

REVIEW OF FAMILY COURTS DIVISION AND UNIFIED FAMILY COURT MODEL PROGRAM - LEGISLATIVE INTERIM PROJECT 2001

OVERVIEW

As with many other states, Florida has experienced a tremendous growth in its family court cases. The number of domestic relation court filings in Florida increased by 68.5 percent from 1986 to 2000 and juvenile delinquency and dependency court filings increased by 56.6 percent.ⁱ These domestic relations, juvenile delinquency and dependency cases accounted for 44.4 percent of all criminal, civil and probate cases heard in circuit courts in 2000. In addition to growth, the complexity of family court cases place further demands on the judicial system.

Family court cases frequently involve a related legal proceeding. For example, a family in a dissolution of marriage proceeding may have one or more family members involved in another proceeding such as a proceeding for a domestic violence injunction and a proceeding for delinquency. In many cases, the parties are appearing before a different judge in each proceeding. According to a survey conducted by the National Center for State Courts, approximately 40 percent of families appeared before the court more than once for family related matters.ⁱⁱ In one particular cross-over study of court file cases in Marion County, Florida, the Supreme Court's Office of State Courts Administrator found that 63 percent of the family court case files included parties (or other family member including children) with previous, concurrent or subsequent involvement in other related family court casesⁱⁱⁱ. Family court cases are also complicated by the underlying non-legal issues which may go undetected or unaddressed or for which services and resources are unavailable. However, the court's limited authority and jurisdiction to resolve a family's non-legal issue may significantly impact the effective long-term comprehensive resolution of the legal issues before the court. Additionally, an increasing number of litigants in family court cases are foregoing legal counsel. Since many of these litigants are minimally or totally unfamiliar with the judicial process, these pro-se cases traditionally place greater demands for time and assistance from the judicial system.

This convergence of growth, complexity, and demand is triggering the need for court reform in many states. One concept receiving considerable attention is the proposed unified family court model, defined by one scholar as:

“ . . . a single court system with comprehensive jurisdiction over all cases involving children and relating to the family. One specially trained and interested judge addresses the legal and accompanying emotional and social issues challenging each family. Then under the auspices of the family court judicial action, informal court processes and social services agencies and resources are coordinated to produce a comprehensive resolution tailored to the individual's family's legal, personal, emotional and social needs. . . .^{iv}

Over ten years ago, Florida began its move towards family court reform when the Legislature established the Commission on Family Courts (ch. 90-273, L.O.F.). The Legislature directed the Commission to: 1) Develop guidelines for the implementation of a family court division within each circuit, 2) Provide statutory, regulatory, and organizational changes, and 3) Recommend necessary support services. The Commission's recommendations were formally adopted by the Florida Supreme Court on September 12, 1991. The Court also required each judicial circuit to develop local rules for the establishment of a family court division or alternatively, some other means to coordinate family law and related matters that affected one family. In a subsequent opinion issued on March 10, 1994, the Court further refined and implemented the plan for the creation of family court divisions.

The Court also appointed the Family Court Steering Committee to provide support and assistance on the development and full implementation of the family court division. One of the primary responsibilities of the Committee was to develop consensus recommendation on the characteristics of a unified family court model, including organization, policy, procedures, staffing, resources, and linkages to the community. In June 2000, the Committee released its recommendations for a unified family court model. On May 3, 2001, the Florida Supreme Court issued an order formally endorsing the Committee's guiding principles and characteristics for a unified family court model. Since July 2001, three pilot programs for unified family court model programs have been implemented statewide.

Similarly involved, the Legislature has initiated a coordinated effort to assist the court in implementing the unified family court model program in Florida by authorizing staff to conduct the interim project "Review of the Family Courts Division and the Model Family Court." In a survey sent to key stakeholders including state and local representatives of entities involved with the family court or with the community and social services systems for children and families, staff have attempted to ascertain the issues, barriers and solutions to implementing the model family court in Florida. In addition, two workshops have been held to facilitate this process. Below is a synopsis of the issues and actions identified to date which will continue to form the basis for further deliberation and consensus building.

CASE MANAGEMENT (PRINCIPLES, STRUCTURE AND STAFF)

The unified family court model represents a significant departure from the existing family court model within the court system. One of the model's primary goals is to create a fully integrated and comprehensive approach in lieu of a piecemeal approach to resolving the legal and underlying non-legal issues faced by families and children involved in the court system. The development and implementation of an effective system of judicial case management that identifies, coordinates and monitors all cases impacting one family including its children and that moves the case along more expeditiously within the judicial process to final resolution is very important. This judicial case management also

envisions court-based services and processes that will facilitate the delivery of court-ordered or judicially recommended social services, maximize judicial resources, avoid conflicting orders, and prevent multiple court appearances on the same issues.^v The benefit of this becomes apparent when considering that many families and children are involved with the court system in two or more of the following actions at any one time: custody, visitation, child and spousal support, dissolution of marriage, adoption, paternity, domestic violence, juvenile dependency and delinquency, termination of parental rights and CINS/FINS. At this time, there is no single system of judicial case management. Initial anecdotal evidence from the existing pilot programs indicate that the components of a judicial case management system may vary between counties. In addition, it appears that dependency and domestic violence cases may drive the case flow of cases through the judicial process based on their time schedules for resolution and frequency for being the lead portal case for the family into the judicial system.

In addition to the need to identify and provide what are essential staff and support within this new model, there is the need to redefine or clarify the role and responsibilities of judicial staff and interrelated court personnel within the context of a coordinated judicial case management system. Since the unified family court model entails an integrative and comprehensive approach in which complex family dynamics and non-legal issues will arise, everyone from judges to clerks of court to attorneys to security staff to agency personnel to social services providers would benefit from initial and continuing legal and multi-disciplinary education and training as may be set forth in statute or rules.

INFORMATION, TECHNOLOGY AND PUBLIC RECORDS ACCESSIBILITY, ADMISSIBILITY, AND CONFIDENTIALITY AND PRIVACY

The Florida Supreme Court noted in its May 3, 2001, opinion that the key to “fair, timely, consistent, efficient, and effective handling of multiple cases related to one family” begins with the judicial system being aware of all related cases involving that family^{vi}. Technology has been identified as an essential element of the unified family court model to achieving that awareness through a system that provides information on all cases involving the family members. Without such technology, it becomes more difficult for the court to track related cases, maintain a complete history of a family’s involvement in the court system, avoid conflicting orders, or secure interagency information helpful or relevant to the resolution of a family’s case.

In order to ensure parity and uniformity among all counties and circuits, it is recognized that a minimum and uniform level of technological support for access to information and for provision of legal and other court-based services is necessary. It is also recognized that there are already a number of existing information systems throughout the state but many of which are not coordinated or integrated to facilitate information sharing. The needs of the family and the timely and efficient coordination of cases is hampered if the court can not share or receive information from the Department of Children and Families, and the Department of Juvenile Justice, or other entities that regularly interact with the family court division. A number of stakeholders have already begun to conduct their own

assessment of their respective technology system, including The Florida Supreme Court Technology Commission and The Florida Association of Clerks and Comptroller.

However, even as advanced technology is an essential component to facilitating the coordination of cases and information sharing within the court and between the court and agencies, social service providers and other stakeholders who interact with the court, the issues of public accessibility, admissibility, confidentiality, and privacy as pertains to the information contained within court files, agency records and other records has been brought to the forefront. It becomes increasingly difficult and important to strike a balance between the court and other stakeholder's need for information to address comprehensively a family's legal and non-legal needs, the public's right to access records, and the interest in protecting families' privacy, due process and safety as they appear before or are affected by the court's judicial disposition of a case. In addition, while the scope of legitimate public access under current court record policies and rules, and statutory public records law has not changed, the advent of the Internet and reliance upon it as a primary method of electronic access has made it significantly easier to access this information, where once logistical, physical or geographical impediments existed. This has caused the court, the legislature, and the public to recognize the need to re-examine the public records law.

No where is the pervasive power of the Internet more exemplified than by the recent enactment of ch. 2000-164, L.O.F., which requires the county recorder to post an index of recorded documents in the official records on the Internet by January 1, 2002, and to provide electronic retrieval of such documents by January 1, 2006. In anticipation of compliance by the statutory deadline, court records are already being scanned and placed on the Internet resulting in a significant amount of published personal information. Consequently, a task force with the Florida Association of Clerks and Comptroller has already begun reviewing the issues as raised by the implementation of ch. 2000-164, L.O.F. In addition, a workgroup of the Florida Supreme Court JMC continues to study the issue of confidentiality, public records and privacy within the context of advanced technology and accessibility as pertains to court records. Oral argument is scheduled for November 2001 regarding public records disclosure and exemption recommendations made by an internal court committee.

ALTERNATIVES TO LITIGATION

Deciding specific disputes between parties regarding contested issues such as custody, support, visitation and dependency case plans is an integral component of the court's family law decision making function. With the continuous growth in family law cases and in the number of parties not represented by attorneys, greater attention is being given to the appropriate utilization of the judicial system for dispute resolution. There is research, for example, indicating that very high conflict cases regarding basic parenting issues continues with a small but significant number of parents for a number of years, consuming an enormous amount of time and energy of the judges^{vii}. The effectiveness of a traditionally adversarial judicial process to resolve adequately family legal problems

that are often so intertwined with highly charged emotional and social family problems has also increasingly come into question. As a result, unified family court efforts in states such as Oregon have examined and begun integrating into their systems alternative avenues to both assist families to resolve their disputes and to provide them with the tools to appropriately deal with future conflicts, as well as to improve the efficiency of the court system.

Currently, the Florida statutes which guide alternative dispute resolution for civil actions focus primarily on court-ordered mediation and arbitration. Chapter 44, F.S., sets forth the statutory framework for mediation alternatives to judicial action. The alternatives provided for in ch. 44, F.S., are court-ordered nonbinding arbitration, voluntary binding arbitration, voluntary trial resolution and court-ordered mediation, the latter of which is the alternative most frequently applied in family law cases. The Supreme Court is authorized to establish standards and provide a certification process for mediators and arbitrators. Each board of county commission is permitted to levy a service charge as designated in s. 44.108, F.S., on any county or circuit court proceeding or on any petition for a modification of a final judgment of dissolution. According to the Office of State Courts Administrator, many counties levy the permitted service charge to fund mediation services. These service charges and county commission court allocations are the primary source of funding for mediation services, in addition to the fees assessed the parties who are able to pay for the mediation services. Section 44.201, F.S., also allows for circuits to establish citizen dispute settlement centers to provide communities with an informal forum for the mediation and settlement of disputes. The family law chapters 39, 61, and 741 F.S., reference the permitted use of mediation services by the courts.

Florida's court system has utilized alternative dispute resolution avenues for over 25 years. As of August 2001, there were 15 citizen dispute centers, 41 county mediation programs, 23 family mediation programs, 13 circuit civil mediation programs and 20 dependency mediation programs. However, respondents to the Senate survey and participants at the interim project workgroup meetings have identified a need for more non-judicial resolution techniques and opportunities to be available to families, both prior to and through court intervention. Florida's Office of State Courts Administrator's assessment of family court cases found documentation of court-ordered mediation in approximately 20 percent of contested cases (this is potentially an underreported utilization). Of both the contested and uncontested cases in which mediation was ordered and held, 58% reached a settlement, 20% impasse, 11% settled on some but not all of the issues, and the remaining cases were either not held or the outcome was unknown^{viii}. These findings provide preliminary indications of the potential beneficial outcome of using mediation in Florida family court cases.

SERVICES TO ASSIST LITIGANTS IN THE COURT/LEGAL PROCESS

There are a number of services to families in the judicial process that are the outgrowth of the needs of the courts for information that will assist them in their decision making functions and in assuring the safety of the children. Services also have been and continue

to be developed that assist the families to successfully navigate the judicial process and achieve the desired outcomes. Each of these types of services contain a common feature of facilitating the effective and efficient outcome of the judicial process. Some of these services have been implemented and are funded by the courts. However, as courts consider the implications of the amendments to Article V of the Florida Constitution pertaining to the funding of court costs, discussions have ensued as to whether such services are a core function of the court and should remain or be added as a judicial service.

Guardian Ad Litem: Guardians ad litem are individuals who are appointed by the court for the child in dependency and dissolution of marriage proceedings to represent or act in the best interest of a child (ss. 39.820, 61.401 and 61.403, F.S.). A number of sections of family law allow or even require the court to appoint a guardian ad litem for the child including ch. 39, F.S., in dependency proceedings, ch. 61, F.S., in dissolution of marriage proceedings, ch. 63, F.S., for abandoned newborns in termination of parental rights proceedings, ch. 914, F.S., for children who are witnesses in criminal proceedings, ch. 984, F.S., in the child in need of services proceedings, and in ch. 985, F.S. in the delinquency proceedings. These chapters also delineate the functions of the guardian ad litem, qualifications, access to information and confidentiality provisions. While there is commonality across the chapters in such aspects as the basic goals and functions, there are discrepancies which present barriers to the utilization of the same guardian ad litem across different family court proceedings involving the same child.

Domestic Violence Assistance Services: Sections 741.30 and 741.31, F.S., require the clerks of the courts to assist petitioners who are seeking either an injunction for protection or enforcement of the injunction by providing necessary forms and instruction in completion of the forms, as well as brochures on the local domestic violence center services available. Domestic Violence Centers have been established by the Legislature to provide services to victims of domestic violence including emergency shelter, a hotline, counseling, case management and information and referral (s. 39.905, F.S.). There is a growing recognition however, that victims of domestic violence need more assistance in both the legal system and in securing the services necessary to provide for their safety. In some courts, the assistance available to victims of domestic violence is focused primarily on applying for an injunction for protection and the necessary paperwork. Some courts have also developed partnerships with the domestic violence centers in offering domestic violence advocacy services to the victims who are pursuing an injunction.

Supervised Visitation Programs: A supervised visitation program provides the opportunity for contact between a noncustodial parent and a child in the presence of a third party responsible for observing and ensuring the safety of those involved (s. 753.001(1), F.S.). Cases served by supervised visitation programs include dependency, domestic violence and divorce cases. There are currently 40 supervised visitation programs in Florida. While the Chief Justice of the Supreme Court established minimum guidelines for supervised visitation programs used by the courts, there are no standards by which to assess the quality of the programs, no monitoring capabilities to assure the

safety of the clients, the staff and the community, and no reporting requirements to track the services provided.

Parent Training and Education Services: All parties in a dissolution of marriage or paternity proceeding where minor children are involved are required to complete the Parent Education and Family Stabilization course prior to the court's entry of the final judgment (s. 61.21, F.S.). This course is designed to educate, train, and assist the parents as to the consequences of divorce on the parents and children, and must be approved by the judicial circuit.

Independent Evaluators: Evaluators are experts in a particular field whom a judge may order to conduct an assessment of a case for a recommended judicial course of action. Such evaluations can be valuable decision making tools regarding such issues as custody, visitation, parenting, mental health and substance abuse. However, workgroup participants reported this array of expert evaluators is not available in all communities.

Court Orientation Services: Basic introduction to the court system and services in the courthouse has been identified by participants in the survey and workgroups as a valuable tool to assist families in navigating the system.

Other Services: Additional services have been identified as needed by families and courts to facilitate an effective court process on which discussions have not yet been held. These include legal assistance, self-help services and child support enforcement.

COORDINATION AND DELIVERY OF SERVICES TO ASSIST FAMILIES WITH THEIR NON-LEGAL PROBLEMS AND LEGAL PROBLEMS

One of the guiding principles endorsed by the Florida Supreme Court in its May 3, 2001 order for a model family court is the key role that therapeutic justice should play in the family court process. "Therapeutic justice" is defined in the order as the process that "attempts to address the family's interrelated legal and nonlegal problems to produce a result that improves the family's functioning". The order recognizes that underlying issues, such as drug abuse, domestic violence, and family dysfunction, form the basis for the family's interaction with the judicial system. This attention to assisting families with not only their legal issues but with their underlying non-legal problems in order to enhance their functioning and their ability to constructively resolve their disputes is supported in literature and is linked with more effective court resolution of family cases and minimizing the need for future court intervention^{ix}. Minimizing and even preventing family involvement with the judicial system is a fundamental objective of the unified family court concept.

The court system alone is unable to provide families with the services needed for achieving the positive and lasting outcomes desired for families. Therefore, strong community partnerships with a variety of agencies and shared responsibility for the outcomes of families must be formed. Many family courts have already developed

partnerships with individuals and organizations in their communities to offer court related services, such as supervised visitation, legal assistance, and domestic violence advocacy. However, the unified family court focus on improving a family's functioning comprehensively necessitates a broader scope of coordination. The respondents to the interim project survey and participants at the interim project workgroup meetings have conveyed that a system of coordination between the courts and social service agencies is needed to facilitate building the courts' awareness and knowledge of the services available to children and families in the community, determining how to link children and families to needed services, sharing of information, and preventing duplication of resources. Funding and professional resource inadequacies, though, in the social services needed by families in the court have been common themes in discussions with stakeholders, particularly as it pertains to the rural areas,.

While developing a system of coordination between the courts and social service agencies provides a mechanism for making services needed by families more easily accessible through the court system, multiple collaborative efforts already exist in the social services arenas to address other specific coordination needs. Some participants in the interim project discussions have pointed to the opportunity the implementation of the unified family court model presents to explore a common collaborative mechanism to create greater unity in the delivery of all family and children services.

INTAKE AND REFERRAL

Many families initiate court action but lack minimal, if any, knowledge of the forms, procedures, court services or offices of the court. An increasing number of these families are unrepresented by counsel and are unfamiliar with what they should expect from the judicial system or what is expected of them. According to a national survey, the rate of unrepresented litigants in dissolution of marriage actions rose from 19 percent in 1974 to 25 percent in 1989^x. In Florida, the Office of State Courts Administrator's recent assessment of family court cases found that 48 percent of the petitioners filing for a dissolution of marriage were unrepresented by counsel and these petitioners were found to have significantly lower incomes than the parties who were represented by counsel^{xi}. Consequently, court action involving these pro se litigants consume considerable court time and present significant challenges to addressing and resolving legal and underlying non-legal issues.

There is a growing recognition that court systems and courthouses require some form of court orientation services, as well as self help services for the pro se litigants. In addition, many of the families needing information on the court processes often require services to support them through the court process or to assist in resolving the conflict that brought them to the courthouse, such as legal assistance, domestic violence advocacy, and alternative dispute resolution options. Some courts have begun to offer information on the court process and services to newcomers entering the courthouse. However, as efforts continue to improve the efficient use of the judicial intervention, there is increased recognition of the importance of early intervention and guidance for

linking families to appropriate non-legal services in the community. As a result, the need for an intake and referral service is being identified as a mechanism to initially assist and to expeditiously direct families to appropriate entities in the court system and in the community to meet their needs.

STATUTORY AND RULE CHANGES

As a result of the ongoing interim project study, attention is focusing on specific family statutes and issues as may be implicated under chapters 39, 61, 63, 88, 741, 742, 743, 751, 752, 753, 984, 985, F.S., and other chapters with relevant provisions. Many provisions in these chapters, most notably, chapter 61, F.S. (relating to dissolution of marriage, custody, support, and visitation), have not been updated recently to reflect the evolving dynamics of family households from the traditional nuclear family and the increased complexity of family law cases. In light of the effort to better coordinate related cases under a unified family court model framework, many statutory provisions may now be in need of clarification or revision, particularly where jurisdictional and procedural conflicts exist. In addition, statutory provisions, agency rules and providers practices and policies have been identified as potential areas for revision to implement the comprehensive approach to resolving family legal and nonlegal issues .

ⁱ Office of State Courts Administrator

ⁱⁱ *Id.*, p. 70.

ⁱⁱⁱ The House Committee on judicial Oversight is currently conducting an interim project on the establishment and enforcement of child support. economic and sociological assumptions underlying the guidelines, the comparison of economic models, consideration of prior and subsequent children in setting child support, and reconsideration of the set-off for visitation as adopted last year. The Senate Committee on Children and Families is currently monitoring the issue and any related activities.

^{iv} Jessica Pearson, *Court Services: Meeting the Needs of Twenty-First Century Families*, Family Law Quarterly, Fall 1999, Page 73.

^v A Model Family Court for Florida, Recommendations of the Florida Supreme Court's Family Court Steering Committee, June, 2000.

^{vi} In re: Report of the Family Court Steering Committee, No. SC00-1410, May 3, 2001.

^{vii} Andrew Shepard, *Parental Conflict Prevention Programs and the Unified Family Court: A Public Health Perspective*, by Andrew Shepard, Family Law Quarterly, Spring 1998, Page 101.

^{viii} Williams and Buckingham, *Supra*, page 30.

^{ix} Barbara Babb, *Fashioning An Interdisciplinary Framework for Court Reform in Family Law: A Blueprint to Construct a Unified Family Court*, Southern California Law Review, March 1998, Pages 8, 12, 13, and 18; Jessica Pearson, *Court Services: Meeting the Needs of Twenty-First Century Families*, Family Law Quarterly, Fall 1999, pages 74 – 76; and Jeffery A Kuhn, *A Seven Year Lesson on Unified Family Courts: What We Have Learned Since the 1990 National Family Court Symposium*, Family Law Quarterly, Fall 1999, page 92.

^x Jessica Pearson, *Supra*, page 69.

^{xi} Williams and Buckingham, *Supra*, page 27.