

Promoting Well-Being in Domestic Relations Court

Understanding Series



NATIONAL JUDICIAL TASK FORCE TO EXAMINE STATE COURTS' RESPONSE TO MENTAL ILLNESS

Chapter 6: Understanding the Benefits of Early Case Intervention

Key Points

1. Cases in which a participant has a mental health condition or has experienced trauma or abuse might benefit from special attention to case processing.
2. Early screening of new case filings for their unique characteristics has been shown to be very effective for both individual justice and overall caseload management.
3. Systematic screening, or triage, is typically used to place cases on simplified processing pathways, identifying those that require early judicial intervention.
4. Case triage should include looking for indicators of mental health conditions, trauma or abuse.

This Chapter describes how screening or triage and early intervention assist courts with managing family law cases more effectively. Early case management is of particular importance for cases in which the parties have children or are engaged in high conflict or where domestic violence, trauma, mental health conditions or substance use disorder are present. A lengthy court process with periods of inactivity generally exacerbates these issues. Early court intervention in these complex cases can lead to better outcomes for families and can allow judges to devote appropriate attention and resources to them.

At its core, early intervention offers many benefits for the court, for parties and for the children. Arguably, it is foundational to the concept of “individual justice in individual cases.” While individual judges may structure case events in a way that reflects that maxim, many courts rely on a much less hands-on or proactive approach, where proceedings are scheduled only as issues are raised by the parties. This chapter presents practical tips for implementing systematic triaging that can assist with court time and resource management and can help families timely to resolve their cases, while tailoring management and interventions to the challenges faced by the participants.

Systematic and Consistent Triage Helps Courts and Families

Early identification of complex or challenging cases increases the opportunities for effective case management in individual cases and for a judge’s entire caseload. These cases can span years, consuming party, attorney, and court resources, and exhausting everyone involved. However, research shows that in many cases conflict can be reduced by effective judicial intervention. Too often, judges are unaware of the difficult circumstances or issues involved in a case, intervening only after significant problems have been encountered, to the detriment



of the parties and their children. Having the opportunity to set expectations and schedules early can reduce problems later, and can result in better outcomes for children who will experience less parental conflict.¹

Both objective and anecdotal evidence suggests that the longer a family is in turmoil and conflict, the worse the outcomes for children. Traditionally, courts have relied upon lawyers or other professionals to bring highly conflictual cases to the judge's attention. Self-represented litigants (SRLs), whose numbers are increasing, often do not know how to trigger court intervention, thereby imbedding delay and risking exacerbation of issues. In either case, the traditional approach is reactive rather than proactive.

Many cases do not need heightened judicial attention or involvement. Triage can help a court identify those cases that might benefit from more robust judicial intervention. The goal should be to provide the right services to the right families at the right time. This approach is especially important in cases that involve children, not only pre and post decree, but also administrative child support matters. Judges should bear in mind that, to a child, a month is a very long time and a domestic relations matter that takes a year seems like it will never end.

Shall we design and operate our case management approach under the assumption that cases will easily resolve or that cases will require significant judicial intervention? Either assumption is rife with potential problems. If one assumes that cases will require only occasional judicial attention, complex and challenging cases may not be identified early enough for interventions to be effective. Designing processes with the most difficult cases in mind creates hurdles and barriers for the families in cases that do not need them, increasing their costs and frustration, and unnecessarily draining court resources. Cases that are truly "uncontested" or present with minimal issues should be identified for streamlined resolution. For the court, speedy resolution frees up docket space for more labor-intensive matters. Litigants and lawyers will experience increased satisfaction by reducing the cost and effort required to resolve the average case.

Triage Improves Judicial Efficiency and Effectiveness

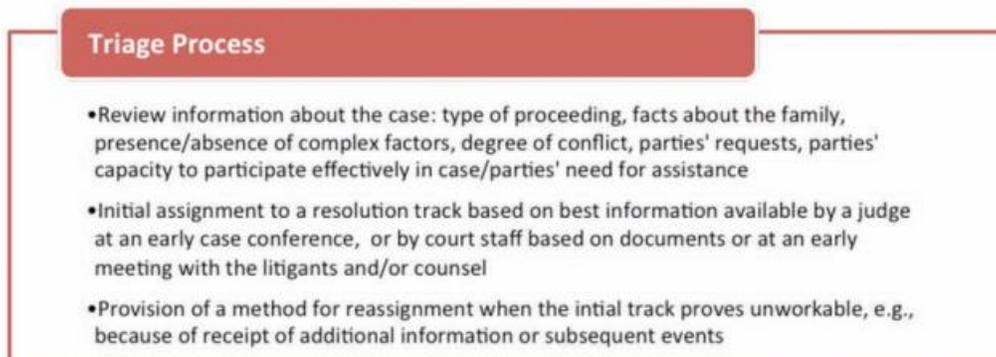
Systematic triage requires screening based on case characteristics that can identify conflict, complexity, and/or risk. The process should also include looking for indications of mental health conditions, trauma and abuse. Much of the screening can occur based solely on information available through court records, the petition and response. The totality of factors points to an appropriate pathway for processing each case. This screening can be performed by trained court professionals or self-help personnel who are aware of how to seek information appropriately without ever engaging in undue inquiries about a person's psychiatric disability. A national *Automating Family Justice Triage* effort is underway to develop case management system specifications that can assist court personnel.² Note that when courts conduct supplemental screening or assessment beyond what is in the case file or court record, the court must inform the parties beforehand, so they have an opportunity to object to disclosure. If Intimate Partner Violence (IPV) is a factor, parties should be directed to an advocate before completing the screening.

¹ Saini, M., & Birnbaum, R. (2007) Unraveling the label of "high conflict": What factors really count in divorce and separated families. *Journal of the Ontario Association of Children's Aid Societies*. 51(1),14-20.

² For more information on *Automating Family Justice Triage*, see www.ncsc.org/Cady

Figure 1, taken from *A Model Process for Family Justice Pathways* (2018), provides a description of the case triage process.

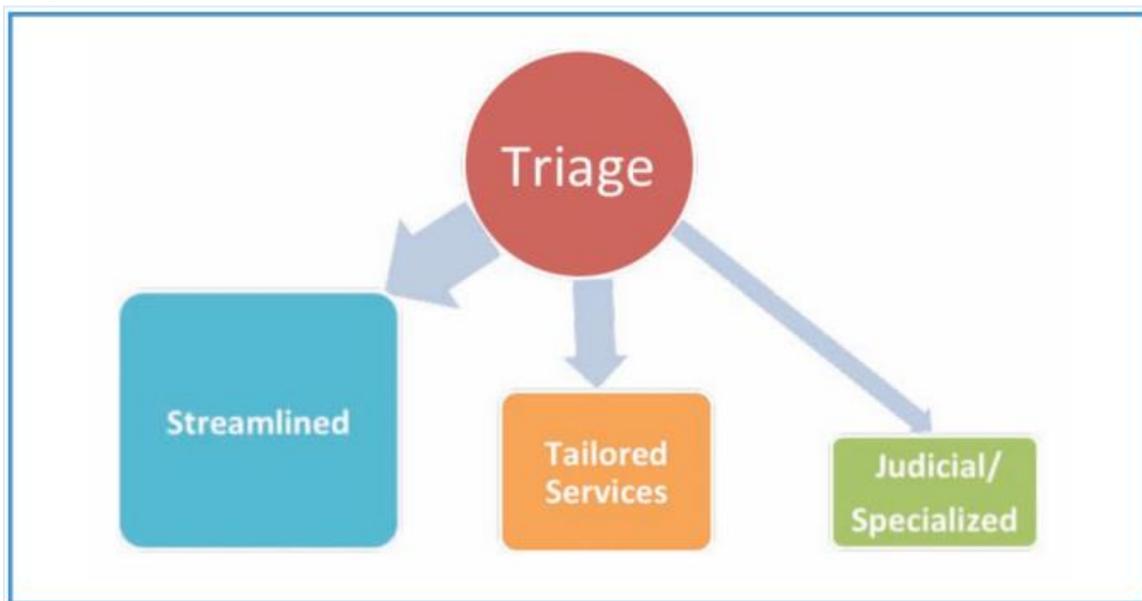
Figure 1. Triage Process



Most cases (65-80%) are low or no-conflict and need little or no intervention.³ Other cases require substantially more attention. While some families will stabilize after an acute reaction period, others will not, requiring a more intensive response.⁴ Identifying issues at the outset and right-sizing the level of attention per case contributes significantly to judicial effectiveness and improves outcomes for children and families.

Triage Pathways

Figure 2. Triage Pathways



³ "(C)ourts can resolve 80% of their contested divorce and custody cases between self-represented parties in just one hearing with a special calendar that employs a problem-solving approach, triage, a simplified process, and early intervention" (Marz, 2019)

⁴ The [Landscape of Domestic Relations Cases in State Courts](#) (2017) indicated that most cases filed could be resolved with minimal court involvement.

The **Streamlined Pathway**, which will apply in a large percentage of cases, is for those where a lower level of judicial decision making is needed. Examples include cases where the parties seek an order approving a stipulated result, default proceedings, cases involving limited issues, post-decree modifications of support or minor parenting-time issues. These matters could be set on summary or other expedited dockets or simply calendared for remote check-ins, or referred to self-help services (if available). These simple settings can be very helpful for self-represented litigants and for managing the court's calendar to avoid future backlogs.

The **Judicial/Specialized Pathway**, is for more complex and challenging cases, including those where there are allegations of intimate partner violence, emotional abuse, mental health concerns, substance use disorder, child abuse or neglect, or if protective orders are in place. These cases should be referred to a judge's calendar (Judicial/Specialized) to receive prompt attention and case management.⁵ Specialized Pathway cases may require accelerated or emergency hearings depending on the issues presented. However, this pathway focuses on early engagement between the parties and the court, and not just accelerated litigation. The specialized track case gives the judge a chance to consider earlier referrals to victim advocates, domestic case managers, substance abuse programs, mental health evaluators, parent coordinators, custody evaluators, guardians ad litem and other experienced professionals or applicable programs. Another critical element that must be employed for cases that are assigned this pathway is for the assigned judge to remain engaged in the case. Regular or periodic status conferences or review hearings should be scheduled for the period through case resolution or trial.

The **Tailored Services Pathway** is applied for the remaining cases, cases in which the summary or abbreviated court engagement under the Streamlined Pathway do not apply or the risk factors under the Judicial/Specialized Pathway are not present. For the most part, cases falling into the Tailored Services Pathway would likely be managed in the jurisdiction's traditional fashion.⁶ The tailored path will vary from place to place depending upon the available services in the community and customary practice in each jurisdiction. The extent of judicial engagement and involvement of other professionals or programs are determined based upon the nature of the contested issues presented. In some jurisdictions, attorneys have been enlisted to provide support to SRLs in the Tailored Pathway, by providing ad hoc legal assistance, or by serving as Special Masters or Mediators.⁷

How Much Work is This? How to Triage Despite Staffing Constraints?

The triage process must be designed around a jurisdiction's available resources. But even when those resources are quite limited, it is possible to create processes that require minimal time. Alaska's Early Resolution Process, conducted by legally trained staff, provides an example. Using a form with screening criteria, judicial staff can

⁵ Poitras, K., Birnbaum, R., Saini, M., Bala, & N., Cyr, F. (2021). Family dispute resolution: Characteristics of cases resolved by trial. *Children and Youth Services Review*. 123(105832), 1-7. <https://doi.org/10.1016/j.childyouth.2020.105832>.

⁶ The Pareto Principle applies to family court as much as it does to economics; 20% of the cases take up 80% of the court's attention. See the writings of Joseph M. Juran (1904-2008). "The Non-Pareto Principle; Mea Culpa, Joseph M. Juran, 1974, reprinted at [The-Non-Pareto-Principle-1974.pdf \(juran.com\)](#).

⁷ National Center for State Courts. (2019) Family Justice Initiative: A model process for Family Justice Initiative Pathways. National Center for State Courts. https://www.ncsc.org/__data/assets/pdf_file/0016/19114/family_justice_initiative_pathways_final.pdf

screen a case in 5 minutes on average. Another option is to have both parties complete questionnaires or fillable forms that supply the information to properly triage the case.⁸

Designated court staff can become the gatekeepers for determining the pathway to be applied to the case. Once the pathway is initially determined, it must be understood that over time a different approach may be required. Pathway assignment must therefore be flexible and adjusted based on new information or changed circumstances. This requires some type of monitoring or periodic reassessment as cases proceed through the process.

Examples of Pathway Driven Approaches

Many jurisdictions have self-service or self-help centers for self-represented litigants. Where available, staff should be trained to identify high conflict or complex and challenging case markers and be able to recommend appropriate referrals for the parties or to court administration. They can also be trained in ways to respect each party's privacy and prevent unnecessary inquiries prohibited by the Americans with Disabilities Act. This facilitates the goal of creating appropriate early intervention opportunities.

Some courts have paraprofessionals, such as case managers, who identify the issues and help parties reach agreements.⁹ To the extent issues remain unresolved, the case managers schedule the case for further proceedings before the assigned judge and provide the assigned judge with an itemization of the contested issues. These can be particularly effective when both parties are self-represented.

There is also a judge-driven approach available for cases in which both parties are represented by counsel.¹⁰ Upon the respondent/defendant filing a formal response to the petition/complaint, the assigned judge schedules a telephonic or virtual "Preliminary Case Management Conference." No formal pleadings are required to be filed in advance of the conference, which is conducted on the record but is informal in nature. Its purpose is to determine the issues that are contested or any case-specific challenges that may be present and then create a comprehensive case management plan. That plan may involve appointment or selection of experts, referrals for services, or a timetable for completion of tasks. Some courts may want to establish procedures for triage and case management regardless of the filing of a formal reply. Many cases involving self-represented litigants have a dispute, but a reply is not filed. This is especially true when a motion to modify existing orders is filed. This proactive, court-driven approach can reduce delay and ensure that issues are addressed before they become intractable.

⁸ When used, these documents should not be part of the continuing record to encourage candor and to protect privacy.

⁹ In Maricopa County, Arizona, family court administration identifies early on in the proceedings cases where there has been both a petition and a formal response but neither party is represented by counsel. For those matters, the parties are ordered to appear at an Early Resolution Conference, which is conducted by a law-trained professional employed by the court. The conference involves issue identification, mediation, drafting of settlement agreements when reached, and identification of contested issue that the court will need to address.

¹⁰ This approach is employed by individual judicial divisions in Maricopa County, Arizona.

Partnering with the Family Law Bar

Traditionally, the local family law bar has not been involved in case management system design and implementation. Engaging the bar in the process may reduce resistance and encourage cooperation. In addition, since the triage process is factually driven, the attorneys can assist the court in identifying facts that help determine the most appropriate case management pathway. Importantly, early case management ensures that there is a cohesive and unified approach among the parties, their attorneys, the court, and other engaged professionals to address the issues that may come before the court. In addition, since the triage process is factually driven, the attorneys can assist the court in identifying facts that help determine the most appropriate case management pathway.

Special Considerations for Intimate Partner Violence

Cases that may involve IPV must receive closer judicial attention and oversight. When allegations of abuse are present, there is a higher risk that violence may occur.¹¹ It is important to create an environment where parties are safe, and feel safe, to disclose and to seek out and receive services. As stated above, if judges request additional information of parties, parties need to know if the information could be made available to the other party.

Judges should become familiar with various approaches that have been developed for addressing cases where Intimate Partner Violence may exist. An example is **SAFeR**, which was developed by the Battered Women's Justice Project. SAFeR is an approach to decision making in IPV-related family law matters. It consists of four parts: (1) **screening** for IPV; (2) **assessing** the full nature and context of IPV; (3) **focusing on the effects** of IPV; and (4) **responding** to IPV in all recommendations, decisions, and interventions.

Other Pertinent Factors

Courts may choose to screen for other factors that might indicate the need for more robust judicial intervention. These factors might include:

- The need for treatment plans distinct from the parenting plan where there are mental health or substance abuse issues that warrant them.
- The existence of expired or current protection or restraining orders, dependency proceedings, or similar state interventions with the family.
- A parent's or child's incarceration.
- Pending criminal charges against a parent or child.
- Pending civil lawsuits that impact the family dynamic.
- Allegations of fault (where that ground exists).
- Pending or recent bankruptcy.
- The existence of a resist/refuse dynamic relating to a child who opposes spending time with a parent.



¹¹ One of the best predictors of the reoccurrence of child maltreatment is whether Child Protective Services has visited the family.

Note: The triaging process is not to be confused with fact-finding as the employment of appropriate case pathways focuses on the characteristics (cited above) of the case, not on whether allegations have yet been proven.

Conclusion

Implementing an early triage process followed by assigning cases to an appropriate pathway that is responsive to the issues of the case will lead to more effective interventions for families in need and will better target resources to appropriate cases. Families where mental health conditions, trauma or abuse are or have been present can often benefit in significant ways from effective triage.