Family Justice Initiative: Qualitative Court Profile Research

Overview

During the first phase of the Family Justice Initiative of the Conference of Chief Justices (CCJ) Children, Courts, and Families Committee, IAALS (Institute for the Advancement of the American Legal System) at the University of Denver partnered with the National Center for State Courts (NCSC) on The Landscape of Domestic Relations Cases in State Courts study. NCSC collected case management data from 11 participating jurisdictions, and IAALS collected qualitative, contextual information on domestic relations court and case processing in these jurisdictions.

Executive Summary

Across the 11 Landscape jurisdictions, the internal procedures for processing domestic relations cases differed considerably; however, there were a few overarching themes that emerged from the qualitative research:

- jurisdictions broadly implement some form of triage toward the start of a case;
- jurisdictions require parties to complete a parental education course when children are involved; and
- most jurisdictions differ on the types of services they offer to self-represented litigants, but all jurisdictions do provide written forms with instructions and online self-help resources.

There are also a number of significant differences that we observed between the jurisdictions:

- not all jurisdictions have an official and/or formal judicial rotation schedule, and the rotation schedules that do exist vary greatly in terms of length and whether they are mandatory or voluntary; and
- only half of the jurisdictions reported using either a domestic relations navigator or an onsite pro bono attorney, even though the majority have some form of a legal clinic.

More broadly, this project provides insight into not only some of the similarities and differences in domestic relations proceedings throughout the country, but also why it is so difficult to accurately compare any data gathered on these case types. In order to better understand and improve domestic relations proceedings, the next steps beyond this research should be to standardize data collection;
identify better practices and disseminate information about those practices, together with implementation assistance; and agree upon evaluative criteria that are tailored to the user experience.

Summary Court Profile Narrative

I. Court Jurisdiction

All but two of the participating jurisdictions have a separate domestic relations division or docket. In the two courts that operate under a mixed docket, judges have a caseload that includes domestic relations, criminal, and general civil cases.

Most of the study courts have jurisdiction over the full range of case types that were the subject of this study: divorce/dissolution, child custody, child support, and visitation cases. In three counties, however, custody and child support cases involving unmarried parents are the jurisdiction of a separate juvenile division within the broader court or a separate juvenile court altogether.

II. Judges & Judicial Officers

In those courts with some form of dedicated domestic relations docket, judicial rotation policies vary widely. Some courts have mandatory rotation, with terms ranging from every 18 months to every four years. Other courts have a voluntary rotation policy, whereby judges can rotate out of the domestic docket but can also elect to remain on the domestic bench. Still others have an informal rotation policy with rotation opportunities based on seniority, for example. Finally, some courts have no established rotation policy.

While there are few, if any, uniform practices across participating courts with respect to judicial rotation, there are more commonalities in practices regarding judicial officer rotation. The majority of participating courts employ judicial officers [quasi-judicial personnel] to assist judges in domestic relations cases. “Commissioners” by title are by far the most common; several jurisdictions use “Magistrates.” Generally speaking, these personnel do not rotate out of the domestic division.

There were considerable differences in the roles and responsibilities of these judicial officers. In one of the courts, judicial officers formally have the same authority as judges, while in another court, judicial officers have specific authority to handle certain case types, but in practice often sit as judges pro tem. In most of the jurisdictions, though, the quasi-judicial officers handled separate dockets based on function or case type, with responsibilities ranging from hearing temporary orders, handling uncontested cases, resolving pre-trial motions, etc.

Because of the role these quasi-judicial personnel play, most courts report that they do not operate under a one-judge, one-family model. Of those courts that did indicate they use this model, the practices differed. In one court, for example, only a limited number of cases are handled in this way, with preestablished criteria guiding assignment. In another court, a case will be assigned to a single judge when two or more open related cases involve any of the same parties, children, or issues pending simultaneously across the family, juvenile, and domestic violence divisions.
III. Differentiated Case Management & Triage Practices

Not all courts affirmatively reported triaging domestic relations cases. When defined broadly, however, to include any effort by court staff, judge, judicial officer, or court rule to assess parties, cases, and case types and thereafter assign appropriate processes, interventions, and services, triage practices are common across all participating courts.

Each court has rules or established court practices that distinguish at the time of filing between uncontested and contested cases. Beyond this differentiation, courts vary in their rules and practices for triaging domestic relations cases and parties.

One court operates under a robust, formalized differentiated case management program that breaks contested cases into four tracks, with assignment depending on the substance of the disputed issues.

Several courts report that all triage is done on a judge-by-judge basis, although one must anticipate that judicial discretion would authorize judges in all participating courts to amend certain processes and assign certain services based on the needs of the case and the individuals involved.

Finally, some courts triage cases based on discrete criteria, explored in more detail in the following sections.

a. Further Distinguishing Uncontested & Contested Cases

A few courts have a separate, simplified process available in a subset of uncontested cases. To be eligible for these processes, parties must meet all criteria. While specifics vary by jurisdiction, these processes are generally available to parties who have been married for a limited period of time, do not have minor children, and have few to no shared debts, property, or assets. On the opposite end of the spectrum, two courts reported screening for high-conflict cases.

b. Representation Status

Some of the participating courts indicate they process cases differently that involve two self-represented litigants, in one form or another. One court has a separate pro se calendar; another has a trial court day dedicated to hearing only those cases in which parties are self-represented. A third court routes family cases with self-represented litigants into a specific dispute resolution process, designed to facilitate agreement and a quick resolution. Finally, one court requires self-represented litigants to participate in a mandatory orientation session, with case-type specific information.

c. Post-Decree Cases

Several courts handle post-decree cases differently – for example, transferring these cases to a separate docket or making available specific dispute resolution processes.
IV. Dispute Resolution & Self-Help Services

Participating study courts report a number of dispute resolution services, with mediation being the most common – and more often than not mandatory for contested domestic relations cases, particularly for disputes over custody and visitation issues. Mediation requirements are less common across courts for property disputes, but some courts either mandate mediation for all disputed issues in a domestic relations case or have opt-in mediation services available for disputes over financial issues. For the most part, these services are made available through the court (some for free; some for a fee), although a small number of courts refer parties to external, court-approved mediators.

Outside of mediation, several courts have additional dispute resolution options available for domestic relations cases or a subset of case types therein, including: conciliation, arbitration, parenting coordination, and settlement conference programs. At least two courts have an alternative dispute resolution process specifically for post-decree cases. None of the courts reported having a formal Early Neutral Evaluation/Early Neutral Assessment program.

Parent education courses are also mandatory in nearly all participating courts, although a few courts do not extend this requirement to unmarried parents in custody and visitation cases.

With respect to services for self-represented litigants, all courts have some form of onsite self-help services – whether formal or informal – including stand-alone self-help centers, law libraries with legal information, clerk’s office programs, and other tools in the courthouse to provide legal information and assistance to litigants in domestic relations cases. Relatedly, approximately half of participating courts indicated they have some sort of ‘navigator’ program to assist self-represented litigants through the various stages of the court process.

All courts have some form of online information and self-help services available to self-represented litigants. In some jurisdictions, these online tools are more robust than in others, but even the simplest court websites generally contained some FAQs and other information on the process, downloadable forms, and contact information for onsite self-help assistance.

With respect to forms, it is largely common practice across study jurisdictions to make domestic relations forms available. The format that these documents take, however, varies considerably across jurisdictions. Hard copy documents available in the court or Word and PDF documents available for download online are common across nearly all participating jurisdictions. Fewer participating courts had fillable forms; even fewer still had interactive forms.

Courts report various models of engaging community attorneys in assisting self-represented litigants. Just over half of participating courts have a volunteer attorney program of some kind – program scope and usage were not explored in the study. Several courts had on file a list of area attorneys providing limited scope representation.