

PATHWAYS THROUGH THE PANDEMIC: AN APPLICATION OF FAMILY JUSTICE PATHWAYS IN THREE COURTS

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As 2021 begins, vaccines are slowly circulating the country, bringing hope for a renaissance. As courts look toward the light at the end of the tunnel, our collective comeback will require adaptation. “Non-essential proceedings” have been suspended in many cases for months. Staffing has been reduced due to temporary absences, changed positions, or budgetary concerns. Backlogs are common, even for courts that were early adopters of remote hearings and technologies.

As described in greater detail in “The Family Justice Initiative: A Work in Progress” (*Trends in State Courts 2020*), Pathways approaches have been applied in civil and family cases with demonstrated effectiveness. The Cady Initiative for Family Justice Reform recommends that courts “aggressively triage cases at the earliest opportunity” to determine which “pathway” is most likely to provide the services and case management that a family needs to resolve their case. This approach has been endorsed by the Conference of Chief Justices and the Conference of State Court Administrators, the highest authorities in state court leadership.



COVID-19 has demonstrated the need for adaptable, flexible court initiatives to respond to changing demands, pressures, and climates. More courts are focusing on differential approaches, proportionality of services, and the use of “Pathways” to enhance the timing, individualization, and efficiency of court services.

This article profiles three courts that have succeeded in providing responsive, adaptive services to families in the middle of the pandemic by implementing Pathways approaches. The leaders in these courts have even leveraged opportunities occasioned by the disruption. Connecticut reformed a motions calendar that parties had previously criticized. Marion County, Indiana unified a court and streamlined processes while they planned a move into a new facility. Making decisive use of available funding, Johnson County, Kansas blazed the way into automation of triage to put family filings on Pathways and piloted a protection order portal. Their successes provide a path for other courts in the recovery efforts ahead.

UNIVERSAL COURT CHALLENGES RELATED TO THE PANDEMIC

Courts across the country are experiencing limited staffing and calendar time. In child and family law, courts are reporting that the actions filed represent higher degrees of potential risk and acrimony than before.

All courts in the country are experiencing staff shortages. Jamie Perry is the family law manager in King County, Washington, a court that receives almost 9,000 domestic relations petitions each year. She reported that they have had significant challenges keeping family law frontline workers because of cuts or illness, or because workers did not want to be exposed to the virus.

Absences and vacancies related to COVID may soon go away, but some positions and functions have had to be repurposed to retrofit court processes to a virtual environment. For example, in the Marion County Superior Court, as in many courts across the country, staff that previously processed filings are working virtually with parties to assist them in responding to procedural steps.

Courts are experiencing limited calendar time. Even courts that have accessed all available technologies have experienced delays in the disposition of cases. Since fall 2020, the National Center for State Courts (NCSC) has monitored case filings and disposition data from a small national data sample. When courts suspended in-person hearings in March 2020, filings for many cases temporarily plummeted but soon returned to previous levels. Tyler Technologies reported in December that divorces were trending 15 percent higher. Disposition rates, on the

other hand, have not caught up. Does this indicate a dampening in court functioning related to staffing or other circumstances? While courts are ramping up operations, reports are emerging documenting higher rates of mental health problems, financial strains, domestic violence, and child maltreatment and neglect. The cases coming in will require more careful consideration.

Courts must adapt to overcome these challenges. Judge Jennifer Bailey of Miami recounts what it was like to oversee cases after the mortgage crisis of 2008 that hit southern Florida especially hard. Case filings continued to outpace dispositions, accumulating for some time: “You can’t judge your way out of a backlog, you can only manage your way out.”

We begin with consideration of the State of Connecticut, Family Division, which has worked within the current disruptions to transform a litigious motions calendar into a triaging system that is highly responsive to the needs of parties.

STATE OF CONNECTICUT, FAMILY DIVISION

Through strong judicial leadership, a dedicated cross-divisional team and collaboration within court and community partners, Connecticut has successfully implemented a Pathways case management approach mid-pandemic.

The family division within the Connecticut Judicial Branch addresses some 40,000 matters annually involving child custody, child access, financial matters, property disputes, and restraining orders with 30 full-time family court judges statewide; 70 to 80 percent of parties are self-represented. The family division provides a wide array of services overseen by experienced court employees with a background in working with families. In 2015 Connecticut conducted a public perception survey as part of continuous improvement. While 73.6 percent of family court customers reported satisfaction, areas of dissatisfaction were the time it took to resolve cases and the cost. This spurred Connecticut forward in reengineering with an eye on the short calendar.

The short calendar was a motions calendar that gave parties speedy access to the court within two to three weeks of filing a motion, but a culture of repetitive motions soon developed around it. The often-crowded court calendars could not allow for meaningful consideration of the matters asserted. It cost parties time and money in



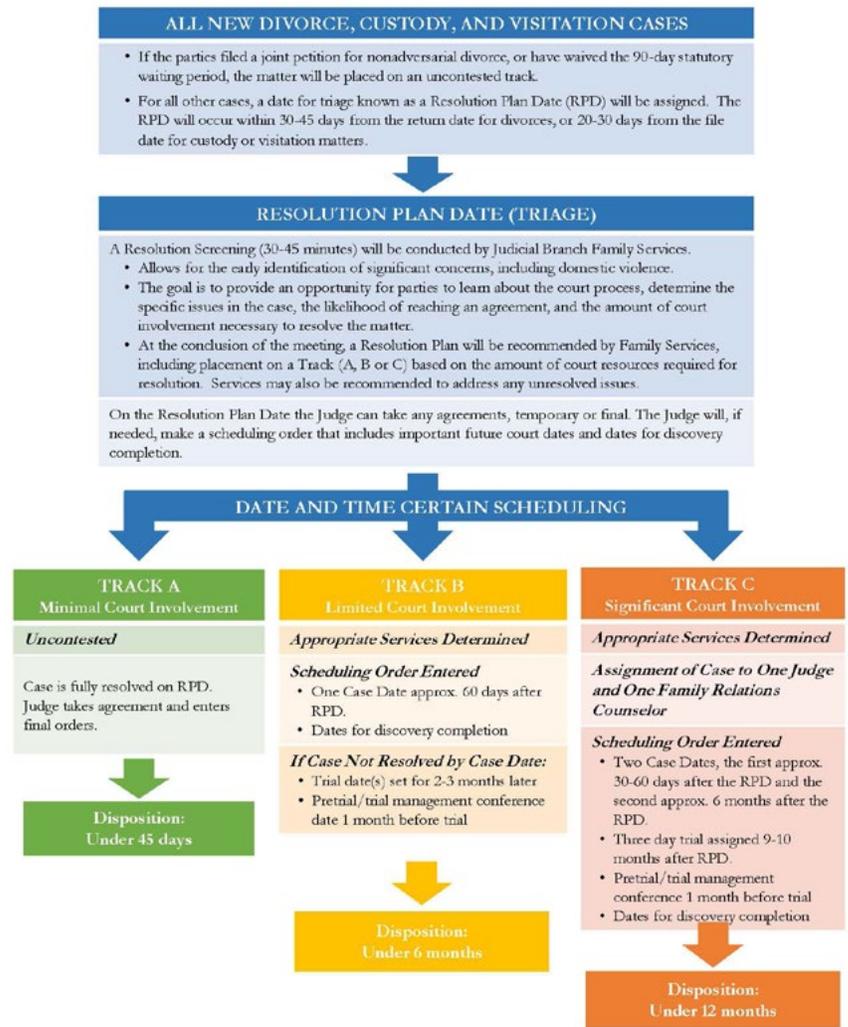
court. Under the leadership of the presiding judge of the family division, Michael Albis, and the family team (Joe DiTunno, Danielle Sanquedolce, Johanna Greenfield, and Damon Goldstein), Connecticut studied the feasibility of a Pathways case management approach.

Connecticut designed three Pathways, from light to more intense court involvement (see Figure 1). Family services meets with parties within 30-45 days of the filing of the return pleading to ascertain party needs and establish a Pathway for resolution. The Pathways match cases and parties to appropriate resources and services both within and outside the court. The Pathways are flexible, and cases can move between tracks if more information would indicate a greater or lesser need for services or court oversight.

Once the new processes were designed, Connecticut reached out widely to local jurisdictions to present an overview of the contemplated processes, request input, and troubleshoot challenges. The judicial branch originally planned to discuss the new processes broadly with all stakeholders with a view toward the intended January 2021 rollout. The pandemic prevented the broader outreach from happening as planned but necessitated the earlier commencement of the proposed new scheduling methods, which are more conducive to remote proceedings than the short calendar. The outreach effort has now resumed, with an eye toward adjusting and refining with the benefit of practical experience.

During a virtual statewide meeting to review the Pathways case management approach, the family team emphasized the opportunity to resume stronger by putting in place more agile and responsive practices. The impressive combination of leadership, a strong history of services for

**FIGURE 1:
PATHWAYS TO RESOLUTION**



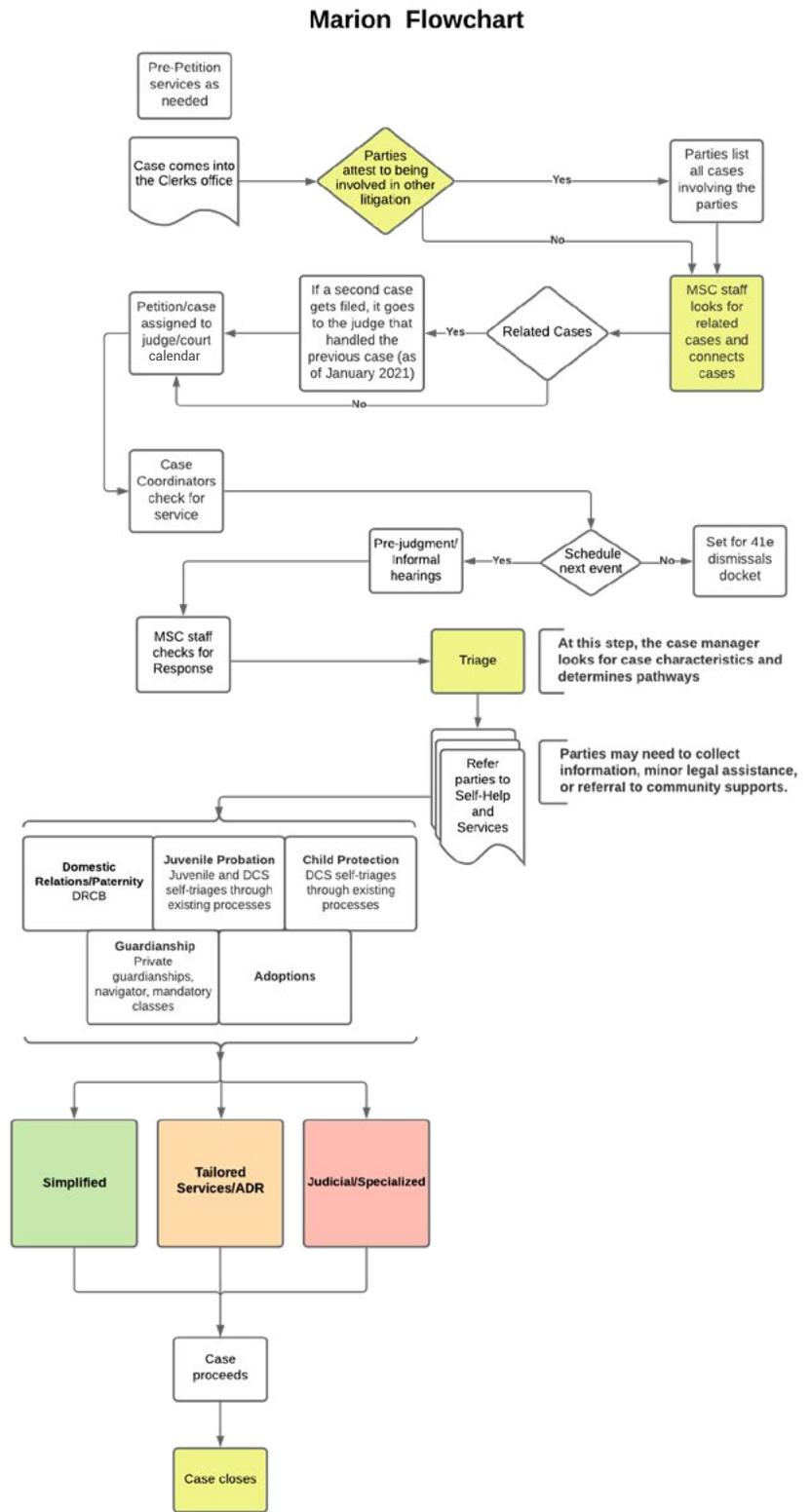
families, and cross-departmental coordination allowed Connecticut to implement Pathways case management according to the original launch date of January 2021. Connecticut continues forward and is collecting data on impacts. They have also influenced other states. Marion County, Indiana is forging a path for implementation of Family Justice Pathways, with the support of the Indiana Supreme Court.

THE INTEGRATED FAMILY DIVISION OF THE MARION SUPERIOR COURT IN INDIANAPOLIS

Leadership of the Marion Superior Court has been planning to move to a new Community Justice Center in January 2022. Court leadership saw the move to a new, unified facility as a timely opportunity for the implementation of best practices that can better serve families facing legal challenges in court. The integrated family court within the Marion Superior Court will oversee approximately 8,500 cases involving juvenile case types, dissolutions, paternity, guardianships, and adoption. In preparation for that move, the superior court has continued work on reform efforts that would be impressive under ordinary circumstances. Under pandemic circumstances, their efforts are incredible.

In contemplation of a world-class, integrated family division, the Marion Superior Court began writing a caseload management plan in 2019 to “provide a uniform procedure for resolution of all issues in child, youth, family, and guardianship cases in the family division.” The plan was intended to reduce the negative impact of adversarial litigation and promote the satisfaction and well-being of family participants and court representatives. As the pandemic raged across the country, forcing the court to suspend some proceedings, the superior court studied its case management data with greater urgency, calling upon Jeff Hall, a court administrator in Oregon and IAALS advisor, to help them consider various methods to prevent a backlog of cases from growing. Case clean-up, reasoned Associate Presiding Judge Alicia Gooden, would assist the court in being responsive

FIGURE 2: FAMILY TRIAGE AND PATHWAYS PROCESS



and agile once full operations resumed. The court is also working to adopt informal domestic relations trials, a relaxed procedure that helps unrepresented parties to better engage in their dissolution processes. Finally, the court has envisioned this triage and Pathways process for all families to be served (see Figure 2).

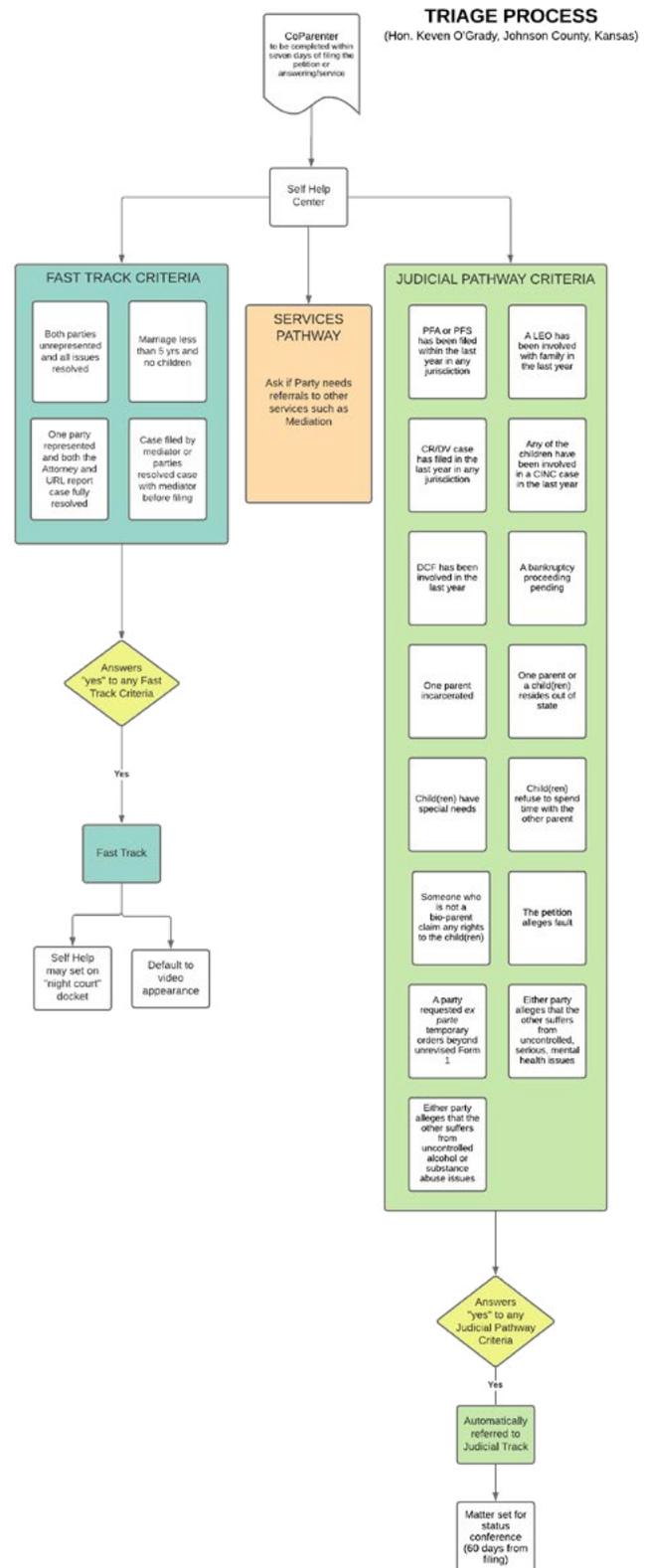
Finally, the superior court is expanding self-help and dispute resolution services. John Greacen provided a court-wide training on the difference between legal advice and legal information on behalf of IAALS. Working to expand upon dispute resolution, court administration has reached out to community partners to allow more parties to access mediation services through experienced mediators trained in trauma responsiveness and conflict. To provide the opportunity for peers to share information, Term Manager Polly Beeson is overseeing a full training curriculum designed to support the integration, addressing topics for each case type. The Marion Superior Court is a court to look to now and in the future.

JOHNSON COUNTY DISTRICT COURT, KANSAS

The family division within the Johnson County District Court may present the most stunning example of thinking quickly on their feet during the pandemic. They accessed available pandemic funding to contract for use of dispute resolution software and quickly designed a triage process that could be built into the software. They did so in the middle of a pandemic, and in the middle of a move to a new facility, similar to the Marion Superior Court.

There has been recent focus on the effectiveness of the court case management teams (CCMT) to provide higher quality justice with existing staffing. Johnson County participated in an October 2020 virtual CCMT workshop along with other jurisdictions throughout Iowa and Kansas. The five judges within the Johnson County Family Court hear a wide variety of

**FIGURE 3:
JOHNSON COUNTY TRIAGE PROCESS**



cases, including divorces with children, parentage and support cases, and civil protection from abuse/stalking cases. During the workshop, the Johnson County executive team consisting of Keven O’Grady, presiding judge of the family division; Katherine Stocks, court administrator; Vanessa Rockers, self-help manager; and Nicolette Bennett, district court trustee, analyzed court data, identified elements for simplification, and established a case management plan.

Within three meetings, this group had established a triage and Pathways process. The executive team agreed that new staffing to apply the triage model was not feasible under current staffing limitations. Recognizing this limitation, Judge O’Grady investigated all possible means of service provision, including automation of processes. Having applied for CARES act funding due to COVID disruptions, Judge O’Grady reached out to CoParenter.org to consider how the application could be used for all dissolution or parentage cases and negotiated a process within the space of weeks. After looking at the Alaska Early Resolution factors, Judge O’Grady’s team designed an instrument for determining Pathways (see Figure 3). In this model, the parties will respond to a guided interview, which will be reviewed by self-help personnel who determine the Pathway. As the first example of the automation of the Family Justice Initiative Pathways process, the potential is tremendously exciting. Given its potential to maximize staff ability to assist parties through the Pathways approach, it is hoped that this will serve as a template for other states to follow, especially at a time when staff are stretched thin.

This is not Johnson County’s only innovation. With a projected go live date of April 1, 2021, Johnson County is currently testing a protection order portal in collaboration with the Kansas Office of Judicial Administration and the University of Missouri, Kansas City School of Law. Used in Arizona, Utah, and elsewhere, protection order portals allow parties to obtain an Order of Protection quickly and virtually, without cost or the risk of appearing in court physically. The University of Missouri, Kansas City School of Law has offered to share the backend of the portal with other interested jurisdictions, which may be viewed at www.kspop.org. The portal will be included in the 2021 Implementation Labs, a national learning community that will share resources, experiences, and challenges. This lab, like the others, will synthesize and document implementation plans, progress, challenges, and sustainability strategies for the national court community.

CONCLUSION

These court leaders implemented creative adaptations based on differential approaches for early and individualized attention to the unique needs of families, while finding the most efficient ways to address pandemic-related conditions. These courts have used Family Justice Pathways to establish processes that will assist with incoming and existing cases, while providing parties the services they need. Early indications are that they have better poised themselves to respond to future needs.

It can be daunting to consider the path ahead. In the short term, we need creative and innovative approaches to address the backlog of court filings to preserve public trust and confidence. We must remain vigilant to find the most effective approaches to address the administration of justice while being flexible to respond to the ever-changing realities, as have these three courts. Stacey Marz, Alaska’s state court administrator and a leader in access-to-justice initiatives, encourages courts to be bold, despite the current challenges: “In some ways, it has never been as acceptable to make change as it is now.”

These courts have taken advantage of a moment of uncertainty to try new practices that are showing the first indications of positive adaptation. They have shown that through effective leadership and *esprit de corps*, implementation of Pathways not only is possible but can also rebuild case management practices to be stronger, more robust, and progressive.

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