The Family Justice Initiative: A Work in Progress

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Legal cases involving families have their own special requirements. The Family Justice Initiative helps courts to improve the ways these cases are handled.

Family case types, including divorce, separation, and allocation of parental responsibilities, have important characteristics that distinguish them from other case types. A family case can be complex and often requires decisions throughout the case. The court must be forward looking in ways unique to family cases, and to shape future behaviors and relationships, they must assess past events. Where children are involved, the relationship between the parties continues well beyond the resolution of the case. Additionally, the traditional court process can inflame tensions between parents, putting children in the middle.

Courts are increasingly trying to develop new tools and processes to meet the needs of the families who come before them. To support family courts in evaluating and improving the way domestic relations cases are handled, the Family Justice Initiative (FJI) launched in 2017. The project is a partnership between the National Center for State Courts (NCSC), the Institute for the Advancement
National Family Court Research

The first phase of the Family Justice Initiative involved a national study of domestic relations cases, *The Landscape of Domestic Relations Cases in State Courts*(2018). There was a belief that the characteristics of domestic relations cases had changed considerably over the last few decades, but at the launch of the FJI project our understanding of current domestic relations litigation was based on anecdotal accounts. The *Landscape* study represents the first large, aggregate examination of how family court cases are litigated in state courts.

Findings confirmed much of the conventional wisdom and anecdotal accounts of issues in domestic relations cases. The majority of cases (64.3 percent) were uncontested, which was consistent across courts and case types. Contested cases were more likely than uncontested cases to involve minor children and had higher rates of requests for emergency or injunctive relief and allegations of domestic violence. Not surprisingly, contested cases were more likely to have case-related activity compared to uncontested cases. Interestingly, however, the mean time to disposition was not significantly different between contested and uncontested cases: approximately one quarter of both contested and uncontested cases resolved in approximately three months.

The *Landscape* study also confirmed the prevalence of self-represented litigants in family cases. Most cases (72 percent) examined in the study involved at least one self-represented party. The petitioner was more likely to be represented than the respondent across courts and case types, and both parties were more likely to be represented in contested cases.

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### Days to Disposition for Contested and Uncontested Cases

<table>
<thead>
<tr>
<th>Case Status</th>
<th>Number of Cases</th>
<th>Mean Days</th>
<th>Median Days</th>
<th>75th Percentile</th>
<th>25th Percentile</th>
</tr>
</thead>
<tbody>
<tr>
<td>Uncontested</td>
<td>69,515</td>
<td>338</td>
<td>147</td>
<td>90</td>
<td>252</td>
</tr>
<tr>
<td>Contested</td>
<td>37,992</td>
<td>341</td>
<td>196</td>
<td>86</td>
<td>370</td>
</tr>
</tbody>
</table>

### Representation by Contested Status

<table>
<thead>
<tr>
<th>Contested (%)</th>
<th>Respondent</th>
<th>Uncontested (%)</th>
<th>Petitioner Represented</th>
<th>Petitioner Self-Represented</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Petitioner Represented</td>
<td>46.0</td>
<td>13.8</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Petitioner Self-Represented</td>
<td>7.2</td>
<td>2.4</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Respondent Represented</td>
<td>14.4</td>
<td>21.9</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Respondent Self-Represented</td>
<td>32.5</td>
<td>61.9</td>
<td></td>
</tr>
</tbody>
</table>
Principles for Family Justice Reform

Informed by the *Landscape* study and other best practices from family courts around the country (i.e., resolving family problems and improving case management through a triage strategy that matches cases and parties to appropriate resources and services), the FJI Advisory Committee developed bold recommendations for family justice reform published in the *Principles for Family Justice Reform* (FJI, 2019b). The Conference of Chief Justices endorsed the *Principles* through resolution 3 at their February 2019 Meeting.

Problem-Solving Mindset

The 13 *Principles* provide courts with strategies for improving the way they process domestic relations cases. At the heart of the *Principles* is a shift to a domestic-relations-case-processing approach that emphasizes problem solving and cooperation between parties, especially where children are involved. Broadly, the *Landscape* study found that “family court procedures still largely reflect the traditional adversarial system rather than the contemporary reality of parties that mostly agree” on how to resolve the issues in the case. “This presents a profound change in the role of the court from an adjudicative to a facilitative process.”

To this end, the FJI *Principles* direct courts toward an approach that focuses on problem solving, while also recognizing that courts have ultimate responsibility for leading case management. Problem solving for many family cases relies on nonadversarial court processes, such as mediation or online dispute resolution modalities, with careful attention to the safety of the parties. The *Principles* envision that parties should be empowered to play a proactive role in charting their course through the courts. Safety, however, must remain the top priority and this, along with children’s need for stability and predictability, gives the court a reason to restrict the self-determination of the parties.

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**CCJ Resolution 3 – Thirteen Principles In Support of the Family Justice Initiative Principles**

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

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Service-Based Triage-Pathway Approach

The Principles are centered on a triage-pathway system that matches cases and parties to appropriate resources and services both within and outside the court and supports increased information for self-represented litigants and robust training for stakeholders. A supplemental report, A Model Process for Family Justice Initiative Pathways, accompanied the Principles, setting forth best practices for implementing the triage approach (FJI, 2019a). The FJI Principles detail three separate but flexible pathways, allowing cases to move between pathways in the event additional information or subsequent events suggest reassignment is appropriate.

Case management enthusiasts will notice similarities between this triage/pathways approach and differentiated case management (DCM). Traditional DCM views incoming cases as feeding a “reverse telescope” where the fat end represents all incoming cases. Attempts are made through a sequence of case events like pretrial conferences, mandatory mediation, and settlement conferences to clean out the cases. This approach may fail to meet the needs of the parties and it also misses efficiencies. Cases involving a history of violence should not be mandated to participate in mediation unless special measures are in place. Complex or high-conflict cases, which have a high probability of going all the way to a trial, could be put on a trial track immediately, rather than working sequentially through events and services that will not resolve those cases.

A triage or pathways approach attempts, through consideration of information available about the parties, to establish a pathway that will resolve the parties’ legal and nonlegal issues. By identifying the “symptoms” up front, courts can provide both the case management and services “treatment” that will be most likely to resolve the parties’ needs and, therefore, the case at issue. The case management and services for each of the three pathways is described below:

Note: Most cases will be Streamlined, fewer will require Tailored Services, and fewer still will be Judicial/Specialized.
The Streamlined Pathway is designed for cases that require minimal court resources and little or no exercise of judicial discretion. As the Landscape study suggests, most domestic relations cases are uncontested, and in these cases, parties look to the court for legal ratification. Serving this need with minimal delay or complication is part of the court’s responsibility to problem solve as appropriate. This pathway is intended to be administrative in nature, and the Principles recommend an entry of decree without appearance. In cases involving children, however, a cursory review of the underlying substance of an uncontested agreement may be appropriate, and there must be an explicit process for potential reassignment of tracks given the limited involvement of the court.

While many cases will be uncontested at the outset, there will naturally be some cases that come into the court contested but present an opportunity for problem solving between parties. The Tailored Services Pathway is designed to provide resources and services that empower parties to problem solve to reach resolution. A robust suite of alternative dispute resolution options, including mediation, early neutral evaluation, parenting coordination, and other mechanisms, are at the core of this pathway. Cases with domestic violence, substance abuse, and related issues should not automatically foreclose assignment to this pathway, but the court and service providers must take appropriate safeguards.

Finally, the FJI Principles detail a Judicial/Specialized Pathway for those cases that necessitate substantial court-based or community services and resources to reach a resolution. The court should begin active management of these cases as early as possible and should consider marshalling additional multidisciplinary court-based or community resources for the benefit of the parties and any children involved in the cases.

**Information and Assistance to Parties**

The Landscape study confirmed anecdotal and individual state reports that present a high number of self-represented litigants in family cases. Courts are increasingly taking on the responsibility of helping litigants navigate the process, and the FJI Principles call on courts to provide clear, straightforward information to parties and assistance to self-represented litigants that includes available resources to assist the family. While digital tools play a large role in court efforts to assist litigants, the Principles recognize that these solutions should not entirely replace the in-person and in-court resources available to parties.

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**Training and Community Partnerships**

In support of the recommendations, the Principles acknowledge the importance of judicial and court staff education. While court-wide education and training are important across case types, domestic relations cases present wide-ranging issues that require educational content beyond traditional family-law statutes and cases. Another supporting recommendation calls on the courts to identify and strengthen community partnerships. Courts are increasingly turning to community partnerships as a means of increasing access to court services, which is particularly important in domestic relations cases where parties benefit from interdisciplinary services.

**Data Collection, Evaluation, and Technology Innovation**

The importance of data quality in the management of family court cases was a key takeaway from the Landscape study, and the Principles acknowledge the need to implement standardized, ongoing monitoring of caseloads and develop evidence-informed practices. As part of the court's caseload-monitoring criteria, the Principles include user-centric metrics, such as party satisfaction with various aspects of the process. Surveys, design sprints, and other means of engaging litigants can provide invaluable insights into process improvements.

**Implementation and Evaluation**

The third and final phase of the FJI project entails the implementation of the Principles in four pilot courts across the country: Miami-Dade, Florida; King County, Washington; Pima County, Arizona; and Cuyahoga County, Ohio. NCSC, IAALS, and NCJFCJ are working closely with the family courts in these jurisdictions to identify opportunities to implement the FJI Principles. A process evaluation will be made available to the court community in the summer of 2020. It is hoped that courts seeking to improve outcomes for families while managing costs, limiting delays, and facilitating healthy outcomes will be guided and informed by these experiences as well as from other courts that have taken steps toward implementation.
**Conclusion**

The evolving nature of family dynamics requires courts to respond with innovative models to help resolve family matters and improve access to and quality of justice. The Family Justice Initiative Principles draw upon data-informed strategies and best practices to provide new approaches to support families. As the piloting courts move forward, tested tools and processes will be available to meet the needs of the families who come before the courts.

**References**


