those cases that do require oversight and assistance in resolving issues in the least adversarial means possible.

Based on the experience of the judges participating in the pilot thus far and the initial data findings, the following recommendations are made for the future of the pilot project:

1. Continue working with the model in districts statewide during the year 2001
2. Allow each district to select the version of the pilot to implement.
3. Complete data collection on pilot and control cases designated in the period January 1, 2000 through October 31, 2000
4. Coordinate efforts and statutory/rule changes with the work of the Court Improvement Committee and the Commission on Families in the Courts.
5. Support or conduct future research.
6. Completion of training materials for distribution to judges, case facilitators and court staff.
7. Identify and consider statutory/rule changes necessary for statewide adoption of the pilot model.

Appendix VI

Court Improvement Committee Status

Report

Colorado Dependency and Neglect Court Improvement Project

Judicial leadership is the key to court and system reform. Much progress has been made in the effort to convince policymakers throughout the system that change is critical. Without the leadership of judges, however, any reform will be bland and it is my fear that the bar will be set far too low. Without recognition by judicial officers of the need for change and the commitment by judges to reform their own structures, the best efforts of other reformers, both in and out of the judiciary, will be frozen in their tracks.

*Hon. Robert J. Lowenbach
19th Judicial District, Colorado*

In 1994, Colorado received federal funds through the Family Preservation and Support Act for use in assessment of court handling of child abuse and neglect (Dependency and Neglect) cases, and to implement reforms to improve and strengthen this system. These funds have been administered by the Colorado State Court Administrator's Office (SCAO), in collaboration with an advisory council of judges and magistrates (the Implementation Committee) whose members have worked to set the "Court Improvement" project agendas for Colorado. This year, the Committee has continued its responsibilities to the Court Improvement project and, at the request of Chief Justice Mullarkey, the committee examined and made recommendations regarding Colorado courts' handling of all cases involving children and their families. A White Paper containing this evaluation and recommendations will be presented to the Supreme Court's Commission on Children and Families this spring.

This report contains a status of the Court Improvement project as it pertains to Dependency and Neglect cases in Colorado. The Committee continues its efforts in implementation of assessment recommendations. The basic components of implementation were divided into six broad categories: Supreme Court directives, case management models, statutory and rule changes, legal representation of children and parents, training, and miscellaneous. An update of implementation efforts in each of these categories is provided below.

1. Supreme Court Directives

- Efforts in state fiscal year 2002 will include an evaluation of districts' compliance with Chief Justice Directive 96-08 and 98-02 concerning the efficient and timely processing and management of D&N cases. This evaluation will include the extent to which districts have implemented a local Memorandum of Procedures (MOP) providing guidelines to the court for processing of D and N caseloads.
- In addition, the Court Improvement Project has developed a Draft Chief Justice Directive establishing standardized procedures for Juvenile Change of Venue Cases. The Colorado Department of Human Services is working with county social services' directors and administrators to develop a uniform protocol for counties in charge of venue cases.

2. Case Management Models

- The use of family court facilitators in the juvenile courts has proven to be an invaluable resource to the Colorado courts in tackling the barriers to meeting the permanency and safety

needs of children. The case manager positions utilize the case manager as an “arm of the court” to facilitate resolution of specific issues related to key court events. Case management conferences, coordinated and facilitated by case managers, provide a less formal environment than the courtroom in which the case manager can educate parents and their attorneys about the court process, and communicate the court’s expectations of parties involved in D and N cases. In addition, court facilitators are responsible for tracking and monitoring D and N caseloads to ensure compliance with statutory and “best practice” time frames as suggested by the MOP. Case managers have also been responsible for providing training and education opportunities for the local Department of Human Services, attorneys, CASA, and other community members concerning the juvenile court process.

- The position has been formerly classified by the Colorado Judicial Branch and is officially titled “family court facilitator”. Additional family court facilitators were requested in the Branch’s FY 2002 budget. Nancy Thoennes of the Center for Policy Research has completed an extensive evaluation of this position.
- Many districts are beginning to experiment with case management models that incorporate many different types of cases involving families. Efforts by the court facilitators to identify and monitor multiple cases involving a family have commenced in several judicial districts. In addition, the court facilitator has worked actively with the judge(s) who are responsible for these cases to develop procedures to avoid conflicting orders and coordinate appropriate information about each case between divisions.

3. Statutory and Rule Changes

- The Colorado General Assembly is considering legislation in key areas affecting children and families involved in D&N cases. Although the Court Improvement committee has not been directly involved in drafting this legislation, input and fiscal assessment was provided. This legislation included; HB 1193 that contained several modifications to the Colorado Children’s Code to meet ASFA requirements; HB 1265 that makes several changes to Colorado’s family development center program including an authorization to the centers to provide services that focus on self-sufficiency and grant opportunities; SB 12 that provides funding to local social services departments to provide respite care for parents and children and in-home services to families; and SB 14 that authorizes Colorado Department of Human Services to establish and enforce standards for accreditation of foster care homes.
- The expedited permanency planning requirements of Colorado Revised Statutes 19-1-123 have been implemented in each of Colorado’s twenty-two judicial districts. This legislation requires that in any case involving children under age 6, expedited time frames for meaningful permanency hearings must be met. (See footnote, p.2) In conjunction with the Department of Human Services, SCAO continues to provide technical assistance to these districts. Court Improvement funds have been used in obtaining an evaluation of EPP’s effectiveness in meeting the permanency needs of children. This report was submitted to the legislature in this year’s annual EPP report.
- Federal legislation H.R. 327 amending H.R. 867, the “Adoption and Safe Families Act of 1997” was passed by Congress on November 13, 1997. In February of 2000, the Department of Health and Human Services issued Rules and Regulations pertaining to ASFA implementation. The Implementation Committee has been actively working with the Colorado Department of Human Services to ensure successful implementation of ASFA.

The Court Improvement Coordinator will assist a Federal Review board to assess Colorado's compliance with ASFA.

4. Legal Representation of Children and Parents

- The initial Court Improvement assessment found that the provisions of the contract payment system that Colorado uses for GALs and Respondent parent counsel do not promote quality representation of children and parents. Numerous concerns were detailed. The first steps to address these issues were made in the requirements of CJD 97-02. The CJD sets out guidelines for the appointment of GALs, special advocates, and attorney representatives of children, training and continuing legal education requirements for attorneys who represent children, and duties of GALs, special advocates, and attorney representatives (including a compliance reporting requirement.) The SCAO worked with a GAL workgroup to address compliance and reporting procedures.
- The Colorado Office of the Child's Representative has recently appointed a director. The new director was formerly a member of the Court Improvement Implementation Committee and plans for collaborative efforts in this area are underway.
- Court Improvement funds continue to be used for the improvement and expansion of CASA programs. CASA programs have been implemented in twelve judicial districts.

5. Training

- Court Improvement funds were used to sponsor a comprehensive training for judicial officers assigned to family cases. The Family Issues Conference included extensive early and adolescent child development workshops, Adoption and Safe Families Act information, adoption and permanency workshops, domestic violence workshops and children's issues within the domestic relations area. Approximately 60 guests representing other agencies, professional groups and the community assisted in the planning of the conference and participated in the conference.
- Court Improvement funds will be also be utilized to provide continuing legal education training for contract attorneys, and have been allocated for co-sponsorship with the Colorado Department of Human Services for the annual Child Welfare Conference in June of 2001.

6. Miscellaneous

- Court Improvement funds are continuing to be used in districts committed to the use of mediation in D and N cases. A final evaluation of the efficacy of D&N mediation has been conducted by the Center for Policy Research.
- The Court Improvement Project has provided a "catalyst" to many districts implementation of more "therapeutic justice" approaches to handling family cases. The 17th judicial district, a large urban and rural community is implementing a comprehensive family court division. This district will implement the principles of a Family Court model as adopted by the American Bar Association. Court Improvement funds have been provided to this district to meet their technical assistance needs as they develop their family court program. Additional districts are interested in implementing family court principles and Court Improvement will actively support and enhance such efforts.
- Emphasis in the last year's implementation included the development of case data entry codes and protocols to permit the creation of case management reports needed to monitor D and N progress. Court Improvement Funds were used to develop a D&N database importing

ICON data. This database is functional in eleven judicial districts and reports will be used to assist these districts in evaluation compliance with statutory time frames. Training for each of Colorado's twenty-two judicial districts concerning D&N data entry protocol was provided and emphasis in the next year will be on the monitoring of D&N data entry.

Appendix VII
Best Practices Report of the
Multidisciplinary Committee

Report of the
Multidisciplinary Committee on Domestic Relations

**Recommendations for
Best Practices
In The Resolution of
Domestic Relations Cases
Involving Children**

**Submitted to
The Honorable Mary J. Mullarkey
Chief Justice
Colorado Supreme Court**

July 12, 1999

VISION

The Multi Disciplinary Committee envisions the development and implementation of court practices that support early identification and assessment of barriers to the efficient resolution of all domestic relations cases involving children. The identification of barriers and suggested recommendations for the speedy and non-adversarial resolution of domestic relations cases involving children is based on a proactive approach by the judicial system and the professionals who serve families involved in this system. The Committee wishes to emphasize that the goal of these best practices is first and foremost, to encourage resolution of these cases completely outside of the adversarial model.

These practices are intended to ensure that cases that unavoidably end up in an adversarial posture receive the best and most timely resolution for the family with the least demand on judicial resources.

EXECUTIVE SUMMARY

The best practices outlined here are designed to recognize the impact of the increasing number of pro se cases on the courts, and to make sure that intervention is available to decrease the negative consequences of divorce upon children. These practices are intended to be comprehensive, and yet recognize the resources, limitations and differing needs of each district.

In brief, the main areas addressed are as follows:

I. **Early Intervention in Cases Involving Children**

- a) **Case Management.** Case management of domestic relations cases shall be the specific responsibility of a case manager or clerk. This involves using existing systems to determine what other cases the family is involved in, including domestic violence cases, and directing appropriate cases to the case manager, magistrate or judge.

Case management also includes developing a tickler system for important dates in all pro se cases, and working with the state judicial department to maintain the records and reports necessary to determine the progress of all domestic relations cases.

- b) **Mandatory Initial Status Conferences.** When children are involved, each district shall conduct a mandatory status conference at the earliest possible opportunity. The status conference shall be held by a judge, magistrate or case manager. The individual conducting this conference shall have special training and represent the authority of the court. The status conference is intended to provide the parties an overview of the court's standpoint toward domestic issues, and to reduce any conflict

that might be based on a misunderstanding of the court's role and intent. The accompanying report outlines some of the issues that may be addressed in this initial status conference.

II. Pro Se Assistance

The courthouse should be the primary resource for information within the community. Such information should include information about the court process, parenting education classes, any legal clinics in the community, including clinics at the courthouse, explanation of ADR and available ADR resources, the possibility and availability of unbundled legal assistance and other social services available to families in the area. Providing information should be a collaborative process between the district, the SCAO, and domestic relations service providers, including local bar associations and local legal services providers. The courthouse can disseminate such information without additional burdens on court staff by providing kiosks for information, posting or otherwise providing notices of legal clinics, mediation resources, and parental education classes.

In those districts with pro se assistance clinics, the pro se officer shall be available to answer questions about these topics, as well as provide assistance in filing pro se domestic forms, and to certify that forms are complete before scheduled court appearances.

III. Court Orders

- a) Case management orders should be issued and enforced in every case. Such orders should be discussed and issued at the initial status conference.
- b) Standard criteria for the uniform appointment of legal representatives, special advocates, evaluators and CASA appointments should be developed to ensure appropriate use of these resources.
- c) Professionals appointed by the court or the parties should certify, at the time of the appointment, that their work can be completed in accordance with the case management order.
- d) Continuances should be granted by the judicial officer only upon a finding that a manifest injustice would occur in the absence of a continuance.
- e) The length of time between separation and final orders is detrimental to families. Final orders should be entered within 180 days of filing in the majority of cases and even the most complex cases within one year of filing.
- f) If not issued at the time of hearing, the court should issue permanent orders within 30 days of hearing. Written orders delegated to counsel must be filed within thirty days of the oral order, without exception for obtaining transcripts, and shall be approved by the court within 45 days of the oral order.

IV. Post Decree Matters

Permanent orders should include a checklist and timetable for the execution of documents mandated in permanent orders.

The Denver District Court Post Decree model should be reviewed by all districts, and adapted insofar as practicable.

BARRIERS AND RECOMMENDATIONS

I. **BARRIER:** *The number of families entering the court system without legal representation continues to increase. The court system should be prepared to address the needs of these families through effective case management models.*

RECOMMENDATION: The committee strongly supports a judicial system that incorporates the use of a case manager in all cases involving families. While the duties of a case manager can be outlined, it is the belief of this committee that the specific design and staffing of a case management system for each district may be determined by the number of cases within each district. Depending upon resources and case load, one person may fulfill all of these functions in a district. In another district, because of a high volume of cases, the case management functions might be divided between a clerk, a magistrate and a case manager. Whatever the implementation and staffing, case management has several components and each must be present.

First, the case must be directed within the system by a person whose position is dedicated to family law matters. Whether this person is a full-time case manager or part-time staff with some responsibility should be determined by each individual court. Responsibilities would include gathering information about other cases in which family members have been involved, monitoring compliance with court ordered filings (i.e. certificates of completion of parenting education) and, if someone other than the case manager, directing appropriate cases to the pro se case manager's office, where applicable. This designated staff member will implement a docketing system for pro se cases that can function as a "tickler" system for important dates in the case. Administrative case management also involves the responsibilities of maintaining and generating records and reports necessary to evaluate the progress of all domestic relations cases.

The second aspect of a domestic case manager is that of pro se assistance. The case manager may be the first representative of the court that the litigants meet. Through a pro se case manager's office, each judicial district will provide information to enable pro se litigants to resolve their cases outside of the adversarial system. This aspect of case management provides information about the court process, information regarding the availability of unbundled legal assistance, ADR settlement programs and other community resources. The case manager will assist litigants in filling out forms, including child support worksheets. The case manager shall explain the procedure, the forms, the information required and assist in their completion. The case manager is neither

advising litigants nor certifying that the information in the forms is correct. The case managers and clerks in each district should work with the chief judge to develop district protocol for providing information and assistance.

We strongly recommend that the court, either through a judge, a magistrate, or the case manager, hold a mandatory case status conference at the earliest possible opportunity when a domestic relations case involves children. The person conducting the status conference, if not a judicial officer, should have specialized training and represent the authority of the court. The mandatory status conference should include the following information:

- a. Neither party has a proprietary interest in the children; both parties have continuing and important responsibilities after separation.
- b. The court cannot consider fault, and it is not appropriate to ask the court to approve or disapprove of a parent's behavior unless it may result in harm to the child.
- c. "Custody" has vanished under the law. The court does not take a child away from one parent and give the child to another unless there is serious danger to the child. Both parents will continue to raise and influence the child.
- d. Children are raised by parents, not the court. An intelligent parenting plan should be the first priority for parents who have chosen to live apart.

Case management orders currently in use across the state have been reviewed. A summary is included as Attachment A.

II. BARRIER: *Absence of comprehensive case information for domestic relations cases contributes to delay. For example, a domestic violence matter in county court may or may not be brought to the attention of the domestic relations judge in district court. In addition, information regarding other case specific information, restraining order information, and other pending case information often is not available to the judge hearing the domestic relations case. If the criminal justice system can gather information about defendant's history for judge use in making decisions, domestic relations judges should have the same resources.*

RECOMMENDATION: The development of case tracking and screening practices at the initial filing of the domestic relations case will allow court staff to spend appropriate time gathering pertinent case history information for those cases which may involve prior or pending matters of which the domestic relations judge should be aware. A differentiated case management system could be

implemented in every judicial district to “track” domestic relations cases based on issues (children, domestic violence, child support, contested, pro se, etc.).

III. BARRIER: *The domestic relations court process is confusing and complex to parties and families. The opportunity to educate oneself about the process should be available at the courthouse.*

RECOMMENDATION: The judicial system should incorporate educational opportunities for families regarding court process, required forms, and technical assistance (i.e. parenting plans and child support calculations). Each courthouse should have forms, lists of attorneys willing to provide “unbundled” services, mediators, and the location and availability of legal clinics and self-help videos. The committee recommends that districts work collaboratively with their local bar associations and local legal services provider to develop other opportunities for families to learn more about the court process, including necessary paperwork, parenting plans, and child support calculations. Frequent pro se clinics should be made available at the courthouse, in collaboration with the state, local bar associations and local legal services providers. The statewide domestic relations forms should be available in every district and legal services office in the state.

IV. BARRIER: *Litigants need information about resources which complement the court process, but exist outside of the courthouse. The absence of information regarding available community services and resources contributes to delay and frustration for families involved in domestic relations cases. Many families lack the sophistication and resources to find basic information.*

RECOMMENDATION: Each court has the potential of being an excellent clearinghouse for information regarding services and resources in the local community. Information concerning unbundled legal services, mediation options, social service and mental health programs, child care and other basic services should be gathered and made available in the most user friendly form. The SCAO should function as the clearinghouse for such information.

The committee also recommends the exploration of collaboration with family development centers. There are 21 different family development centers that provide information and services to families statewide. The committee recommends that representatives from the Judicial Branch meet with family development centers to identify and implement a plan for delivery of resource and service information. These centers provide a strengths based approach for families and offer several resources, including parenting education, family advocacy, crisis intervention, support services and referrals (English & Spanish). The courts are an ideal place for providing information about the family development centers to families in crisis, either through a family staff person or printed information that is located with other domestic relations brochures/information. *Attachment B* describes the availability and structure of

family development centers in Colorado and provides a list of centers and their locations.

- V. **BARRIER:** *A lack of community and legal resources for non-adversarial resolution of domestic relations matters is a barrier to Colorado families. Adequate information about the resources existing in the community is often not available in any central location. Many non-metropolitan districts suffer from a shortage of appropriate services for parenting education, mediation and other family support programs. Many of the districts have resource limitations that prevent parenting education from occurring in a timely or effective manner (i.e., classes only offered once per month with a requirement that both parties attend together).*

RECOMMENDATION: The committee suggests that the SCAO conduct a survey of how parenting education classes and mediation services are offered across the state and make recommendations about how parties/providers can work together more effectively. Efforts are currently being made regarding parenting education in rural areas. Information regarding this program is included in *Attachment C*.

Rural districts should be assisted in an effort to collaborate with their communities for the development of creative ways to provide services for families. Meetings between community members and the court should be held on an ongoing basis. The 7th judicial district uses a model of community involvement that has great potential. That model is attached to this report as *Attachment D*. Rural districts should determine whether or not a family development center exists in those particular districts and whether they may be an appropriate response to local needs.

Parenting after Divorce seminars might be asked to devote resources to rural districts in exchange for continued court referrals. The CBA is willing to sponsor clinics, and the Lend-A-Lawyer board is piloting “settlement day” resources to districts outside the metropolitan area (information regarding this program is included in *Attachment E*).

- VI. **BARRIER:** *Substantial delay in the resolution of cases often occurs when there is non-compliance with court orders .*

RECOMMENDATION: The case manager or other court staff should develop a system for tracking and monitoring compliance with mandatory court orders, parenting education, ADR and other requirements. The system should involve the minimal amount of staff time. For example, in Boulder, a notice of the need to do ADR and a notice of the requirement to attend a parenting education class is sent out automatically as soon as the case is at issue. A standardized form, entitled Certificate of Compliance, is filed by the parties. The docketing system indicates whether the requirement has been met, and automatically sends out an Order To Show Cause regarding compliance. The

hearing date for such orders are scheduled for 8:00 am once a month. The order states that filing a certificate by the hearing date excuses you from the hearing. Boulder's experience is that the show cause order itself usually achieves compliance.

- VII. **BARRIER:** *While the percentage of domestic relations cases involving highly volatile parties polarized by extreme views is minimal, the majority of domestic relations cases involving children involve contested issues both in the pre-and post-decree stages. Many families are not exposed to information about alternative dispute resolution that might reduce conflict and eliminate issues in the case.*

RECOMMENDATION: Every case involving children should be evaluated by the judge, magistrate or case manager to determine whether early ADR would aid in resolution. During this process, particular attention should be paid to determining whether any domestic violence issues exist that would make ADR inappropriate. Information about ADR should be made available at the courthouse when initial pleading forms are provided by a clerk or in a pro se office. The committee is divided over whether there should be a presumption that ADR be required before cases are given a contested hearing date in an initial filing. In the event that ADR is mandated by the court, the court must assure that mediation services are provided by competent mediators and are available to the indigent.

- VIII. **BARRIER:** *ADR is often ordered too early in the case. Issues frequently do not become apparent until disclosure has taken place. Referral to ADR prior to knowing all of the issues that require attention may create unexpected problems for the mediator and may result in wasted time and efforts. ADR should be made available when disputed issues are known.*

RECOMMENDATION: In those cases where a formal disclosure beyond the requirements of CRCP 26.2 is anticipated, much of the ADR plan is dependent upon what occurs during that process. In order to use mediator time most effectively, it is recommended that ADR take place within 20 days after disclosure (approximately 60 days into the case, at the latest), in these cases. One suggestion is the amendment of CRCP 26.2 to require a preliminary position statement on allocation of parental responsibilities.

- IX. **BARRIER:** *There are no standard criteria to assist the court in determining when a neutral third party should be appointed to a case and the type of appointment that should be made (i.e., GAL, Legal Representative, CASA, Special Advocate, Parental Responsibility evaluator).*

RECOMMENDATION: While the committee understands that the resources of a district dictate the use of professionals, standard criteria for the uniform appointment of legal representatives, special advocates, evaluators and CASA appointments in domestic relations cases should be used by the court. *Attachment F* reflects the committee's recommendations for the use of lay assistance, CASA's, special advocates, evaluators and legal representatives. Referral to one of these professionals should be automatic if domestic violence is a factor.

The SCAO should develop standard application forms for laypersons and professionals seeking appointments. Listings of these professionals and laypersons should be available in the courthouse. Orders of appointment should be very specific and should contain time, subject matter and/or cost limitations on the appointment, as well as the method for requesting that the court modify these limitations, if necessary. All orders of appointment should contain a definite deadline for the submission of any reports.

- X. **BARRIER:** *Pro se parties often appear for hearings without the necessary paperwork completed or properly completed. If represented, parties and their attorneys often submit necessary documentation immediately prior to hearings or at the hearings themselves.*

RECOMMENDATION: Pro se litigants should be required to meet with the appropriate case manager before the trial, whether set for contested or non-contested hearings, so that the case manager may examine and confirm that paperwork is complete and that the parties understanding the hearing process. Each district will determine by when paperwork must be completed.

- XI. **BARRIER:** *The discovery rules and other deadlines are often not adhered to by attorneys and parties, and not enforced by the court. Failure of other professionals to complete reports in a timely manner negatively impacts domestic cases.*

RECOMMENDATION: For those cases involving children, a standard schedule should be established and agreed upon by all parties and attorneys involved. The schedule can be generated at the first case status conference. The schedule should be based on the Rules of Civil Procedure but may be modified to conform to the requirements of each judge. This schedule would include deadlines for completion of all ordered activities, including Rule 26.2 and 16.2 disclosure, ADR, the filing of professional reports, and the filing of all necessary documents.

At the time of appointment by the court, lawyers, litigants and the appointed professionals in the case should be required to certify that the process can be completed before the permanent orders hearing date. Sanctions, whether formal or informal, shall be imposed for failure to meet these deadlines. The committee recommends that GAL, Special Advocate, CASA, etc., reports should

be scheduled and completed prior to the first ADR session in cases in which children are an issue.

XII. BARRIER: *The length of time between separation and final orders resolution creates additional problems for the family. The inability of the family to get court orders may exacerbate violence, economic problems and emotional stress.*

RECOMMENDATION: This recommendation is closely related to the recommendation that speedy judicial intervention and temporary orders are critical to the effective management of domestic relations cases. At least one judicial district has found that with effective case management they are able to complete eighty percent of their domestic cases within 180 days after the case is filed. The remainder, the more complex cases, should be completed within one year from the date that the case is at issue. The permanent orders date is set at the time of the initial status conference, and firm settings are encouraged. Continuances are the exception and should be allowed only in the most compelling cases. (See Recommendation XI, within).

Corollary: In order for this goal to be met, the manner in which attorneys and other professionals generally do business must be changed. The professionals must "front load" the case. Before a case is filed, the professionals must begin ADR, if appropriate (see provisions regarding formal disclosure under Barrier VIII), determine the need for additional evaluations, mental health services, or the need for legal representatives or special advocates, and make extensive preparations for financial discovery.

XIII. BARRIER: *Continuances in final order cases greatly increase confusion, and expense for the litigants and the court.* NOTE: This section addresses continuances caused by the court and problems of docket control. Continuances are also often caused by the failure of pro se litigants to appear with the appropriate documents and forms, or where professional reports are not completed in a timely manner. Those problems are addressed elsewhere in this report.

RECOMMENDATION: The courts should make firm permanent orders settings whenever possible. Counsel and pro se parties should be held to complete cases in the time designated in the original setting request.

The need for continuances because of multi-case setting should be studied by the Judicial Branch and alternatives should be considered.

XIV. BARRIER: *A delay in obtaining written Permanent Orders is detrimental to compliance, effective enforcement and case completion.*

RECOMMENDATION: All orders drafted by the court, including written permanent orders, should be completed and executed by the court within 30 days of any hearing.

If the memorialization of orders is delegated to counsel, the verbal order must be issued within 30 days. The verbal order must include a provision that a written order agreed to by both parties will be filed with the court within thirty days of the verbal order date, and will be signed by the court within 45 days of the verbal order date.

XV. BARRIER: *Necessary post decree paperwork often is not completed in pro se cases. Failure to complete this paperwork results in contempt and other post decree motions.*

RECOMMENDATION: Permanent orders should include completion of a checklist for the execution of post decree documents. Documents that can be executed immediately, such as transfer of car titles, titles to real estate, etc., should be executed at the time of the hearing. These documents should be available at the courthouse. Litigants should leave the courtroom with a checklist of what further action must be taken, and deadlines ordered by the court for completing those actions or executing documents.

XVI. BARRIER: *Post decree motions are increasing the burden on the court, and are often given a very low priority in setting and hearing.*

RECOMMENDATION: The Denver District Court Post Decree Multi-Door model should be used as a basis for handling post decree matters. *Attachment G* briefly describes the system and includes an initial statistical overview of the use of the model during its first year. The salient points of the model are as follows:

- i) When a post-decree case is filed, there is an immediate evaluation of whether any ADR “door” is appropriate. Orders should be issued immediately. ADR is presumed to be the best course, unless a specific determination is made that ADR is not appropriate (e.g., restraining orders).
- ii) ADR must be commenced within twenty days after the case is filed, unless after specific review, it is deemed by the court to be inappropriate.
- iii) If the parties do not set the matter or advise the court of ADR compliance within 30 days of the filing of a post decree motion, the motion is automatically dismissed.
- iv) Hearings should be held within 45-90 days of the filing of the motion.

Attachments to this report are not available electronically.

For a copy of the attachments to the Best Practices report, please contact:

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Appendix VIII

Principles Governing the Handling of Family Cases

COLORADO SUPREME COURT

Principles Governing the Handling of Family Cases

Court processes for family cases³¹ are often confusing, complex, and adversarial. At a time when families are faced with emotionally charged issues, challenges, and difficult decisions, the current response of our court system does not always meet their needs. The Supreme Court adopts the principles contained in this document in an effort to align court processes with the unique needs of family cases. These principles are intended to encourage family and community involvement in resolving the disputes, invite individualized approaches, utilize non-adversarial decision-making, and provide for fairness, protection, and safety.

Each Chief Judge is to evaluate the extent to which his or her individual district is using procedures consistent with these principles and propose a course of action that will embrace these concepts. The State Court Administrator's Office will be available to assist in these evaluations. Chief Judges are to report the results of their evaluation by _____ to the Supreme Court.

The seven principles listed below are imperative for Colorado courts to address the needs of families involved in the judicial system.

1. *Judicial Leadership and Education:* Judges must take an active leadership role in order to foster a “shared vision” for families in the court system. Judges should work at the local level with other agencies, policy makers, professionals, and advocates and be proactive in developing that vision for each individual judicial district.

³¹ Family cases include domestic relations, domestic violence, dependency and neglect, paternity, child support, and delinquency case types.

- Judges who choose to handle family cases, and who are trained to do so, make better decisions for families. Accordingly, judicial districts should, to the extent possible and appropriate, use judges and magistrates who volunteer to be assigned to family cases. The Chief Judge should also encourage judges and magistrates who are or will be presiding over family law dockets to participate in related educational opportunities. The State Court Administrator's Office should make information regarding educational opportunities readily accessible to judicial districts.
- To the extent possible, judges who wish to continue their service in the family law area should be permitted to do so.

2. *One family/One judge*: the “one family-one judge” model suggests that all cases involving one family should be consolidated in one central decision-making authority in order to assure more consistent, comprehensive outcomes for families.
 - To the extent possible, family cases involving a particular family should be heard by the same judge throughout that family’s involvement with the courts. Given the current Colorado model of using magistrates to handle portions of family cases, this same principle should apply to magistrates. The Chief Judge should ensure that when a magistrate is involved in a family case, the judge and magistrate coordinate their efforts with the family closely. All information about pending cases concerning the family should be available to each judge

or magistrate, and the family's court appearances should be consolidated where possible to minimize inconvenience to the family.

- When appropriate, the judge should encourage the family to resolve the dispute in the least adversarial manner possible.
- When possible, the judge should expedite cases concerning placement or custody of children.

3. Case Managers: Cases involving families should be handled efficiently with court settings and information shared and coordinated to ensure consistency and thoroughness and to minimize the inconvenience to the family. Case managers assist the family in navigating the court system and ensure that the family's cases receive necessary priority.

- Family cases frequently require a referral or order for support services that fall outside the judicial system. Case managers can partner with other community and public agencies to provide comprehensive information and referral services that dramatically affect the quantitative and qualitative management of these cases through the court process.
- Case managers can assist the judicial district in meeting the educational and service needs of individuals and families who do not have the services of an attorney such as by referring the family to prose assistance centers of parenting education classes.
- Case managers, if appropriate, can facilitate staffings and meetings on a case specific basis with families.

4. *Representation of Children:* Ensuring that children involved in the Colorado courts receive the highest quality of legal representation should be a priority in each judicial district.
 - Chief Justice Directive (CJD) 97-02 requires judges to establish local oversight procedures to ensure that *guardians ad litem* or other legal representatives of children are adequately and appropriately representing children, pursuant to the minimum standards of the CJD.
 - Each judicial district should determine how to develop oversight programs that are best suited to the needs of the district, and that comport with the requirements of the CJD.
 - Several possible oversight models have been proposed and the State Court Administrator's Office is available to provide technical assistance in their implementation.
5. *Family Friendly Facilities:* Each judicial district should form an advisory committee to explore models for ensuring that its courthouse is a family friendly facility.
 - Case managers can work with judicial district administration to ensure that the court facility is conducive to the needs of families with young children. The case manager can be instrumental in assisting with a local needs assessment and procurement of funding for a children's center.
6. *Information and Technology:* All of the family court efforts include a broad-based jurisdiction of family and juvenile court case types:

delinquency, dependency and neglect, paternity, child support and domestic relations.³²

- Each judicial district should take necessary steps to ensure that information concerning one family is tracked, monitored and, unless otherwise inappropriate, provided to the judge or magistrate hearing matters concerning that family.

7. Evaluation: Adequate resources are needed to implement these principles.

A critical component of obtaining funds is securing the information needed to justify those resources. To this end the Judicial Branch must assess the courts' success in meeting the needs of families by evaluating "outcomes" based on service delivery, efficiency, coordination, and accountability.

- In the FY 2001 budget request, the Judicial Branch identified a number of performance measures that, to some extent, specify the outcomes in family cases that the legislature can expect if adequate funds are provided to the Judicial Branch. While the Branch recognizes that the quality of judicial services to families cannot be reduced entirely to a series of statistics, the performance measures do provide some relevant information. To this end, in assessing how each judicial district stands in relation to these principles, each chief judge should include an evaluation of how his or her district is doing with respect to these

³² There continues to be ongoing discussion about the inclusion of criminal cases such as domestic violence and drug related criminal cases in the family court model. Nothing in these principles should be viewed as "decriminalizing" the serious nature of domestic violence and other criminal case types.

performance measures and whether they are instructive or indicative of the services provided to families.

- Each judicial district should consider using *Trial Court Performance Standards* in conjunction with local evaluation efforts.
- As part of the evaluation effort, each judicial district should evaluate the success of coordination efforts within the district and with other agencies and professionals.

Glossary

Commission on Families in the Colorado Courts

GLOSSARY

ADR—Alternative Dispute Resolution; includes mediation, arbitration and other non-adversarial resolution processes.

CASA—Court-Appointed Special Advocate; CASAs are trained community volunteers who are appointed by a judge to gather as much information about the case as possible about the children and to provide the judge with recommendations so the judge can make informed decisions about the child(ren). The CASA volunteer's only role is to advocate for the best interests and safety of the child(ren). The CASA volunteer is not required to be an attorney. CRS 19-1-202-208.

Child Advocate—There are several types of child advocates, which are defined in this Glossary. They include: Special Advocate, Child Legal Representative, Parenting Coordinator, CASA Volunteers, and Guardians Ad Litem.

CLR—Child Legal Representative (equivalent to the GAL in juvenile cases); a court may, only or in addition to an SA, appoint a CLR to represent the best interests of the child (not to represent the child). This is always an attorney, who is a full attorney in the case. The CLR cannot be called as a witness, but the CLR can call or cross-examine any witness, in the same manner as the parties' attorneys can. CRS 14-10-116(2)(a).

Child Representative—See CLR; also referred to as Child's Rep.

County Attorney—works for county departments of social services, represents the State of Colorado in the interest of the child, and is responsible for initiating the D&N case.

Court Facilitator—Provides high-level coordination and direction for family cases including domestic relations, domestic violence, dependency and neglect, and delinquency before the Colorado Judicial Branch courts.

DHS—or CDHS; Colorado Department of Human Services.

D&N—Dependency and neglect; D&N cases are ones of abuse or neglect of children. A D&N case is a civil case that does not involve the criminal prosecution of parents. Instead, parents who are involved in an allegation of physical, emotional or sexual abuse of their children are held responsible for making positive changes in their families for the benefit of children's best interest and safety. Children involved in a D&N case are placed under the jurisdiction of the juvenile court for their safety and protection.

DR—domestic relations.

DSS—(Previous title of Colorado’s Department of Human Services) Department of Social Services, usually county social services departments.

DV—domestic violence.

EPP Case—Expedited Permanency Planning; Colorado law requires that a case involving children under the age of six be resolved on an expedited time frame.

Family—A group of two or more individuals who consider themselves family.³³

GAL—Guardian Ad Litem; is the lawyer who legally represents the child’s best interests. The GAL is responsible for investigating the allegations presented in the case, interviewing all of the professionals working on the case, and making a recommendation to the court regarding what is in the child(ren)’s best interest. In Colorado, GALs are paid up to \$2,000 per case. This rate is effective as of January 1, 2001. The following Colorado statutes provide specifics regarding GALs in these case types: Domestic Relations—Title 14, Probate—Title 15, Juvenile Delinquency—Title 18, and Juvenile (general)—Title 19. GALs are also addressed in terms of court structure and procedure in Title 13.

JISP—Juvenile Intensive Supervision Program (JISP); is utilized by a judge in sentencing where a juvenile presents a high risk of future placement within the juvenile correctional system. This program provides highly structured probation supervision while the juvenile is in a community-based setting.

OCR—Office of the Child Representative; newly created state agency. See pages 13-14 of the report for a description of this agency.

ODR—Office of Dispute Resolution; cash funded office providing alternative dispute resolution services through the state; administered by the State Court Administrator’s Office within the Division of Court Services.

PC—Parenting Coordinator; many courts will appoint an attorney or mental health professional to accomplish the ill-defined duties of a parenting coordinator, since there is no statute that describes this position. To overcome this, an SA with PC duties is named, adding to the normal SA duties or designating a PC under the ADR statute with the understanding that the confidentiality provisions of the ADR statute will not apply.

Parenting Plan—Colorado has done away with the idea that either parent has “custody.” Responsibility for parenting of the children is divided between the parties. The parties must submit a parenting plan to the court. If the parties cannot agree on a plan, a party should submit the plan they want the court to order. If they do not, the court must make

³³ This definition is based on a definition of family used by the Child Welfare League of America in its brochure Building Consensus: Creating a National Framework for Reducing Victimization and Enhancing the Well-being of America’s Children and Youth (2001).

the decisions for the parties. The parenting plan must contain a proposal for allocation of parental responsibilities and the division of parenting time.

Permanency Plan—The plan established by the department of social services and approved by the court for the permanent placement of a child(ren) in an out-of-home placement.

SA—special advocate; a court may appoint a Special Advocate on its own motion, or by request of a party. The SA can be, but does not have to be, an attorney. Family law attorneys or mental health professionals, usually Ph.D.-level psychologists, are usually appointed. A lay person may also serve as a SA. The SA is appointed to investigate, write a report to the court, and be available to testify at a hearing about her/his recommendations regarding specific issues in the case. The SA must include in the report any preference stated by the child that addresses the issue the court requested the SA address. Recommendations must be in the child's best interest. CRS 14-10-116(2)(b).

Temporary Orders—Temporary orders are issued to maintain stability for the family while the parties are waiting for final resolution of their case. The court can order temporary child support, spousal support, allocation of parental responsibilities, and parenting time, and can make temporary orders regarding debts and property. Temporary orders are addressed generally in CRS 14-10-108; temporary orders relating to children are addressed in CRS 14-10-125.

Treatment Plan—If the court finds that the child is neglected or abused, the parent(s), caseworker, GAL, and attorney(s) develop a recommendation to the court for a treatment plan which if approved by the court will be ordered.

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[VS1]Is this true? I thought they rotated at the same time in all divisions, but that the whole court rotated at one or two years, depending on the district?

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[S2]Buss: “shall not be unreasonably held” ??????

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