

Executive Summary

Domestic relations cases are a key entry point into the state court system for many American families. The characteristics of these cases have changed rapidly over the last several decades, and the landscape of current domestic relations litigation is not fully understood. The positive response to the findings and subsequent recommendations of the CCJ Civil Justice Improvements Committee prompted the CCJ/COSCA Joint Committee on Courts, Children and Families to initiate the Family Justice Initiative (FJI), which employs a similar methodology to domestic relations cases. An FJI Task Force has been formed to develop recommendations for issues facing domestic relations cases, and an FJI Landscape study was commissioned to provide the Task Force with information about domestic relations caseloads in state courts.

Currently, anecdotal accounts and conventional wisdom are the most prevalent evidence for issues in domestic relations cases. This landscape study tested that conventional wisdom using actual court data, finding that many are correct. This report documents the caseload characteristics of domestic relations cases disposed between July 1, 2016, and June 30, 2017, across eleven large, urban courts. Three levels of analysis were used to examine the landscape of litigation in domestic relations cases: case-level, court procedures and operations, and community characteristics. The sample of 147,436 cases represented approximately 8 percent of domestic relations caseloads nationally.

Findings

More than three-quarters (76%) of cases were divorce/dissolution cases, followed by “other” (14%), a case type used by some courts in their case management system. The final 10 percent of cases involved parental responsibility claims (e.g., custody/visitation, child support). Some courts were unable to provide one or more of these case type categories and may have grouped categories together more broadly (e.g., a custody case grouped under the initiating divorce case). About half of cases (51.7%) involved minor children.

Cases were primarily disposed by a judgment (76.5%), followed by dismissals (20.3%), with the remaining cases disposed by transfer or by an unknown disposition type. Judgments were mostly unspecified formal adjudications (34%), followed

by settlements (26%), then default judgments (17%). Time to disposition was examined at the 75th percentile, which represents the time it takes for 75 percent of cases to dispose. This method was chosen as averages are sensitive to extreme values and medians often reflect optimistic standards for comparison. The 75th percentile for time to disposition across all cases was 263 days, or about 8 and a half months. Divorce cases typically have statutory waiting periods before a final decree can be issued. Each site’s statutory waiting period was factored into their divorce caseload by subtracting the minimum statutory waiting period from the total time to disposition for divorce cases. The adjusted time to disposition for divorce cases was 170 days, or about five and a half months when excluding waiting periods. Overall, the cases included in the study were close to meeting the Model Time Standards.



Contested versus Uncontested Cases

The majority of cases (64.3%) in the FJI Landscape 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. Scheduled and held in-court hearings and pretrial conferences were also more frequent in contested cases, indicating more court involvement in those cases with contested issues. Interestingly, there was no significant difference

in average time to disposition between contested and uncontested cases. Other case characteristics may have confounded this result, as other case factors are important contributors to case time (e.g., manner of disposition, case type).

Representation Status

As expected, the majority of cases (72%) involved at least one self-represented party. The petitioner was more likely to be represented than the respondent across courts and case types (42% versus 33% overall, respectively). Both parties were more likely to be represented in contested cases. For initial filings, both parties were more likely to be represented when the case involved minor children. In reopened filings, both parties were more likely to be represented in cases without the involvement of minor children. Cases in which there was at least one self-represented party were less likely to secure a final judgment, and more likely to have their case dismissed.

Self-help resources for litigants at each court were examined in light the representation status of litigants and community demographics. The number of self-help resources provided by the court was related to the proportion of self-represented litigants in the study caseload. The self-help resources most highly related to self-representation were fillable and interactive forms and presence of a domestic relations navigator. As the median adjusted income across sites increased, the presence of these resources decreased.

Filing Type

Most cases (80%) were initial filings of a new case, rather than a reopened case requesting modification or enforcement. This was consistent across sites, ranging from 65 percent to 95 percent. Based on the overall proportion of reopened cases across sites, approximately 25 percent of new cases will eventually reopen. Considering only reopened filings, the average number of reopened petitions per case was 2.7. Reopened cases were more likely to be contested and more likely to involve minor children than initial filings. Cases without minors tended to reopen within the first two years following the original disposition and level off, while cases with minors reopened at a higher rate and had a wider spread of reopened petitions over several years post-disposition.

Conclusions

The FJI Landscape study represents the first large, aggregate examination of how family court cases are litigated in the state courts. Much of the findings confirmed conventional wisdom about family court litigation, though several offered new insights into the typical domestic relations case.

The study findings also raise questions both of how domestic relations cases should be managed and whether the judicial branch is still the most appropriate forum for such cases.

The findings from this study highlight the importance of data quality in the management of family court cases. Much of the CMS data that are routinely collected by state courts harken to a predominantly adjudicative system that no longer exists in domestic relations cases. The CMS data captured by courts fail to indicate both the need for closer judicial involvement in dispute resolution and the appropriate allocation of resources to assist litigants as they reorganize their family relationships. Moreover, the data fail to provide a systematic basis for assessing court performance with respect to the effective use of court resources and its relationship to case outcomes.

The study findings also raise questions both of how domestic relations cases should be managed and whether the judicial branch is still the most appropriate forum for such cases. External resources and programs, such as private mediation, have continued to develop to serve families and resolve conflicts. The judiciary has developed programs and resources to meet the needs of families as well, but still maintains many features of the adversarial system used to litigate other case types outside of family court. Judges and court staff understand their role in achieving better outcomes for families, but the litigation framework for these cases may be ready for reconstruction. Resources for litigants and judicial officers to aid in gathering pertinent case information and to support healthier outcomes for families should continue to be developed and implemented across state courts.