



Family Law Taskforce

Recommendations

September 2020

Table of Contents

Executive Summary	3
Members.....	5
Meeting Highlights	6
Introduction.....	11
The Family Law Taskforce recommends that Indiana adopt the FJI's 13 Principles of Family Reform and set goals to implement these principles through the Taskforce's proposals to the Supreme Court.....	11
Family Law Taskforce Proposals	12
Tier One Proposals	12
Tier Two Proposals	16
Tier Three Proposals.....	17
Appendix A: Order Establishing the Indiana Innovation Initiative.....	20
Appendix B: Family Justice Initiative, Principles for Family Justice Reform.....	24
Appendix C: April 1, 2020 Guidance from Family Law Taskforce	53
Appendix D: June 3, 2020 Guidelines on Resuming Operations in Family Law Cases.....	55
Appendix E: Indiana Divorce and Paternity Filings by County, 2018 and 2019.....	60

Executive Summary

The Indiana Supreme Court issued an Order Establishing the Indiana Innovation Initiative on September 24, 2019, and created the Family Law Taskforce as a subgroup of the Initiative.¹ The Order directed the Taskforce to analyze the research on court reform, assess the impact of innovations in other states, identify innovative strategies for significantly improving court processes, and to provide a written report with findings and recommendations. Toward the goal of identifying innovative strategies to improve court processes, the Family Law Taskforce has placed great importance in working to implement the “13 Principles for Family Justice Reform” as detailed in the Family Justice Initiative’s (FJI) *Principles and Pathways Report*, supported by resolution of the Courts, Children, and Families Committee of the Conference of Chief Justices at its 2019 Midyear Meeting.²

The Family Law Taskforce met at the end of 2019 for a brainstorming session and to discuss needed changes in family law practice. Over the last several months, the Taskforce had seven meetings and created seven subgroups that met on numerous occasions. Taskforce members—comprised of members from the Indiana Bar, the trial and appellate court judiciary, law professors, and psychologists—have spent substantial time researching and discussing various innovative ideas for improving family law justice in Indiana. The Taskforce developed 28 ideas that were studied and discussed. The Taskforce members recently completed a survey to evaluate the priority that should be given to the various innovative ideas. The Taskforce ultimately decided to recommend 13 preliminary proposals to the Innovation Initiative, which were approved by the Initiative on August 19, 2020. The Taskforce is also discussing and researching additional initiatives to recommend as proposals in the future based on the 13 Principles.

When the pandemic began and courts were forced to temporarily suspend normal operations, the Family Law Taskforce convened a COVID-19 subgroup of family law judges and practitioners. The subgroup had several emergency meetings to discuss issues facing trial courts and practitioners due to the pandemic. The Taskforce issued guidance on April 1, 2020, that was sent to all trial judges in the Supreme Court’s Weekly Bulletin.³ This guidance provided additional information to assist courts and local communities on how to make child support payments, how to file protection orders electronically, and listed additional resources for courts, attorneys and families.

¹ See Appendix A: Order Establishing the Indiana Innovative Initiative.

² https://www.ncsc.org/_data/assets/pdf_file/0021/19173/family_justice_initiative_principles_final.pdf

³ See Appendix C: April 1, 2020 Guidance from Family Law Taskforce.

In addition, on June 3, 2020, the Family Law Taskforce's COVID-19 subgroup issued Guidelines on Resuming Court Operations in Family Law Cases to further assist trial court judges and to help alleviate the impact of the pandemic on parties and children in family law cases.⁴ These Guidelines provided general guidance to trial courts on handling cases in a pandemic, as well as specific advice for family courts, such as using trauma-informed practices, triaging cases, and prioritizing cases involving the safety and emotional well-being of children or domestic violence.

The first finding and recommendation of the Taskforce is that Indiana adopt the FJI 13 Principles of Family Justice Reform⁵ and set goals to implement these Principles through the Taskforce's proposals. After research, discussion and evaluation, the Taskforce has developed 13 proposals for consideration by the Supreme Court, all of which incorporate various FJI Principles. The first 5 proposals are Tier One proposals that are essential for reform, and the Taskforce recommends focus on and implementation of these proposals first. These proposals include: Case Management Standards, Triage, Online Dispute Resolution, Judicial and Trauma-Informed Training, and Resources for Self-Represented Litigants.

The second Tier of proposals, which the Taskforce recommends as important for implementation soon, include: Adopt GAL Guidelines for Family Court, Problem-Solving Courts, and Updating Self-Represented Litigant Videos. Third Tier proposals will require additional time and work, but the Taskforce also recommends implementing these proposals in 2021 or when feasible. Several of these proposals require assistance from the Office of Court Technology. These proposals include: Order Banks, Text Message Hearing Reminders, Financial Declaration Guided Interview Application, Update the Parenting Time Calendar, and User Satisfaction Surveys.

The Taskforce now presents these 13 preliminary proposals to the Supreme Court for approval and for guidance as to implementation and prioritization. The Taskforce also requests approval to share the proposals that the Supreme Court approves with the Family Law Section of the Indiana Bar Association, as well as other interested groups and individuals, for their input.

⁴ See Appendix D: June 3, 2020 Guidelines on Resuming Operations in Family Law Cases.

⁵ See Appendix B: Family Justice Initiative, Principles of Family Justice Reform.

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Meeting Highlights

November 4, 2019

On November 4, 2019, the Taskforce had its initial meeting to make introductions and discuss members' ideas, along with the mission of the Taskforce.

January 31, 2020

On January 31, 2020, the Taskforce had a presentation from Natalie Knowlton and Michael Houlberg from the Institute for the Advancement of the American Legal System (IAALS) on the FJI's three pathways for triaging cases. Janelle O'Malley from the Office of Court Technology presented on Odyssey data for case processing and on tools and reports available in Odyssey to help triage cases. The following subgroups were created: Technology, Uniformity, Psychologists, Judges, and SRL Resources. Subgroups agreed to meet between FLT meetings to share research and discuss ideas.

March 5, 2020

On March 5, 2020, the FLT heard presentations by several national experts from around the country on FJI Principles and triage.

- Alicia Davis, Principal Court Management Consultant with the National Center for State Courts, and Natalie Knowlton, Director of Special Projects, Institute for the Advancement of the American Legal System presented on the Principles of the FJI: Problem Solving Approach, Involve and Empower Litigants, Provide Information and Assistance, and Implement Appropriate Technology. Examples were provided of jurisdictions who have implemented these principles. Application of FJI Principles has resulted in successful triaging and efficient resolution of cases.
- Stacey Marz, Administrative Director of the Alaska Court System, presented on Alaska's implementation of triaging procedures and shared important points for success.
- Amanda Key, Senior Program Attorney, and Andrea Korthase, Senior Program Manager, both from the National Council of Juvenile and Family Court Judges, presented on trauma and its impact in the court setting.
- Janelle O'Malley, Office of Court Technology, presented on Odyssey and Odyssey reports that judges can use including, and how judges can use Odyssey flags and other tools for tracking cases.

- Projects and initiatives were discussed, and members are reviewing research and reports from other states that have made fundamental changes.

May 7, 2020

On May 7, 2020, each of the FLT subgroups shared their action plans and recommendations.

- The Technology subgroup is working on Online Dispute Resolution (ODR) in family law cases and the judges in the subgroup will pilot it. They also reviewed the Self-Represented Litigant (SRL) videos and recommend updates.
- The Uniformity subgroup recommended a web-based financial declaration created by a guided interview tool. They further recommended establishing order banks for judges, as well as case management standards regarding how long each step in a family law case should take. They further recommend e-filing for SRLs, updates to the parenting time calendar, training for judicial officers on case management principles, triage, triage case flags, and training on various subjects related to family law.
- The Judges subgroup is researching ethical issues regarding triage. Some of the judges are now using triage flags and are developing reports for triage pathways. They also recommend implementation of family problem-solving courts for cases with children at risk who are not Children in Need of Services (CHINS). Finally, they have conducted research on user satisfaction surveys; said research can be found in the Teams e-files.
- The SRL Resources subgroup is working with the Office of Court Technology to provide a search function for SRLs on the Indiana Legal Help website. They have guidance on legal advice versus legal information posted on Teams and recommends providing training on this for judges and court staff. They also discussed collaborative law, limited scope representation and ODR for SRLs. They recommend updates to the IndianaLegalHelp.org website to increase its functionality, mobile optimization, and evaluation regarding whether the site could facilitate e-filing for SRLs.
- Judge Tavitas requested Leslie Dunn, State Director of GAL/CASA, to present on additional guidelines for guardians *ad litem* (GALs) in family law cases. Leslie proposed standard training, additional guidelines, better monitoring of GALs, standardized GAL roles, court orders and timelines. A subgroup on GAL guidelines was formed.

- Janelle O'Malley of the Office of Court Technology presented regarding Odyssey reports and flags. She suggests creating a webinar training on the reports and flags.
- Marilyn Smith and Scott Wylie of Pro Bono Indiana discussed Pro Bono Indiana and the Coalition for Court Access can help implement the Principles of Family Justice Reform.
- Discussion about triage checklists and other FJI innovations; Marion County has applied for a grant to help pilot triage and discussed takeaways from the FJI site visit.

June 17, 2020

On June 17, 2020, the subgroups provided updates on their research and activities.

- The Technology subgroup is focusing on ODR for family court cases at this time.
- The Uniformity subgroup had six proposals: a financial declaration calculator, order banks, case management standards, updates to the parenting time calendar, judicial training, and use of Zoom for tracking Title IV-D pre-hearing conferences.
- The Psychologists subgroup were asked to review ODR functioning and guided mediation interviews; training on conducting in-camera interviews of children; how custody evaluations should be used; GAL guidelines; and interventions that are helpful to children.
- The Judges subgroup presented on triage, problem-solving courts, and user satisfaction surveys.
- Members discussed amendments to ADR rules in relation to parenting coordination.
- The SRL Resources subgroup discussed three main areas they are considering: triage and simplified court processes; ODR in family law cases; and access to legal information. It recommend partnering with Indiana Legal Help on various matters to assist help SRLs and recommend updating the Supreme Court's videos on representing oneself in court. They also support the development of a financial declaration form calculator tool. They recommend promoting the use of help desks as court navigators, using projects in other Indiana counties as a guide.
- The GAL subgroup discussed what the guidelines should cover, such as GAL qualifications, training requirements and practice standards, and more detailed, uniform GAL appointment orders. These guidelines could be a part of the Indiana Parenting Time Guidelines, like the guidelines for parenting coordinators.

- Janelle O'Malley provided an update on a "Falling Through the Cracks" report in Odyssey that identifies open cases that have no hearings set and no final judgement.
- Bob Rath provided an update on ODR, which will be piloted in small claims and family law cases.
- A survey was created and will be sent to FLT members to prioritize the proposed projects from the various subgroups.

July 23, 2020

On July 23, 2020, the subgroups each provided an update on their research and action plans.

- Bob Rath gave an update from the Technology Work Group of the Innovation Initiative. They are preparing to launch pilots on ODR in small claims and have selected two vendors. They are also working on proposed remote video interpreting, recommendations for submitting exhibits remotely, and text message reminders to litigants.
- The GAL group has conducted research and are reviewing other state GAL rules. Most states have more comprehensive guidelines than Indiana.
- Project prioritization survey results were presented; members discussed all 28 proposals at length and determined that 13 proposals should be submitted to the Innovation Initiative for approval. Some proposals for SRLs will be grouped together.

August 12, 2020

On August 12, 2020, the FLT heard updates and presentations.

- Bob Rath updated members on the Technology Working Group proposals, including the ODR pilots, and limited scope *pro bono* representation by video; FLT members voted to support the limited scope representation proposal. Bob also presented a Technology Working Group proposal on document assembly. The goal is to convert online forms to fillable PDFs, eventually and updating them to be guided interviews or wizard driven processes. FLT members voted to support this proposal.
- Julie Whitman, Executive Director of the Children's Commission, provided an overview of the Commission its committees and task forces, and their purposes. The Commission has adopted definitions of trauma and the Trauma Committee offered an evidence-based training on trauma called "think trauma." This is a possible option for our trauma training proposal. The psychologists will review and provide feedback.

- FLT members voted to consider making a video explaining the Parenting Time Guidelines to litigants as a future project. Members will study what other states do.
- The Taskforce plans to research the idea of a statewide dashboard of Family Law and SRL resources; FLT members identified the difficulty of gathering the needed information and the updates that would be necessary to keep it current.
- FLT member Heather Kestian will arrange a presentation to members about Community Partners so members can better understand the services available to families not involved with DCS.
- The FLT decided not to pursue collaborative law as a proposal.
- FLT members voted to approve the 13 proposals and submit them to the Innovation Initiative for consideration. Judge Tavitas will present the 13 proposals approved by the FLT to the Innovation Initiative on August 19. The FLT also decided to request that the Initiative approve the FJI's 13 Principles for Family Justice Reform.

Introduction

The Family Law Taskforce **recommends** that Indiana adopt the FJI's 13 Principles of Family Reform and set goals to implement these principles through the Taskforce's proposals to the Supreme Court.

The Family Law Taskforce recognizes the need for change in Indiana family courts and believes that adopting these principles is the first step in embracing needed change.⁶ The FJI was established to provide courts with validated, data-informed strategies for improving the way courts process family law cases. At the heart of the FJI recommendations is the premise that courts ultimately must be leaders and be responsible for ensuring access to family justice and managing cases toward just and timely resolutions.

The Family Law Taskforce Chair, Judge Elizabeth Tavitas, presented the recommendation to adopt the 13 Principles of Family Justice Reform to the Innovation Initiative, which subsequently approved this recommendation. The Innovation Initiative also approved the proposals the Family Law Taskforce presented to them, which incorporate many of the below principles.

The 13 Principles of Family Justice Reform are divided into four sections:

- A. Problem-Solving Approach**
 - 1. Direct an Approach that Focuses on Problem Solving
 - 2. Involve and Empower Parties
 - 3. Courts are to be Safety- and Trauma-Responsive
 - 4. Provide Information and Assistance
- B. Triage Family Case Filings with Mandatory Pathway Assignments**
 - 5. Use a Service-based Pathway
 - 6. Streamlined Pathway
 - 7. Tailored Services Pathway
 - 8. Judicial/Specialized Pathway
- C. Training and Stakeholder Partnerships**
 - 9. Training and Stakeholder Partnerships
 - 10. Identify and Strengthen Community Partnerships
- D. Data Collection, Evaluation, and Technology Innovation**
 - 11. Improve Ongoing Data Collection, Analysis, and Use of Data to Inform Case Management

⁶ Family courts include those courts hearing divorce, custody and paternity cases. The number of Indiana divorce and paternity filings by county for 2018 and 2019 are shown in Appendix E.

12. Collect and Analyze User-Evaluation Metrics
13. Implement Innovative and Appropriate Technology

Family Law Taskforce Proposals

The Taskforce recommends the following 13 proposals to the Supreme Court for approval and for guidance as to implementation and prioritization. The Taskforce also requests approval to share the proposals that the Supreme Court approves with the Family Law Section of the Indiana Bar Association, as well as other interested groups and individuals, for their input. The first five proposals are Tier One proposals that the Taskforce believes are essential for reform and, therefore, recommends focusing on and implementing these first.

Tier One Proposals

1. Case Management Standards

The Family Law Taskforce recommends the creation and utilization of case management standards, which implement time frames for pretrial conferences, discovery, and other case activities and hearings. To be effective, family law courts must implement a plan to manage the flow of cases in an orderly and systemic manner. Using case management standards, courts routinely review the status of family law cases and assess their progress toward disposition according to court standards. Use of case management standards throughout a case allows the court to organize events in ways that leverage staff and judicial time and solve procedural problems at the earliest point in a case. An effective case management order requires judicial leadership, planning, and accountability and can result in more effective and efficient court operations and cost savings.

Time frames for disposition of family law cases also provide greater efficiency, less trauma to families, conserve court resources (as well as litigant resources), and provide greater customer service to families during the family court process. Some timelines are set forth in statutes;⁷ however, there is no best practice or guidance in Indiana as to how long a family law case should be pending. As a result, many family law cases are delayed for long periods of time, causing further trauma to families and children. Court delays and the lack

⁷ I.C. 31-15-4-5 provides that the court shall immediately schedule a preliminary hearing upon filing of a petition for temporary child support or temporary custody of a child entitled to support. The court shall determine whether to grant or deny the petition not later than 21 days after the petition is filed. I.C. 31-15-4-6.

of time frames can cause injustice and unfairness to parties without resources and can be used to manipulate the system by a party who does have resources.

The Family Law Taskforce is reviewing case management standards in other states and will work with Indiana's family court judges to create family law case management standards. The Family Law Taskforce will also work with the Office of Court Technology regarding the use of flags and reports in Odyssey to assist in case management. Adoption of case management standards incorporates FJI Principle 1, Direct an Approach that Focuses on Problem-Solving, and Principle 4, Provide Information and Assistance.

2. Triage Family Law Cases

The Family Law Taskforce recommends implementing a triage process to help manage case flow. The Taskforce has conducted research on triage processes in various states. Triage involves an early screening and assessment of the case to determine the appropriate pathway for that case based on a variety of factors, such as whether the parties are in full or partial agreement, whether children are involved, whether self-represented litigants are involved, how much judicial intervention is needed, and other factors. The case is then assigned a flexible pathway that meets each family's needs and matches them with appropriate resources.

For example, under the FJI Principles, a streamlined pathway is appropriate for cases that require minimal court resources and benefit from swift resolution. A tailored services pathway is appropriate for cases that require more than the minimal court resources of a streamlined pathway case but less than the resources required for the judicial/specialized cases, which require the greatest court resources; this could offer an opportunity for problem-solving between the parties. The judicial/specialized pathway is designed for cases that necessitate substantial court-based or community services and resources to reach resolution or for cases in which parties cannot, or should not, problem solve together without court supervision, such as cases involving domestic violence.

Three counties in Indiana are currently piloting triage processes for family law cases. The Family Law Taskforce will review the pilots and develop several models that judges can use to more efficiently and effectively resolve family law cases. We also will evaluate the use of Odyssey and other technology and tools to help make the triage process more streamlined. Triage of family law cases implement FJI Principles 5-9 on Triage of Family Case Filings with various pathway approaches.

3. Online Dispute Resolution for Family Law Cases

The Family Law Taskforce recommends online dispute resolution services to improve the experience of families who have litigation in Indiana courts. Other jurisdictions have seen cases resolved in less time and with higher customer satisfaction using ODR, rather than through litigation, especially in the context of small claims and domestic relations cases. ODR offers a path to better results for customers and reduced caseloads for courts, which is especially helpful at this time due to backlogs in cases from the pandemic. This project will complement other proposals from the Family Law Taskforce. In particular, ODR can help courts to triage domestic relations cases to determine the pathway that fits the complexity of each case.

The Technology Workgroup has received approval to closely pilot ODR in small claims cases. The Family Law Taskforce has worked with Bob Rath to develop a plan to also pilot ODR in family law cases in four counties. Several Taskforce members have seen demonstrations of the ODR products. The Taskforce has a scheduled meeting with the judges in these four counties to discuss the parameters of the pilots and to assign them to one of the two vendors that the Technology Workgroup has selected. Two subgroups of the Family Law Taskforce, the Judges group and the Technology group, have been active in developing some preliminary guidelines and parameters for the use of ODR in family law cases.

The ODR proposal incorporates several of the FJI Principles, including: Principle 1, Direct an Approach that Focuses on Problem Solving; Principle 2, Involve and Empower Parties; and Principle 13, Implement Innovative and Appropriate Technology.

4. Judicial and Trauma-Informed Training

The Family Law Taskforce recommends implementation of various modes of training for judicial officers presiding over domestic relations cases, judicial staff, clerk's office personnel, and any other appropriate persons working with family courts. The Taskforce believes that the development and utilization of trauma-informed care training for all family court judges and court staff is especially important. The Taskforce has obtained training materials on trauma-informed care and the psychologists on the Taskforce are providing input on training. The Taskforce also had a presentation from Julie Whitman about the trauma-informed care definitions adopted by the Children's Commission and the trauma-informed training that the Commission provided. The Family Law

Taskforce also recommends an annual or biennial joint family court and juvenile court judges conference to present on topics common to both types of cases. In addition to trauma-informed care training, the joint training should include the following areas: Domestic Relations, Paternity, CHINS, Termination of Parental Rights (TPR), Adoption, Guardianship, and Domestic Violence. Judicial training should also include education on the FJI's 13 Principles for Reform.

The Taskforce has already offered four webinars during the pandemic for family law judges and practitioners on: Expedited Issues in Family Cases; Zoom Licenses and Hearings; Family Bench and Bar Communication; and Family Law from a Distance. These webinars were well-received and were attended by a total of 273 people overall. The Taskforce envisions ongoing training videos and webinars for new judicial officers and court employees on trauma-informed care and other relevant family and juvenile law related areas.

This proposal incorporates FJI Principle 3, Courts are Safety and Trauma-Responsive and Principle 9, Training and Stakeholder Partnerships.

5. Resources for Self-Represented Litigants

The Family Law Taskforce recommends updating and expanding resources for self-represented litigants. The Indiana Legal Help website is heavily used by litigants. The Family Law Taskforce recommends making important updates to the website to further assist self-represented litigants:

- Developing guided interviews with automated form generation as an option for all the family law self-help forms (in addition to offering PDF fillable forms)
- Designing a process for SRLs to file petitions electronically from the IndianaLegalHelp.org website
- Integrating multimedia instructions (graphics, text, and video) to help guide SRLs with information about their legal issues
- Providing guided interviews and information in multiple languages

The Family Law Taskforce also recommends duplicating the free legal clinics operating in several counties so that in-person and virtual clinics, help desks, or self-help centers are available in every courthouse in the state. The Family Law Taskforce also recommends developing an SRL best-practices toolkit for courts and court personnel to assist them in responding to the increase in SRLs in court. The toolkit would include: training resources on providing legal information rather than legal advice, legal aid and *pro bono* brochures, and other resources.

This proposal will require partnership with various groups such as the Indiana Bar Foundation, the Coalition for Court Access, Pro Bono Indiana, Legal Services

entities, and courts. This proposal incorporates FJI Principle 1, Direct an Approach that Focuses on Problem-Solving; Principle 2, Involve and Empower Parties; Principle 4, Provide Information and Assistance; and Principle 10, Identify and Strengthen Community Partnerships.

Tier Two Proposals

6. Adopt GAL Guidelines for Family Law Cases

The Family Law Taskforce recommends adopting GAL Guidelines for family law cases. There is a need to improve GAL practices in family law and guardianship cases and a need for more uniformity and consistency in practice. There is also a need to help litigants better understand the role of the GAL, as well as a need for more qualified GALs to assist judges in family law cases. After researching and reviewing other states' GAL guidelines, the Family Law Taskforce is recommending expanding the description of the qualifications, training, roles, and duties for GALs in family law cases. The Family Law Taskforce envisions guidelines that would be engrafted into the Parenting Time Guidelines in a format similar to the Parenting Coordination guidelines. The Family Law Taskforce also recommends creating uniform training for GALs. Some jurisdictions have offered free GAL training to recruit attorney GALs by offering the training in exchange for accepting *pro bono* appointments.

The Taskforce will seek input from the Domestic Relations Committee on the GAL guidelines. This proposal incorporates FJI Principle 1, Direct an Approach the Focuses on Problem-Solving; Principle 2, Involve and Empower Parties; and Principle 4, Provide Information and Assistance.

7. Family Problem-Solving Court

The Family Law Taskforce recommends development of a pilot family problem-solving court. Indiana has multiple problem-solving court models, but no models for complex, high-conflict family law cases that involve issues such as domestic violence, substance abuse, child abuse, and others. The problem-solving court will utilize a team-approach with intensive case management oversight. For example, monthly meetings would occur on these cases with the entire team until issues are resolved and with the social worker/case manager interacting with the family in between meetings. Once a resolution is reached, meetings must to held every three to six months if needed. Teaching the parties cooperation and problem-solving skills throughout the process is important and can have a life-long impact. The problem-solving court essentially fills the gap

between families who cannot co-parent after separation or divorce and the families with open investigations through the Department of Child Services.

Before this pilot would occur, Taskforce members would meet with the staff at Court Services who oversee the other problem-solving courts to gather insight on how the other problem-solving courts operate. This proposal incorporates FJI Principle 1, Direct an Approach that Focuses on Problem Solving, Principle 2, Involve and Empower Parties, and Principle 4, Provide Information and Assistance.

8. Update Self-Represented Litigant Videos

The Family Law Taskforce recommends updating the videos for self-represented litigants that are currently on the Supreme Court website. The videos were created in 2008 and are outdated. For example, they do not mention e-filing. We recommend that the videos be accessible on various websites, including IndianaLegalHelp.org, to provide information to self-represented litigants. Taskforce members anticipate partnering with Pro Bono Indiana, the Bar Foundation, the Coalition for Court Access, and Indiana Legal Services, Inc. to assist in creating and marketing the videos. This proposal incorporates FJI Principle 1, Direct an Approach that Focuses on Problem Solving; Principle 2, Involve and Empower Parties; Principle 4, Provide Information and Assistance; and Principle 10, Identify and Strengthen Community Partnerships.

Tier Three Proposals

9. Order Banks

The Family Law Taskforce recommends the creation of a family law order bank with template form orders for judges. Family court judges spend significant time writing detailed and case-specific orders. The template form orders should interact with Odyssey to obtain the relevant case numbers and party names and to allow customization by the presiding judge. These uniform orders would assist judges with generating orders quickly that contain accurate language to comply with state law requirements. This would be especially helpful for new judicial officers, senior judges, and judicial officers exercising jurisdiction over multiple areas. The orders could be created in open court and given to litigants at the conclusion of the hearing. This proposal incorporates FJI Principle 9, Training and Stakeholder Partnerships, and Principle 13, Implement Innovative and Appropriate Technology.

10. Text Message Hearing Reminders for Non-Attorneys

The Family Law Taskforce recommends piloting text message reminders in family law cases. A common problem described by the Family Law Taskforce membership is the failure of non-attorney parties to appear at scheduled hearings. This results in wasted judicial and legal resources and delays resolution of the case and of justice. The Technology Work Group is also working on a proposal to increase the use of text messaging to remind litigants of court hearings. We support their proposal and seek to expand the use of text reminders to include family law cases. This project requires clerks to collect cellphone numbers from litigants, as well as acquire their permission to provide hearing reminders by text. It will be necessary to identify a new process for collecting the needed information and permission. The Family Law Taskforce is working with the Technology Work Group on ways to implement this proposal. This proposal incorporates FJI Principle 2, Involve and Empower Parties; Principle 4, Provide Information and Assistance; and Principle 13, Implement Innovative and Appropriate Technology.

11. Create a Financial Declaration Guided Interview Application

The Family Law Taskforce recommends the creation of a web-based, uniform financial declaration calculator. The financial declaration calculator would allow for input of assets and debts through a “guided interview” process, one where the same sets of questions are asked of each person in order to ensure the same information is provided through their responses. Each of the parties to the case (or their attorneys, if represented) could access the financial declaration application by going to the Indiana Supreme Court website, similar to the process for accessing the child support calculator. Just as the child support calculator has been successful at providing a uniform approach to calculating child support, so too could a uniform financial declaration calculator. The calculator would be easy to use to assist self-represented litigants, as well. The application would allow for saving the completed form and could be amended and accessed by permission. This proposal incorporates FJI Principle 2, Involve and Empower Parties, Principle 4, Provide Information and Assistance, and Principle 13, Implement Innovative and Appropriate Technology.

12. Update Parenting Time Calendar

The Family Law Taskforce recommends updating the Parenting Time Calendar. The current Parenting Time Calendar⁸ is a beta version. The updated Parenting

⁸ <https://public.courtsin.gov/PTC/#/>

Time Calendar would allow users to create user-friendly documents to assist parties in memorializing their parenting time agreements and court orders. It would also allow parties to export the results to a shared online calendar that the parents could see on their phone and would have options for alternative parenting time schedules other than the minimum under the Guidelines. This proposal incorporates FJI Principle 2, Involve and Empower Parties, Principle 4, Provide Information and Assistance, and Principle 13, Implement Innovative and Appropriate Technology.

13. Develop User Satisfaction Surveys

The Family Law Taskforce recommends that Indiana courts develop and utilize user satisfaction surveys to gauge satisfaction of litigants in family courts.

Taskforce members have conducted research on the methods and substance of court user surveys from other states. Several states have successfully used the National Center for State Courts Access and Fairness survey on CourtTools.⁹ A survey, for example, could inquire into court accessibility, fairness and their understanding of the court proceeding. Courts should use this information to improve the customer service they provide and to improve court operations.

Although a more general user satisfaction survey for family law litigants is not a top priority, the Taskforce recommends that we do include a user satisfaction survey for litigants who utilize ODR and for litigants who participate in a family problem-solving court pilot or a triage pilot. This proposal incorporates FJI Principle 12, Collect and Analyze User Evaluation Metrics.

⁹ NAT'L CTR. FOR STATE COURTS, COURTTOOLS MEASURE 1: ACCESS AND FAIRNESS (Richard Y. Schouffler eds., 2005).

Appendix A: Order Establishing the Indiana Innovation Initiative

In the Indiana Supreme Court

Case No. 19S-MS-512



Order Establishing the Indiana Innovation Initiative

Indiana has been a national leader in justice reform in areas such as evidence-based decision-making, pretrial release, problem-solving courts, and commercial courts. Additional innovation opportunities now present themselves in Indiana, designed to make Indiana's system of justice more efficient, less expensive, and easier to navigate while continuing to ensure that justice is fairly administered and the rights of all litigants protected.

Accordingly, there is hereby CREATED the Indiana Innovation Initiative to analyze research on justice reform, assess the impact of reform efforts in other states, identify innovative strategies to manage different case types, and make recommendations to the Indiana Supreme Court for best practices surrounding Indiana's justice system structures and procedures. A list of the Initiative members is attached, and the group's membership may change as its work continues.

IT IS THEREFORE ORDERED that the Indiana Innovation Initiative shall:

1. Analyze the research on justice reform;
2. Assess the impact of reform efforts in other states;
3. Identify, map, and analyze commonalities and differences in subject matter and process in criminal, civil, family, and child welfare justice systems;
4. Identify innovative strategies, such as technology, to manage different case types;
5. Develop specialized procedures for different types of cases involving differing levels of complexity;
6. Evaluate the potential and actual impacts of specialized procedures;
7. Launch pilot projects to test procedures and determine the scalable value of those procedures;
8. Collaborate with and support the Coalition for Court Access (CCA) in areas where the Initiative's work overlaps with the CCA's objectives; and
9. Make recommendations to the Indiana Supreme Court for best practices surrounding Indiana's judicial system structures and procedures.

The Initiative is additionally authorized to create subgroups needed to carry out its work. The Court now ORDERS that the first two subgroups of the Initiative shall be the Family Law Taskforce and the Technology Working Group.

The Family Law Taskforce shall consider recommendations on more efficient handling of domestic relations matters created by the National Center for State Courts, the Institute for the

Advancement of the American Legal System, the National Council of Juvenile and Family Court Judges, the Conference of Chief Justices, and the Conference of State Court Administrators. The Technology Working Group shall likewise evaluate business processes and innovative technologies in other jurisdictions, and in commercial enterprise, in preparing its recommendations.

Both the Family Law Taskforce and the Technology Working Group shall analyze the research on court reform, assess the impact of innovations in other states, identify innovative strategies for significantly improving court processes, and provide a written report with findings and recommendations to the Indiana Innovation Initiative not later than March 1, 2021. The Initiative is directed to provide a written report, with findings and recommendations, to the Court not later than July 1, 2021. The Indiana Office of Court Services is directed to assign staff to assist the Initiative in its work.

Done at Indianapolis, Indiana, on 9/24/2019.



Loretta H. Rush
Chief Justice of Indiana

All Justices concur.

INDIANA INNOVATION INITIATIVE

1. Mag. Molly Briles, Vanderburgh Superior Court;
2. Russell Brown, Clark, Quinn, Moses, Scott & Grahn, LLP;
3. Hon. Steven David, Indiana Supreme Court;
4. Mary DePrez, Indiana Office of Judicial Administration;
5. Justin Forkner, Indiana Office of Judicial Administration;
6. John Franklin Hay, Near East Area Renewal;
7. Angka Hinshaw, Marion County Public Defender Agency;
8. Hon. Matthew Kincaid, Boone Superior Court;
9. Eric Koch, Indiana State Senate;
10. Jamie Oss, Huelat & Mack;
11. Joseph Skeel, Indiana State Bar Association;
12. Chasity Thompson, Indiana University Robert H. McKinney School of Law; and
13. Michael Tolbert, Tolbert & Tolbert LLC.

FAMILY LAW TASKFORCE

1. Amy Applegate, Indiana University Maurer School of Law;
2. Debra Lynch Dubovich, Levy & Dubovich;
3. Lindsay Faulkenberg, Kids Voice of Indiana;
4. Hon. William Fee, Steuben Superior Court;
5. Leslie Craig Henderzahn, Church, Church, Hittle & Antrim
6. Michael Jenuwine, Notre Dame Law School;
7. Heather Kestian, Department of Child Services;
8. Kelly Lonnberg, Stoll Keenon Ogden PLLC;
9. Dr. Jill Miller, Northwest Psychological Services, P.C.;
10. Hon. Lakshmi Reddy, Vigo Superior Court;
11. Marilyn Smith, Indiana Bar Foundation;
12. Hon. Catherine Stafford, Monroe Circuit Court;
13. Tara Tauber, Tauber Law Offices; and
14. Hon. Elizabeth Tavitas, Indiana Court of Appeals, Chair.

TECHNOLOGY WORKING GROUP

1. Hon. Kimberly Bacon, Lawrence Township Small Claims Court;
2. Josh Brown, Cohen, Garelick, & Glazier PC;
3. Scott J. Shackelford, Indiana University Kelley School of Business and Maurer School of Law;
4. Jared Linder, Indiana Family and Social Services Administration;
5. Robert Rath, Indiana Office of Judicial Administration, Chair;
6. Hon. David Riggins, Shelby Superior Court;
7. Hon. Jeffrey Sanford, St. Joseph Superior Court;
8. Roger Schmenner, Indiana University Kelley School of Business;
9. Emily Storm-Smith, Strada Education Network, Inc.;
10. Amitav Thamba, Marion Superior Court;
11. Jeffrey S. Ton, Ton Enterprises LLC; and
12. Seth R. Wilson, Adler Attorneys.

Appendix B: Family Justice Initiative, Principles for Family Justice Reform

Family Justice Initiative

PRINCIPLES
FOR FAMILY
JUSTICE REFORM



Family Justice Initiative

PRINCIPLES FOR FAMILY JUSTICE REFORM



The Family Justice Initiative (FJI) is guiding courts toward improved outcomes for families, while managing costs, controlling delays, and facilitating healthy outcomes.

FJI is a partnership of the National Center for State Courts (NCSC), the Institute for the Advancement of the American Legal System (IAALS), and the National Council of Juvenile and Family Court Judges (NCJFCJ). It is supported with a grant from the State Justice Initiative (SJI).

PROJECT DIRECTOR

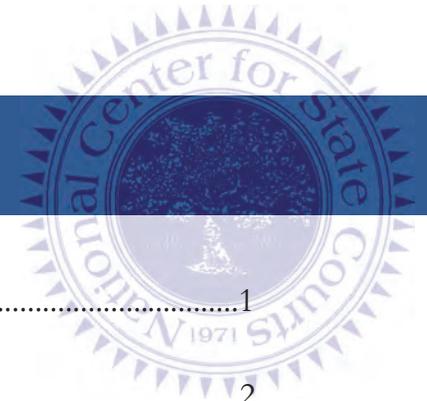
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2019



Table of Contents



Introduction.....	1
Problem-Solving Approach.....	2
Principle 1 – Direct an Approach that Focuses on Problem Solving.....	2
Principle 2 – Involve and Empower Parties.....	4
Principle 3 – Courts are Safety and Trauma-Responsive	5
Principle 4 – Provide Information and Assistance	7
Principle 5 – Use a Service-based Pathway Approach	9
Principle 6 –Streamlined Pathway.....	12
Principle 7 – Tailored Services Pathway	13
Principle 8 – Judicial/Specialized Pathway.....	15
Training and Stakeholder Partnerships.....	16
Principle 9 – Training and Stakeholder Partnerships.....	16
Principle 10 – Identify and Strengthen Community Partnerships.....	18
Data Collection, Evaluation and Technology Innovation	20
Principle 11 – Improve Ongoing Data Collection, Analysis, and Use of Data to Inform Case Management	20
Principle 12 – Collect and Analyze User-Evaluation Metrics	22
Principle 13 – Implement Innovative and Appropriate Technology	23

Introduction

The Family Justice Initiative (FJI) was established to provide courts across the country with validated, data-informed strategies for improving the way they process domestic relations cases.



It draws upon domestic relations case management data, promising practices, and program evaluations nationwide to recommend practices that promote better outcomes for families. FJI was undertaken as a partnership between the National Center for State Courts (NCSC) and the Institute for the Advancement of the Legal System (IAALS) and the National Council of Juvenile and Family Court Judges (NCJFCJ). FJI received oversight and guidance from a subcommittee of the Conference of Chief Justices (CCJ) and the Conference of State Court Administrators (COSCA) Joint Committee on Children and Families. FJI follows from the Civil Justice Initiative (CJI), extending and modifying the CJI Recommendations to address domestic relations cases.

Readers familiar with the CJI Recommendations will find similarities in approach. This is intentional, given the documented successes of a number of courts that have implemented CJI Recommendations.¹ The 13 FJI Principles that follow also incorporate an approach rooted in resolving family problems and improving case management through a triage strategy that matches cases and parties to appropriate resources and services.

The Principles are based on an assessment of the current Landscape of Domestic Relations Cases in State Courts and best practices in domestic relations cases—a first-of-its-kind study looking at family cases nationwide.² They are divided into four sections:

- Problem-Solving Approach
- Triage Family Case Filings with Mandatory Pathway Assignments
- Training and Stakeholder Partnerships
- Data Collection, Evaluation, and Technology Innovation

A companion document sets forth best practices for this approach that can be adapted to fit local realities.³ The next phase of the project will involve several jurisdictions pilot-testing the recommendations. Successes in improving the management of domestic relations cases can then be shared broadly to help guide courts toward improving outcomes for families while managing costs, limiting delays, and facilitating healthy outcomes.

¹ A number of states including Arizona, Florida, and Utah have documented case management efficiencies from implementing CJI Recommendations. See e.g. <http://iaals.du.edu/blog/learning-arizona-s-success-civil-justice-leaders-share-their-experiences>; 11th Judicial Circuit Court of Florida. (2018). *Civil Justice Initiative Pilot Project: Performance Report*.

² National Center for State Courts. (2018). *Family Justice Initiative: Landscape of Domestic Relations Cases in State Courts*. Available at <https://www.ncsc.org/~media/Files/PDF/Services%20and%20Experts/Areas%20of%20expertise/Children%20Families/FJI/FJI%20Landscape%20Report%202mb.ashx>

³ National Center for State Courts. (2019). *A Model Process for Family Justice Initiative Pathways*.

Problem-Solving Approach



Principle 1 – Direct an Approach that Focuses on Problem Solving

The court must lead case management. In domestic relations cases, this requires directing a problem-solving approach.⁴

COMMENTARY

Given the unique aspects of domestic relations cases and parties, adversarial court processes and traditional approaches to managing cases may be ill-suited to healthy family reorganization. In fact, each case is as unique as each family. Unlike civil cases, which frequently involve a snapshot in time of past events, the issues in many domestic relations cases evolve throughout the course of a case and well into the future. Resolution of family disputes requires an assessment of past events to shape

Unlike civil cases, which frequently involve a snapshot in time of past events, the issues in many domestic relations cases evolve throughout the course of a case and well into the future.

future behaviors and relationships. The dispute resolution process itself must be fluid and flexible in this evolving environment. Thus, teaching the parties cooperation and problem-solving skills throughout the court-related life of a family case is important.

Where children are involved, the relationship between the parties

continues well beyond the resolution of the case. Given the far-ranging and long-term impacts that judicial decisions have on parents and children, the court system has substantial reason to encourage parties to reach resolution themselves, with careful attention to the safety of the parties, rather than undergo a full adversarial proceeding and receive a determination by the judge. Self-determined resolutions are more likely than a court-imposed decision to address both the substantive and underlying interests of the parties; therefore, parties are more likely to comply with and support agreements that they reach on their own.⁵

This is particularly important in family cases, which frequently come back to the court to adjust for new circumstances, resolve new disputes, or resolve pre-existing disputes that were not effectively addressed the first time. Further, the system should model a positive decision-making process for the parties. The message sent by the legal system about what type of dispute resolution is appropriate and effective for families will have life-long impact. At the same time, some cases are not suitable for a facilitated approach or require additional safety measures to be made suitable. Those cases should be identified as soon as possible and monitored.

⁴ Much has been learned from problem-solving courts. The problem-solving term is used in a general descriptive sense to differentiate between traditional and adversarial proceedings. <https://www.ncsc.org/Topics/Alternative-Dockets/Problem-Solving-Courts/Home.aspx>

⁵ National Center for State Courts. (2016). *Civil Justice Initiative: Call to Action: Achieving Civil Justice for All, Recommendations to the Conference of Chief Justices by the Civil Justice Improvements Committee*. page 16. Available at <https://www.ncsc.org/~media/microsites/files/civil-justice/ncsc-cji-report-web.ashx> [hereinafter Call to Action].

Problem solving in many domestic relations cases will rely on the deployment of non-adversarial court processes. The adversarial process can exacerbate existing tensions between parents at a time when it is best for their children that they focus on working together to co-parent and collaborate in planning for the future (so long as safety of the children is protected). In this context, courts should be mindful of the language used to refer to parties and case types in domestic relations cases. Descriptors such as “contested” and “complex,” or “plaintiff” and “defendant,” can automatically place parties in a position of being adversaries and/or in conflict. The adoption of understandable, neutral, and non-adversarial descriptions and categories can facilitate the problem-solving approach.

The problem-solving approach, however, also recognizes that not all parties and cases will present to the court with outstanding issues and unresolved problems.

Many divorce and separation cases come into the court uncontested, with parties having agreed to all terms prior to filing. In these cases, parties look to the court for a legal ratification and serving this need with minimal delay or complication is part of the court’s responsibility to problem solve as appropriate.

The problem-solving mindset does not abdicate the court’s ultimate responsibility for managing family cases. At the heart of the Civil Justice Initiative Recommendations “is the premise that the courts ultimately must be responsible for ensuring access to civil justice. Once a case is filed in court, it becomes the court’s responsibility to manage the case toward a just and timely resolution.”⁶ FJI similarly recognizes the importance of courts having ultimate control of ensuring access to family justice. The problem-solving mindset provides the contours of the process around which courts should manage domestic relations cases.

At the heart of the Civil Justice Initiative Recommendations “is the premise that the courts ultimately must be responsible for ensuring access to civil justice. Once a case is filed in court, it becomes the court’s responsibility to manage the case toward a just and timely resolution.”

⁶ Call to Action *supra* note 5, at 16.

Problem-Solving Approach *continued*

Principle 2 – Involve and Empower Parties

Courts have ultimate responsibility for managing domestic relations cases but should empower both parties to play a proactive role in charting a course that is best suited to the family's situation and needs.

- 2.1 Parties must be empowered with information about available process and service options, including the implications of each.
- 2.2 Court control over managing domestic relations cases must be balanced against parties' self-determination to decide what is best for their family.
- 2.3 Courts should be receptive to innovations in domestic relations case management and procedures that streamline the requirements imposed on the parties, particularly those who are self-represented.

COMMENTARY

Court staff and judges cannot assume that they know better than the parties what processes and services are best suited to a healthy reorganization for that family. Parties should be empowered to play a proactive role in charting their course through the court. To that end, courts should provide parties with information and the understanding needed to make educated decisions about how to shape a divorce or separation process in a manner that is most appropriate to the family's ever-changing situation and needs. Motivational interviewing techniques have been shown to be helpful to empower parties when assisting families to problem-solve issues within their case. With growing numbers of self-represented parties, it is imperative in domestic

relations cases for courts to effectively communicate requirements and expectations in plain language.

Party self-determination to influence the course of their case, however, must not come at the expense of children involved in the case. When children are caught in the middle of parents' adversarial posturing or left in limbo because of delays in the process, these uncertainties can create and magnify anxiety in children, and that increases the likelihood of negative consequences arising out of the divorce. Children's need for stability and predictability gives the court a reason to restrict the self-determination of the parties.

Court ownership of family case management is entirely appropriate, and the universe of stakeholders who share primary responsibility for doing so includes an interdisciplinary group of service providers, in addition to traditional court personnel. Where possible, courts should coordinate delivery of services to make the process more seamless for the parties who need it.

Court staff and judges cannot assume that they know better than the parties what processes and services are best suited to a healthy reorganization for that family.



Problem-Solving Approach *continued*

Principle 3 – Courts are Safety and Trauma-Responsive

Courts should be trauma-informed and trauma-responsive. Court processes should empower parties to make their own decisions and should be proactive in ensuring the safety of the parties, children, and others involved in the case.

- 3.1 To the extent possible, court processes should be designed to minimize re-traumatization and to facilitate effective participation by parties, including children, who have experienced trauma.
- 3.2 Courts must be knowledgeable and aware of the signs and dynamics of domestic violence, child abuse, substance abuse, and other critical issues to ensure safety and a fair process in each case.
- 3.3 Screening with reliable tools should be ongoing and behavior-specific rather than relying on labels. When screening reveals possible signs of violence, abuse, or trauma, further assessment to ascertain the nature and extent of any risk to the parties, children, or others is warranted.
- 3.4 If assessment reveals a threat to the safety of the parties, children, or others, courts should be prepared to take appropriate steps to protect those impacted by the threat.
- 3.5 When safety concerns arise in a case involving domestic violence, the survivor's voice should be heard regarding how best to address those concerns. Self-determination remains a primary

goal in such cases, and intervention may be required to protect a survivor from the abuser's coercion, intimidation, and control.

COMMENTARY

As the Adverse Childhood Experiences Study showed, an alarmingly high proportion of the population has experienced some form of trauma.⁷ When the trauma takes the form of domestic violence or child abuse that is directly related to a pending domestic relations case, the effects on the court case are exacerbated. An affected party's effective participation in the case can be impaired by a court environment and processes that are not trauma-informed. All judges, court staff, and court-related professionals who interact directly with parties should receive training in recognizing the signs and dynamics of critical issues, including domestic violence, child abuse, and substance abuse. This includes training in understanding the effects of trauma and how they may present in typical court and court-related processes (e.g., mediation and parental education programs), as well as reasonable measures that can be taken to promote a trauma-responsive process and environment.⁸

⁷ National Center for Injury Prevention and Control, Division of Violence Prevention. (2014). *The Adverse Childhood Experiences (ACE) Study*. cdc.gov. Atlanta, Georgia: Centers for Disease Control and Prevention, Archived from the original on 27 Dec. 2015.

⁸ Trauma-informed means taking into account the whole person, their past trauma and the resulting coping mechanisms when attempting to understand their behaviors. Trauma-informed courts take active steps to avoid stressing or re-traumatizing parties in court to resolve family issues whether or not trauma is actually present. Specifically, universal precautions in the context of administration of justice should support the core conditions of healing from trauma or adverse experiences and reduce unnecessary environmental stress. Shawn Marsh & Mari Kay Bickett, *Trauma-Informed Courts and the Role of the Judge* (Feb. 11, 2015), available at <https://www.ncjfcj.org/trauma-informed-courts-and-role-judge>

To be trauma-informed, court-related professionals must realize the widespread impact of trauma and understand potential paths for recovery and be able to recognize signs and symptoms in clients, families, staff, and others involved with system.

To be trauma-responsive, courts should endeavor to integrate knowledge about trauma into policies, procedures, and practices and seek to actively resist re-traumatization.

To be trauma-responsive, courts should endeavor to integrate knowledge about trauma into policies, procedures, and practices and seek to actively resist re-traumatization.⁹

To the extent possible, such measures should be standard. Domestic violence and child

abuse are more often hidden than disclosed, and at the outset the court may not be aware of which parties and children are affected. Screening, using reliable tools, should be ongoing rather than occurring only once at the beginning of the case, and it should be specific as to behaviors rather than simply asking about labels (e.g., not questioning parties about “domestic violence,” rather, asking about who controls the finances, who makes decisions, whether the party has felt unsafe, intimidated, or threatened, whether physical violence has occurred, whether sexual violence or coercion has occurred). Also, parents who use battering or coercive control often couch accusations against the other parent

in terms of concern for the children, attempting to portray protective efforts as being motivated by malicious intent. Court staff and judges should become well-versed with domestic violence screening and risk assessment tools as well as the dynamics of abuse and how the court case can become a means of further manipulation and control.

If screening reveals a concern, the case should be assessed to determine the nature and extent of any risk. Each court works differently, and who completes the assessment will vary, depending on the court’s organizational structure and staff, resources, and community partners. Rather than impose a blanket solution in all cases, any steps taken or orders entered should be tailored to the circumstances of the particular case. This could mean the imposition of additional security measures, adjustments to typical court or dispute resolution processes, or substantive orders in the case if the risk factors present so warrant. The parties’ voices should be heard in determining the most effective responses as they know their family best and may have suggestions the court would not have considered.

Safety must remain the top priority. Protection of the self-determination promoted in Principle 2 will assist in achieving safety by fostering thoughtful consideration of the individual circumstances and risk factors in the case. Providing information about (and assuring an understanding of) process and service options in a safe, protected environment can facilitate informed determinations by parties about their safety and their lives.

⁹ “A trauma-informed approach to services or intervention acknowledges the prevalence and impact of trauma and attempts to create a sense of safety for all participants, whether or not they have a trauma-related diagnosis. Becoming trauma-informed requires re-examining policies and procedures that may result in participants feeling loss of control in specific situations, training staff to be welcoming and non-judgmental, and modifying physical environments. The goal is to fully engage participants by minimizing perceived threats, avoiding re-traumatization, and supporting recovery. There is often little or no cost involved in implementing trauma-informed principles, policies, and practices.” Substance Abuse and Mental Health Services Administration. (2013). Essential Components of Trauma-Informed Judicial Practice, available at https://www.nasmhpd.org/sites/default/files/DRAFT_Essential_Components_of_Trauma_Informed_Judicial_Practice.pdf. See also the six key principles of the trauma-informed approach: 1. safety; 2. trustworthiness and transparency; 3. peer support; 4. collaboration and mutuality; 5. empowerment, voice, and choice; 6. cultural, historical, and gender issues. Substance Abuse and Mental Health Services Administration. (2014) A Concept of Trauma and Guidance for a Trauma-Informed Approach. HHS Publication No. (SMA) 14-4884. Rockville, MD: Substance Abuse and Mental Health Services Administration. Available at https://www.nasmhpd.org/sites/default/files/SAMHSA_Concept_of_Trauma_and_Guidance.pdf

Problem-Solving Approach *continued*



Principle 4 – Provide Information and Assistance

Courts should provide clear, straightforward information to parties about the court process. Courts should provide assistance to self-represented parties including procedural information and available resources to assist the family.

- 4.1 Court self-help information and materials should be in plain language so that self-represented parties can understand and apply the information to their case.
- 4.2 Access to self-help materials, court forms, and other documents and resources must be available in not just English.
- 4.3 Informational resources should be made available both in digital format on court websites and kiosks as well as in hard copy formats at the courthouse.
- 4.4 Courts should provide staff and/or digital tools that direct and guide parties through each stage of the domestic relations process and provide appropriate resources and assistance along the way.
- 4.5 Informational resources and efforts to provide proactive court staff assistance should be comprehensive but purposefully curated to address common barriers that self-represented parties encounter in the domestic relations process.

COMMENTARY

The Conference of Chief Justices and Conference of State Court Administrators, through Resolution 5: Reaffirming the Commitment to Meaningful Access to Justice for All (2015), supported the “aspirational goal of 100 percent access to effective assistance for essential civil legal needs.”¹⁰ The Resolution called on a wide swath of stakeholders to fulfill this goal but recognized that “the Judicial Branch has the primary leadership responsibility to ensure access for those who face impediments they cannot surmount on their own.”¹¹

There are various vehicles through which courts can facilitate the “continuum of meaningful and appropriate services” that the Resolution envisions. Expanded self-help information and services are foundational components. Of course, this Principle and the broader CCJ/COSCA Resolution on Access to Justice do not direct courts and court personnel to provide parties with legal advice. While the line between legal information and legal advice may still be problematic in some contexts, there is considerable—and growing—guidance available to state courts for navigating this line.¹²

¹⁰ National Center for State Courts. (2015). *Resolution 5, Conference of Chief Justices and Conference of State Court Administrators*. Available at https://www.ncsc.org/~media/Microsites/Files/access/5%20Meaningful%20Access%20to%20Justice%20for%20All_final.ashx

¹¹ Directive Concerning Colorado Courts’ Self-Represented Litigant Assistance, CO 13-01 (2013) (providing guidance to clerks, family court facilitators, self-represented litigant coordinators, and others to litigants or potential litigants in non-criminal matters); John M. Greacen, “No Legal Advice From Court Personnel: What Does That Mean?” *The Judges Journal* (Winter 1995).

¹² Call to Action, *supra* note 5, at 19.

Most courts today provide some degree of legal information to self-represented parties about court processes and procedures, and available resources to assist self-represented parties. Not all self-help information is created equal, however. Providing parties with verbatim court rules and extensive, complex information about court processes is an important step, but simply replicating the complex, difficult-to-understand rules and information is of limited help for self-represented parties. Legalese, complex concepts, and lengthy narratives can render some self-help efforts just as much a barrier to access as if the information was not available at all. Additionally, as society becomes increasingly multilingual, presenting written and video content in English and other languages is an important aspect of access to justice.

Self-help materials that facilitate meaningful access help parties translate the information into action, to move their case forward, or achieve another goal within the court process.

An increasing number of courts are experimenting with self-help services that go beyond the traditional self-help service model in terms of the function and timing of intervention. Whereas chat bots, court self-help centers, and other common efforts to help self-represented parties are reactive in nature—engaging only when prompted by the party—new innovations are creating opportunities to provide more proactive and ongoing assistance to navigate parties through the court process.¹³ Other services, such as child care, may also be beneficial.

Self-help materials that facilitate meaningful access help parties translate the information into action, to move their case forward, or achieve another goal within the court process.

¹³ Greacen, J.M. (2018). *Eighteen Ways Courts Should Use Technology to Better Serve Their Customers* (Rep.). Institute for the Advancement of the American Legal System. Available at <http://iaals.du.edu/publications/eighteen-ways-courts-should-use-technology-better-serve-their-customers>

Triage Family Case Filings with Mandatory Pathway Assignments



Principle 5 – Use a Service-Based Pathway Approach

Courts should establish a flexible pathway approach to triage domestic relations cases that matches parties and cases to resources and services.

- 5.1 Case assignment to an appropriate pathway should occur at the earliest possible time.
- 5.2 Pathway assessment can be assisted through the capture of specific data elements or via a cover sheet that collects sufficient information on the family and factors to facilitate the selection of an appropriate pathway.
- 5.3 Pathways must be flexible, allowing cases to move between pathways in the event additional information or subsequent events suggest reassignment is appropriate.
- 5.4 Courts must coordinate with interdisciplinary professionals, within or outside the courthouse, to serve domestic relations parties and cases effectively.

COMMENTARY

The Civil Justice Initiative adopted a right-size approach to civil case flow management that is centered on triaging cases into appropriate pathways at filing.

“[T]he premise behind the pathway approach,” according to the Committee, “is that different types of cases need different levels of case management and different rules-driven processes. Data and experience tell us that cases can

be grouped by their characteristics and needs. Tailoring the involvement of judges and professional staff to those characteristics and needs will lead to efficiencies in time, scale, and structure.”¹⁴

The Civil Justice Initiative’s triage approach—that is being applied here to domestic relations cases—goes beyond the traditional Differentiated Case Management techniques in that a pathway assignment is undertaken at filing; is based on a broader array of case characteristics and needs than case type; and is flexible, allowing a case to move across pathways if and when necessary. This pathway approach—and the broader notion that one size does not fit all—is particularly important in domestic relations cases.

The current distinction in most state courts between “uncontested” and “contested” cases does not allow for tailored assignment of court resources and services within each of these very broad categories. As a result, parties are often required by the court to engage in services and processes that are unnecessary or inappropriate for their case, often at a financial cost. This creates delays, increases expenses, and can escalate tension between the parties. These overly broad categories also misdirect judicial and staff resources toward cases that do not need that level of attention. Scarce judicial resources must be

¹⁴ Call to Action, *supra* note 5, at 19.

focused on the cases and parties that need them most, and right-sizing of court resources avoids the imposition of unnecessary, time-consuming steps that render the family justice system burdensome for many parties who need little court involvement.

As envisioned in the CJI Recommendations, pathway assignment can be made early in the life of a case by capturing key data elements about case characteristics and needs—for example, length of the marriage or relationship, length of the separation, presence of children and their age, type of property and debt, and representation status of parties. Whether a workable legal solution is obvious or exists and whether parties' expectations are in the realistic range of legal alternatives may be relevant to triage determinations. Additionally, courts may find it useful to solicit party perspectives on whether they have come to agreement on any issues to date and also on whether they anticipate being able to cooperate in order to reach agreement on outstanding issues. Finally, domestic violence, indicators of power asymmetry, and related considerations can impact triage decisions. Because initial triage determinations will be made upon case information at the time of filing, before the complete set of pleadings has been filed, it will be necessary to gather the filing party's estimates with respect to some of these factors, for example, the financial components of the case.

These Principles do not route post-judgment filings into their own pathway. Rather, these cases will also be triaged at filing and assigned to a pathway based on the characteristics and needs of the case and parties. This reflects the diversity of post-decree issues in the sense that:

- Some involve uncontested issues;
- Some should be mediated, and parties encouraged to problem solve;

- Some may benefit from other alternative dispute resolution processes; and
- A few require judicial resolution and intensive case management.

E-filing, electronic case management systems, and data analytics can facilitate collection of data elements that inform the pathway assignment. Technology can also help identify later changes in a case's characteristics that may justify management adjustments. As part of a package of resources to assist courts in implementing the CJI Recommendations, the Civil Justice Improvements Committee released recommended criteria for implementing an automated triage process that conforms to the pathway approach.¹⁵

Courts seeking to implement a pathway approach often express concerns about staffing.

While many family courts have designated case managers that assist in reviewing cases at filing and helping cases progress to decree, a dedicated staff person is not a feasible option for many courts and should not be seen as a barrier. A number of courts have successfully developed screening sheets to identify objective criteria. Parties themselves may be able to set forth the factors, thus requiring minimal review by the family court staff, in performance of other typical case management responsibilities. Further, if families receive court services tailored to their specific

While many family courts have designated case managers that assist in reviewing cases at filing and helping cases progress to decree, a dedicated staff person is not a feasible option for many courts and should not be seen as a barrier.

¹⁵ National Center for State Courts. (2017). *Civil Justice Initiative: Criteria for Automating Pathway Triage in Civil Case Processing*. Available at <https://www.ncsc.org/~media/Microsites/Files/Civil-Justice/Automated%20Civil%20Triage.ashx>

needs from case initiation, this approach should reduce case management activity that results from multiple hearings. The Alaska courts found that implementing their Early Resolution Program did not increase court staffing costs and led to decrees that lasted as long as decrees issued after an adversarial process. Many courts have created self-help centers or positions to assist self-represented parties, a practice recommended by other CCJ/COSCA resolutions supporting access to justice, but these programs do not include case management functions.

The procedures involved in implementing this Principle can and likely will evolve over time as emerging technologies help courts become more efficient and effective at triaging domestic relations cases.

In domestic relations cases, right-sizing requires appropriately identifying resources and services within the court and in the broader community from which families and children would benefit. In addition to non-legal services (e.g., mental health, financial planning, job training/placement, and substance abuse services, child care including care of special needs of children), these might include referrals to legal services (e.g., partnering with bar associations to provide lists of limited scope practitioners and mediators). When engaging interdisciplinary professionals is appropriate, the court must not abdicate responsibility for managing the case, and the engagement of these experts must not protract the process.

In domestic relations cases, right-sizing requires appropriately identifying resources and services within the court and in the broader community from which families and children would benefit.

Triage Family Case Filings *continued*



Principle 6 –Streamlined Pathway

A Streamlined Pathway is appropriate for cases that require minimal court resources and little or no exercise of judicial discretion, and that benefit from swift resolution.

- 6.1 The goal of the Streamlined Pathway is to provide parties with a swift resolution using minimal court resources and entry of decree without appearance.
- 6.2 Although this pathway is administrative in nature, court staff should ensure that parties have filed all necessary documents and that all legal criteria have been satisfied.
- 6.3 Appropriate case types for the Streamlined Pathway include those that are focused on limited issues, have full party agreement, do not require significant court involvement or the exercise of judicial discretion, and can be resolved through administrative proceedings.
- 6.4 Because of the limited involvement of the court, there must be an explicit process for potential reassignment of tracks.

COMMENTARY

The Streamlined Pathway is assigned to cases where little exercise of discretion is appropriate. While statutes in some jurisdictions require appearance in uncontested

cases, this is an expenditure of judicial time that may not be necessary. This pathway can be assisted by online form preparation and filing, and online reminders to facilitate process completion within a short timeframe. Examples of typical processes that fit this pathway are administrative proceedings focused on limited issues (e.g., child support enforcement, default proceedings, uncontested cases, and simplified process cases) where the parties seek an order approving a stipulated result.

The *Landscape of Domestic Relations Cases in State Courts* study confirmed that a majority of cases (64.3%) in participating courts are uncontested.¹⁶ Where parties have reached full agreement on all issues before filing, the only problem that remains in most cases is receiving legal recognition of the agreement by the court. A low level of facilitation may be appropriate to assist in resolving the case when the issues are limited. In cases involving children, a cursory review of the underlying substance of an uncontested agreement may be appropriate to assess and identify any red flags that suggest power asymmetries or other issues that may impact the fairness of the stipulated agreement.

¹⁶ National Center for State Courts. (2018). *Family Justice Initiative: Landscape of Domestic Relations Cases in State Courts*. Available at <https://www.ncsc.org/~media/Files/PDF/Services%20and%20Experts/Areas%20of%20expertise/Children%20Families/FJI/FJI%20Landscape%20Report%202mb.ashx>



Triage Family Case Filings *continued*

Principle 7 – Tailored Services Pathway

A Tailored Services Pathway is appropriate for cases that require more than the minimal resources of Streamlined Pathway cases but less than what are required for Judicial Specialized cases, and that presents an opportunity for problem solving between parties.

- 7.1 The goal of the Tailored Services Pathway is to provide resources and services that empower parties to problem-solve to reach resolution through active case management.
- 7.2 The court must ensure that families have access to information on alternative dispute resolution and other services that can help parties reach agreement.
- 7.3 Mediation, early neutral evaluation, parenting coordination, and other alternative dispute resolution mechanisms are at the core of this pathway. Online dispute resolution, which encompasses mediation, may also be appropriate for parties in this pathway.
- 7.4 Courts should consider the bifurcation and resolution of issues where appropriate. However, the decree should not be entered until all issues have been resolved.
- 7.5 Cases involving domestic violence, substance abuse, and related issues should not automatically foreclose case assignment to the Tailored Services Pathway, but the court and service providers must take appropriate safeguards.

COMMENTARY

The ability to solve problems together and cooperate throughout the process is essential for parties and cases on the Tailored Services Pathway. Where parties are capable of and amenable to safely engaging together in the process, referrals to self-help resources, court services, and non-adversarial dispute resolution processes, like mediation and the Collaborative Law processes can encourage problem solving toward resolution. A tailored resolution offers the advantage of a result that is more likely to meet the family’s needs because the parties are invested and have agreed to the outcome. This should not require additional resources, but reallocating existing services based on need.

Mediation and other non-adversarial, alternative dispute resolution processes are at the core of this pathway. Courts must provide information on mediation, the Collaborative Process, and similar processes so that parties are fully informed about their alternatives to

The ability to solve problems together and cooperate throughout the process is essential for parties and cases on the Tailored Services Pathway.

traditional court-centered processes. Courts must also ensure that these processes are robust and responsive to the needs of the case and the parties. In some cases, courts might consider the bifurcation of issues through alternative dispute resolution processes, to resolve key issues. Resolution through these processes would facilitate further resolution and/or would provide children with certainty and stability.

Even cases with complicating factors such as domestic violence may be appropriately assigned to this pathway if the parties are capable of engaging in solving problems together and sufficient safeguards can be taken,

such as remote participation, shuttle mediation, advocacy support. Any resolution must be completely voluntary. A careful screening and assessment may assist in determining whether this pathway is appropriate, and if safety can be assured, a survivor's decision to attempt a Tailored Services Pathway resolution should generally be respected. Having domestic violence trained mediators or other third-party neutrals is essential if cases involving domestic violence are mediated or subject to other facilitated processes.



Triage Family Case Filings *continued*



Principle 8 – Judicial/Specialized Pathway

A Judicial/Specialized Pathway is appropriate for cases that necessitate substantial court-based or community services and resources to reach resolution. This track is appropriate for cases in which parties cannot or should not problem solve together without court facilitation and supervision.

- 8.1 The goal of the Judicial/Specialized Pathway is to tailor resources, services, and judicial involvement to the needs of the case and the parties.
- 8.2 Court management of the case should begin as early in the case as possible and should be active throughout the life of the case.
- 8.3 The court should consider marshalling additional multi-disciplinary court-based or community resources for the benefit of the parties and any children involved in the case.
- 8.4 Specialized domestic relations judges and court staff should be assigned cases to the Judicial/Specialized Pathway. In jurisdictions where specialized judicial assignments or dedicated domestic relations dockets are not feasible, judges and court staff should be sufficiently trained in the complex issues that arise in these case types and the means for addressing them.

COMMENTARY

Those cases that have either more complex issues or a high level of conflict benefit from a greater degree of judicial involvement in order to appropriately and efficiently route parties to resources and services. The court should begin active management of these cases as early as possible.

When one or both parties are self-represented, these cases can be extremely challenging for judges. Court provision of information regarding representation and other legal services is appropriate here and encouragement of unbundled representation may be especially desirable.

Allowing remote attendance at court hearings and digital submission of evidence can assist in streamlining some services in high-conflict cases. Higher complexity also introduces the importance of maintaining a list of parties' personal needs that helps ensure needed services are arranged. The greater judicial involvement for this pathway may lead to a facilitated, agreed result rather than litigation, but the issues presented by the case are sufficiently complex to require more judicial oversight throughout the process than the Tailored Services Pathway.

Judges and staff managing cases on this pathway must be adequately trained on these complex issues. Additionally, while it is considered best practice for a single judge to handle a case from beginning to end, these Principles recognize the reality that this is difficult in many courts due to rotation schedules and individual calendars.

Training and Stakeholder Partnerships

Principle 9 – Implement High Quality Judicial and Court Staff Training/Education

Because of the complex, unique nature of domestic relations cases, judges and court staff must possess additional specialized knowledge, skills, and qualities.¹⁷

- 9.1 Judges handling domestic relations cases should have regular training in diverse areas of the law including but not limited to criminal, civil, immigration, bankruptcy, military issues and tax law.
- 9.2 Judges and court staff handling domestic relations cases should be familiar with non-legal issues that present in these cases, including but not limited to an understanding of child development and family dynamics, cultural factors, implicit bias, indicators of domestic violence, child abuse, and substance abuse, and intervention strategies and the standards for each.
- 9.3 Judges and court staff should seek out information on innovative approaches to address the issues and problems arising in domestic relations cases.
- 9.4 Judges, court staff, and court-related professionals should be familiar with procedural justice, trauma-informed processes, and practical techniques for effectively addressing the needs of self-represented parties.
- 9.5 Court leadership should provide appropriate guidance for court staff on how to navigate the line between legal information and legal advice.

COMMENTARY

Judicial education is imperative, no matter the case type, and domestic relations cases present the need for in-depth and diverse judicial education programs. It is common for judges hearing domestic relations cases to encounter wide-ranging issues such as bankruptcy law, estate planning, contract law, tax law, military law, immigration law, general civil law, and criminal law. It is important, then, for judicial education programs to focus on substantive legal issues that extend beyond traditional family law statutes and cases.

Additionally, “Divorce, separation, and parental responsibility cases often present complicated emotional and non-legal issues, requiring a family court judge to have familiarity with theories and research in disciplines such as social work, psychology, and dispute resolution.”¹⁸ There is too much at stake to forgo this kind of comprehensive training:

“Without adequate specialized judicial education, at best a family court judge gains expertise over time, through hands-on experience or self-education; at worst, outcomes, families, and communities are negatively impacted.”¹⁹

Judges should monitor and regularly update training in areas that have progressed in their field or changed over

¹⁷ Knowlton, N.A. (2014). *Modern Family Court Judge: Knowledge, Qualities & Skills for Success* (Rep.). Institute for the Advancement of the Legal System. Available at <http://iaals.du.edu/publications/modern-family-court-judge-knowledge-qualities-skills-success>

¹⁸ Knowlton, *supra* note 17, at 2.

¹⁹ Knowlton, *supra* note 17, at 11.

time (e.g., mental health). Judges should seek not only to consider cultural factors and check implicit bias, but to strive to continually deepen their own cultural competency.

Non-judicial court staff and clerk's office personnel should also be trained in the dynamics of family issues and the unique needs of and challenges faced by parties and children. Particularly important is the ability to identify and screen for safety issues, such as intimate partner violence, child abuse, and substance abuse, and the knowledge of how to respond when these issues are detected.

Issues specific to self-represented parties present another opportunity for both judicial and non-judicial staff training. With respect to judicial personnel, understanding how best to navigate cases with self-represented

parties, especially those involving one represented party and one self-represented party, is particularly important. Court and clerk's staff can also benefit from training in how to provide appropriate help to self-represented parties. Specifically, navigating the line between legal information and legal advice is important for clerks and other staff who routinely interact with family court self-represented parties. Courts should provide comprehensive and clear guidance to court staff, outlining the parameters of what constitutes appropriate legal information. A Chief Justice Directive or Court Order to this effect can provide court staff with needed cover and greatly increase the staff's ability to effectively assist parties.²⁰ Such tools are consistent with the U.S. Supreme Court's holding in *Turner v. Rogers* (2011)²¹

Courts should provide comprehensive and clear guidance to court staff, outlining the parameters of what constitutes appropriate legal information.

²⁰ Chief Justice Bender. (2013). Directive Concerning Colorado Courts' Self Represented Litigant Assistance. Supreme Court of Colorado, Office of the Chief Justice. Available at https://www.courts.state.co.us/Courts/Supreme_Court/Directives/13-01.pdf

²¹ *Turner v. Rogers*, 564 U.S. 431 (2011).

Training and Stakeholder Partnerships *continued*

Principle 10 – Identify and Strengthen Community Partnerships

Courts managing domestic relations cases benefit from strong partnerships with community organizations, legal professionals, and service providers.

- 10.1 Judicial leadership at all levels is necessary to effectively marshal resources and supports for domestic relations and, more fundamentally, to advocate for innovation and adequate court resources in the first instance.
- 10.2 Courts should identify resources available to parties within the court and broader community and gather the information necessary for making appropriate and effective referrals from community, bar, and other groups.
- 10.3 Courts should support limited scope representation based on models that have been shown to be successful and make available materials that provide domestic relations attorneys the guidance and judicial approval they need to incorporate these models into their practice.

COMMENTARY

There is a very real gap in most state courts between available resources and necessary resources. Courts should be aspirational when they think about resources, focusing not just on what resources are available, but also on what resources should be available to facilitate lasting and meaningful outcomes for families. Judicial leadership plays an important role in communicating the importance of domestic relations cases and in helping courts secure adequate resources from other

branches of government and organizations in the broader community.

Courts are turning to community partnerships as a means through which to increase access to court services and information—for example, partnering with attorneys and community organizations to host off-site legal advice clinics or equipping stakeholders outside the court with important information about the legal system. Fostering community relationships, especially within diverse communities, is important to improve trust. This would include collaboration with tribal court systems and federal courts handling tribal cases as well as outreach to underserved communities. Additionally, courts are looking to increase community partnerships as a means through which to increase access to justice broadly. As framed by the Alaska Court System:

“Expanding access to justice requires innovation and moving past the idea that an attorney or a courtroom is the best or only solution for [people]. Partnering across legal, social services, medical and information providers to address the array of justice needs that people face may be the key to the early detection, diagnosis and intervention necessary to empower [people] to solve their problems before they find themselves in the legal system.”²²

²² “Justice for All,” Alaska Court System (2019), available at <http://www.courts.alaska.gov/jfa/index.htm>.

Engagement with legal practitioners and local bar associations is a fundamental partnership between courts and community members and organizations. Dialogue across the country is focusing on the role of family bar attorneys in working toward continuous improvement in the family justice system. There is a clear recognition that the courts cannot do this on their own. There must be partnerships with individual attorneys, bar associations and local social service agencies. As stewards of the system, family law practitioners should partner with courts and communities to remove obstacles that interfere with service to families. This necessarily requires educating

the bar because too many attorneys do not have the awareness or knowledge to even recognize this issue, let alone participate in being part of a solution. There is also increased attention on alternative legal services delivery models such as limited scope (unbundled) representation. New CLE programs and bench/bar conferences should inform practitioners about important aspects of these new models and how they can offer complementary services for parties. The CJI Recommendations also recognized the important role of lawyers in influencing the effectiveness of any court pilot projects, rule changes, or case management innovations.



Data Collection, Evaluation and Technology Innovation



Principle 11 – Improve Ongoing Data Collection, Analysis, and Use of Data to Inform Case Management

Courts should gather baseline data to understand the landscape of their domestic relations caseload and then implement standardized, ongoing monitoring and development of evidence-informed practices.

- 11.1 Baseline domestic relations caseload assessments and ongoing monitoring should be tailored to reflect the unique aspects of domestic relations cases and domestic relations case management.
- 11.2 Court data elements should be precisely defined to ensure clarity in data collection and analysis and to facilitate data standardization across courts.
- 11.3 Courts should follow proven practices with respect to the use of common data definitions, routine counting of cases with one or more self-represented parties and recording outcomes to enable the development and ongoing improvement of evidence-based practices.
- 11.4 Courts should regularly make caseload assessments available to the public.

COMMENTARY

Smart data collection, analysis, and use are central to the effective administration of justice and can significantly improve decision-making. Experience and research demonstrate that courts cannot manage what is unknown. Each court system should gain a firm understanding of its current domestic relations case landscape. Using technology for this purpose will increase

the ability of courts to take an active, even a proactive, approach to managing for efficiency and effectiveness. Although court administrators appreciate the importance of recordkeeping and performance measurement, few judges routinely collect or use data or analytical reports.

Courts must systematically collect descriptive information about their cases, processes, and people. An inventory should not be a one-time effort. Courts can regularly use inventories to gauge the effectiveness of previous management efforts and “get ahead” of upcoming caseload trends. Additionally, the information gathered can help courts fully appreciate the ecology of resources needed to serve domestic relations court parties.

As made clear in previous recommendations, the entire court system acting as a team must collect and use data to improve case flow management and reduce unnecessary costs and delay. This can be accomplished by enlisting court system actors at different levels and positions in developing the measurement program, by communicating the purpose and importance of the information to all court staff, and by appointing a responsible oversight officer to ensure accuracy and consistency. Encouraging the cooperation of the clerks of court can further facilitate data collection efforts.

To promote comparability and analytical capacity, courts should use standardized performance measures such as CourtTools as the presumptive measures because there is a consensus on the outcomes targeted. Courts should only depart from these measures where there is good reason to do so. Consistency—in terms of what data are collected, how they are collected, and when they are collected—is essential for obtaining valid measures upon which the court and its stakeholders can rely.

Concerns have been raised about the retention of records, such as screening tools, that may indicate the presence of family violence. While a valid concern, these are not new issues. Parties must be notified that confidentiality and record retention is an issue and documents may be public records, accessible by the other

party. Existing court practices designed to protect party information, especially in the presence of family violence, should be applied to pathway documentation as well.

Finally, transparency in data collection and reporting is important, and courts should periodically publish court data elements. Courts must compete for limited resources to be able to serve the public and should demonstrate that they are good stewards of public dollars. Communicating court data and metrics is also a way to increase public trust and confidence in the courts. Where the data suggest opportunities for improvement, proactive court communication can build public trust while allowing the court to frame the narrative.

Consistency – in terms of what data are collected, how they are collected, and when they are collected – is essential for obtaining valid measures upon which the court and its stakeholders can rely.

Data Collection, Evaluation and Technology Innovation *continued*

Principle 12 – Collect and Analyze User-Evaluation Metrics

Court and domestic relations caseload monitoring criteria should include user-centric metrics, such as party satisfaction, with various aspects of the process, including court resources and services. Courts also should consider periodically engaging former parties in exploring ways to improve the process.

COMMENTARY

The court user is central to family justice. With an increasing number of parties in family and civil cases engaged in the court process without attorneys, courts must embrace a customer- service mindset. This mindset should extend to data collection. Courts should be striving to meet the needs of the constituency rather than telling them what their needs are or merely providing services that meet only a small portion of their needs. Accordingly, courts will need to gather information to be able to assess whether constituent needs are, in fact, being met.

Court users are a foundational source of information on what is working well with respect to court processes and services and what might be improved. Courts should employ party surveys, focus groups, and other forms of user engagement to continuously improve court procedures, services, and self-help materials. This is a very different approach from current practice in most domestic relations courts, but courts and judges must not be afraid of change. As with any data collection, courts adopting this mindset will also need to analyze the information gathered from court users and present findings in a manner that will clarify areas of needed improvement.



Data Collection, Evaluation and Technology Innovation *continued*

Principle 13 – Implement, Innovative and Appropriate Technology

Courts should deploy innovative and appropriate technology solutions whenever possible to assist domestic relations parties, as well as judicial officers and court staff handling domestic relations cases.

- 13.1 Courts should offer parties digital solutions and virtual means of engaging with the court, but technology solutions should not entirely replace the in-person and in-court resources available to parties.
- 13.2 Courts should adopt a component-based case management system that allows for flexibility in vendor selection and system functionality.

COMMENTARY

Technology is creating efficiencies in court and case management, and in helping parties in divorce and separation cases navigate the process. While many facets of judicial system operations—and everyday life more broadly—are moving online, courts must not assume that everyone who needs their services can and will access self-help information digitally. Many parties lack access to the Internet due to poverty, language barriers, being in transition due to the separation, or being apprehensive of technology, and must have access to the court via other means. Self-help materials and information should be available to parties through multiple

channels to ensure broad accessibility by parties with varying levels of technological sophistication and Internet access. Where the court adopts technology solutions that interface with parties, these solutions should reflect the reality that the large majority of those who access information online will be doing so from a smartphone. Ensuring that court websites are mobile optimized is an important aspect of accessibility.

Technology is also essential to internal court case management. The Joint Technology Committee of NACM/NCSC/COSCA NextGen Court Standards suggest a move away from traditional monolithic case management systems provided by a single vendor.²³ Instead, the NextGen Standards propose a component-based approach that facilitates a grouping of functional capabilities that may be implemented independently from one another. IAALS has explored this component-based model in the context of serving self-represented parties, detailing the many ways in which these parties benefit from this model.²⁴

²³ Conference of State Court Administrators, National Center for State Courts and National Association for Court Management, Joint Technology Committee. (2017). Introduction to the Next-Generation Court Technology Standards Application Component Model. Available at <https://www.ncsc.org/~media/Files/PDF/About%20Us/Committees/JTC/JTC%20Resource%20Bulletins/NextGen%20Court%20Component%20Model%202017-12-08%20FINAL.ashx>

²⁴ Greacen, *supra* note 13, at 9.



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Appendix C: April 1, 2020 Guidance from Family Law Taskforce

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In addition to the Supreme Court's Order on custody, parenting time, and child support during the COVID-19 Pandemic, the Innovation Initiative's Family Law Taskforce proposes the following family law guidance that may assist courts or local communities.

Child Support Payments

Many county child support offices are closed or are not accepting payments in person. Child support payments can be made online, by telephone, by mail, and at other locations, as described on the Indiana Department of Child Services, Child Support Bureau website: <https://www.in.gov/dcs/3504.htm>. For more assistance with child support, please contact:

- Child Support Bureau Parenting Time HelpLine, 844-836-0003, PTHelpLine@dcs.in.gov
- Child Support Customer Service Center (Kidsline), 800-840-8757, www.in.gov/dcs/support.htm

Protection Orders

Electronic filing of petitions for protection order is recommended. A tutorial can be found here: <https://www.in.gov/judiciary/tutorials/efile-po-efsp/#/>

Additional Resources

For more information or forms for court documents, please visit:

- IndianaLegalHelp.org, for information and court forms on selected civil legal issues.
- The Indiana Supreme Court Website: courts.in.gov.
- Local county websites, linked at: <https://www.in.gov/judiciary/2794.htm>.
- <https://www.in.gov/judiciary/5578.htm>, for local orders on emergency operations.
- <https://indiana.freelegalanswers.org/>, for low-income Hoosiers to ask a volunteer attorney a specific question about a civil legal issue.
- courts.in.gov/efile, for information on efilings.

Appendix D:
June 3, 2020 Guidelines on Resuming
Operations in Family Law Cases



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TO: All Trial Court Judges
FROM: Judge Elizabeth F. Tavitas,
Chair of the Indiana Innovation Initiative Family Law Taskforce
DATE: June 3, 2020

Guidelines on Resuming Operations in Family Law Cases

The COVID-19 pandemic has required courts to suspend non-essential hearings for nearly three (3) months. The Indiana Family Law Taskforce is aware of the impact this has had on parties and children in family law cases, and recognizes there are challenges in efficiently managing domestic relations cases as courts resume full operations. The Indiana Innovation Initiative Family Law Taskforce is reviewing the continually evolving circumstances and offering guidance. On April 2, the Taskforce provided [Guidance on Family Law for Courts and Communities](#). Today, the Taskforce provides further general guidance and recommendations based on the information currently available.

1. **Consider General Guidelines.** The Office of Judicial Administration of the Indiana Supreme Court published “Resuming Operations of the Trial Courts – Covid-19 Guidelines for Indiana’s Judiciary” (“Resuming Operations”) on May 13, 2020, which provides detailed guidance, and should be reviewed in conjunction with this notice. See <https://www.in.gov/judiciary/files/covid19-resuming-trial-court-operations.pdf>.
2. **Use Remote Hearings Whenever Possible.** In order to promote public health and safety during the continuing pandemic, courts are strongly encouraged to minimize the number of individuals entering the county courthouse. Judges and judicial officers should conduct remote hearings in domestic relations cases as much as possible; and when not feasible or appropriate in particular circumstances, courts should allow witnesses to appear remotely to limit contact between individuals. The Indiana Supreme Court has offered Zoom licenses to all trial courts, and allows

remote hearings even when the parties object, so long as good cause is found by the trial court, which can be the continued existence of COVID-19.

3. **Provide Advance Information on Protocol.** At the time a hearing is scheduled, the courts should provide parties and attorneys their plans for maintaining social distancing, the requirement of masks, security procedures, sanitation methods, and any other helpful information that can ease the concerns of the public for their health and safety. *See Resuming Operations* at pages 12-13.
4. **Ensure Access to Digital Justice.** Courts should be mindful that not every party has reliable or available technology to participate in hearings by phone or video. Some parties may have cell phone service with a limited number of minutes available. Parties should not incur expense to participate in hearings, nor should they be required to remain on a telephone line until their case is called. Possible options for ensuring access include calling the party when their case is ready to be heard, or offering a public location for parties to use a computer or phone (such as a library, bar association, or legal assistance clinic). Courts should also consider maintaining the necessary video technology that parties can access at a remote location which provides the level of privacy required. Personal protective equipment should be available for parties to use.
5. **Schedule Cases at Specific Times.** The use of high-volume dockets, where multiple cases are scheduled each hour, or at the same time, is discouraged. Cases held in person should be scheduled at specific times to allow for proper social distancing in accordance with CDC guidelines, and to provide for adequate sanitation between hearings. As discussed above, cases held remotely should also be scheduled at specific times to prevent parties from having to use cell phone minutes or data waiting for their cases to be called. Alternatively, courts should consider “doctor’s office” protocols – having parties wait in the parking lot or another nearby location outside the courthouse that permits social distancing until they are summoned to appear either by a phone call, text messaging, or pager system.
6. **Prioritize Cases.** Courts are encouraged to review the filed pleadings and case chronology to prioritize cases – especially those that must be conducted in person (due to lack of resources or necessity). Cases involving the safety and emotional well-being of children, or issues relating to domestic violence, should take priority over most other case types. After addressing emergency cases, courts should prioritize cases with statutory deadlines, such as provisional hearings, and then other non-emergency cases that were continued during the pandemic.

7. **Use Trauma-Informed Practices.** For a multitude of reasons, the pandemic has resulted in traumatic circumstances for many families and children. While there is a high volume of cases that needs to be addressed as quickly and efficiently as possible, courts should be mindful of trauma-informed practices. Courts should display patience and understanding to families during their time of crisis. Courts should provide parties with informational resources in their jurisdictions relating to domestic violence, substance use and abuse, and counseling services so that emotional, physical, and mental health needs can be addressed during this time.
8. **Triage Cases.** To expedite the resolution of domestic relations cases, and consistent with the recommendations of the National Center for State Courts' Family Justice Initiative (<https://www.ncsc.org/services-and-experts/areas-of-expertise/children-and-families/family-justice-initiative>), courts should consider a triage approach to assess which cases may be resolved more quickly and which cases require more extensive court time and services. A possible triage option may involve immediately scheduling a remote pre-trial conference to determine whether:
 - a. the parties have an agreement, either in whole or in part, and whether they need assistance in memorializing that agreement;
 - b. the parties would benefit from a referral to legal assistance organizations or resources (such as www.indianalegalhelp.org);
 - c. mediation is appropriate;
 - d. referral to services is appropriate (such as counseling or parenting classes); or
 - e. the case involves high conflict requiring substantial court time and intervention.

This approach may take an early investment of time, but in the long-term, could save significant court time for many cases.

9. **Strive for Uniformity.** All of the courts handling family law cases within a particular county should consider uniform rules and practices during the pandemic in order to promote efficiency and increase public confidence in the process.
10. **Encourage Language Access.** Courts must still ensure that individuals with limited English proficiency, or those who are hearing impaired, are provided necessary language interpreters, regardless of whether the hearing is in person or conducted remotely. Language line is available to all courts free of cost. Interpreters certified by the Indiana Supreme Court can be used both in person or by video. For assistance in locating a language interpreter, please contact Lun Pieper at lun.pieper@courts.in.gov.

11. **Use Technology to Increase Efficiency.** Courts should consider developing and using a paperless process that will move emergency pleadings to the judge as soon as possible. Courts should also consider obtaining the email and/or cell phone information of unrepresented litigants in order for them to receive notice quickly and electronically from the court.

Appendix E:
Indiana Divorce and Paternity Filings
by County, 2018 and 2019

Indiana Divorce and Paternity Filings by County – 2018

County	JP	DC	DN
ADAMS	48	61	64
ALLEN	1090	761	747
BARTHOLOMEW	168	208	197
BENTON	22	26	13
BLACKFORD	15	47	30
BOONE	134	160	165
BROWN	9	42	49
CARROLL	36	55	50
CASS	141	100	101
CLARK	233	292	312
CLAY	60	78	76
CLINTON	89	76	71
CRAWFORD	2	45	36
DAVISS	74	72	72
DEARBORN	67	93	113
DECATUR	60	72	82
DEKALB	147	109	120
DELAWARE	220	248	237
DUBOIS	56	101	93
ELKHART	479	429	438
FAYETTE	57	54	81
FLOYD	77	269	186
FOUNTAIN	34	46	44
FRANKLIN	23	50	43
FULTON	58	71	55
GIBSON	92	104	92
GRANT	181	114	163
GREENE	76	105	110
HAMILTON	257	695	576
HANCOCK	144	171	177
HARRISON	32	101	110

County	JP	DC	DN
HENDRICKS	194	376	325
HENRY	71	122	121
HOWARD	212	232	278
HUNTINGTON	122	82	100
JACKSON	69	122	148
JASPER	82	86	63
JAY	35	39	47
JEFFERSON	82	91	143
JENNINGS	37	109	92
JOHNSON	225	397	367
KNOX	92	111	129
KOSCIUSKO	159	164	199
LAGRANGE	55	40	41
LAKE	1247	761	910
LAPORTE	311	220	260
LAWRENCE	49	151	153
MADISON	452	296	388
MARION	2509	1749	2212
MARSHALL	88	101	99
MARTIN	10	25	25
MIAMI	39	133	128
MONROE	158	222	289
MONTGOMERY	74	83	92
MORGAN	62	217	220
NEWTON	22	21	39
NOBLE	129	104	101
OHIO	5	13	20
ORANGE	36	51	72
OWEN	46	60	83
PARKE	29	49	49
PERRY	49	53	75

County	JP	DC	DN
PIKE	25	30	31
PORTER	334	360	305
POSEY	50	54	48
PULASKI	27	30	26
PUTNAM	60	92	98
RANDOLPH	23	77	60
RIPLEY	47	78	73
RUSH	40	48	36
SCOTT	65	64	95
SHELBY	139	118	166
SPENCER	26	40	45
ST. JOSEPH	535	501	564
STARKE	43	70	46
STEUBEN	106	82	68
SULLIVAN	19	96	59
SWITZERLAND	16	16	23
TIPPECANOE	384	323	363
TIPTON	15	32	36
UNION	11	10	13
VANDEBURGH	595	527	577
VERMILLION	35	42	53
VIGO	281	245	345
WABASH	71	79	80
WARREN	20	19	15
WARRICK	66	163	137
WASHINGTON	70	92	110
WAYNE	146	145	197
WELLS	59	55	70
WHITE	51	52	55
WHITLEY	53	81	85

STATE 14343 14756 15850

Indiana Divorce and Paternity Filings by County – 2019

County	JP	DC	DN
ADAMS	63	60	54
ALLEN	1015	758	801
BARTHOLOMEW	233	197	216
BENTON	14	24	16
BLACKFORD	10	39	30
BOONE	115	183	172
BROWN	24	34	41
CARROLL	47	47	45
CASS	112	114	98
CLARK	224	287	287
CLAY	58	65	77
CLINTON	110	81	87
CRAWFORD	6	35	45
DAVIESS	76	52	80
DEARBORN	75	96	127
DECATUR	74	84	70
DEKALB	138	78	121
DELAWARE	211	261	256
DUBOIS	55	84	89
ELKHART	489	423	384
FAYETTE	61	69	71
FLOYD	70	229	174
FOUNTAIN	54	42	47
FRANKLIN	33	44	54
FULTON	57	54	46
GIBSON	66	89	95
GRANT	188	141	166
GREENE	68	90	108
HAMILTON	219	653	633
HANCOCK	72	191	170
HARRISON	32	95	100

County	JP	DC	DN
HENDRICKS	192	399	343
HENRY	82	105	157
HOWARD	207	211	267
HUNTINGTON	181	99	77
JACKSON	75	147	145
JASPER	59	85	71
JAY	39	52	59
JEFFERSON	82	70	136
JENNINGS	33	96	101
JOHNSON	256	357	391
KNOX	98	100	118
KOSCIUSKO	114	186	175
LAGRANGE	45	46	48
LAKE	1192	915	916
LAPORTE	247	245	230
LAWRENCE	64	177	142
MADISON	413	292	345
MARION	2400	1664	2459
MARSHALL	88	95	105
MARTIN	21	30	30
MIAMI	80	120	109
MONROE	161	249	284
MONTGOMERY	97	85	89
MORGAN	74	216	222
NEWTON	21	29	29
NOBLE	144	99	105
OHIO	10	9	13
ORANGE	48	55	59
OWEN	85	56	67
PARKE	26	26	35
PERRY	35	62	64

County	JP	DC	DN
PIKE	31	33	34
PORTER	318	357	286
POSEY	43	61	67
PULASKI	16	23	25
PUTNAM	64	83	90
RANDOLPH	24	80	72
RIPLEY	64	70	63
RUSH	55	51	48
SCOTT	49	70	101
SHELBY	120	116	139
SPENCER	17	42	51
ST. JOSEPH	653	499	520
STARKE	80	47	46
STEUBEN	346	66	82
SULLIVAN	19	81	67
SWITZERLAND	13	18	34
TIPPECANOE	337	335	360
TIPTON	18	37	42
UNION	12	14	20
VANDEBURGH	1710	478	555
VERMILLION	24	38	56
VIGO	296	277	312
WABASH	51	78	95
WARREN	14	24	22
WARRICK	64	158	134
WASHINGTON	84	87	83
WAYNE	157	177	189
WELLS	68	60	56
WHITE	45	62	71
WHITLEY	52	79	76

STATE 15582 14677 15947