

**NEW YORK COUNTY LAWYERS' ASSOCIATION
TASK FORCE ON THE FAMILY COURT
JULY 2010 INITIAL REPORT**

This Report was approved by the Executive Committee of the New York County Lawyers' Association at its meeting on July 22, 2010

I. Introduction

The Task Force on the Family Court was created in the summer of 2008 to build on the momentum of two conferences addressing the needs of New York City's Family Court that the New York County Lawyers' Association (NYCLA) sponsored in 2006 and 2007. The proceedings and recommendations of the first conference are memorialized in a symposium issue of the Columbia Journal of Law and Social Problems entitled, *The Family Court in New York City in the 21st Century: What Are Its Roles and Responsibilities?* 40 Colum. J.L. & Soc. Probs. (2007). Following publication of the symposium issue, NYCLA held a second conference in July 2007. During the morning session, national authorities on Family Courts reflected on the recommendations and in the afternoon, a town meeting discussion was held with extensive audience participation. The symposium issue was also distributed widely to New York City Family Court judges, court personnel and government officials.

NYCLA invited a range of individuals to join the Task Force, attempting to balance insiders and interested outsiders in the mix. Hon. Howard Miller, Justice of the Supreme Court, Appellate Division, 2nd Department, and Professor Jane M. Spinak of Columbia Law School were asked to co-chair the Task Force. The Task Force began meeting in July 2008 and sub-committees were created in September 2008 based on initial discussions. The sub-committees were charged initially with considering the following issues:

1. **Point of Entry:** What happens when litigants arrive at Family Court? What barriers exist to entering the court, filing petitions or otherwise beginning the process?
2. **Trial Practice:** What steps need to be taken to enhance the ability of the court to hear and try cases quickly and effectively?
3. **Current Initiatives:** What initiatives are being created and implemented by stakeholders and the court itself in the five boroughs?
4. **Information and Data:** What information is currently being collected by the court system? What data should be collected? How should that data be used?
5. **The Culture of the Court:** Who are the people in Family Court; to what extent are people of color disproportionately represented; and how are people treated in the court?

As the sub-committees began their work, significant changes were occurring on the state and city level that limited or delayed their activities. Most importantly, Chief Judge Judith Kaye retired and was replaced by Chief Judge Jonathan Lippman in February 2009. During an overlapping period, Family Court Administrative Judge Joseph Lauria retired and was replaced in May 2009 by Judge Edwina Richardson-Mendelson. Just prior to Judge Lauria's and Judge Kaye's retirements, Judge Kaye announced a new Child Protective Initiative in the fall of 2008 that would consolidate or modify many of the initiatives already occurring in various boroughs. These significant changes shifted some of the Task Force's attention and slowed its progress; Task Force members wanted to provide Judge Richardson-Mendelson an opportunity to begin her tenure before issuing major recommendations. At the same time, the sub-committees were reluctant to pursue earlier chosen issues that might change significantly as Judge Richardson-Mendelson proceeded. Judge Richardson-Mendelson did issue a Plan for the Future of the New York City Family Court in early 2010 that reflects many of the concerns of the Task Force and is consistent with many of the goals and recommendations of the Task Force. We hope this Initial Report will continue the momentum of reform that Judge Richardson-Mendelson is leading.

The Task Force has reached out to many other organizations, bar associations and commissions to gather and share information. The Task Force held an invitational Roundtable in February 2009 to brief organizations committed to Family Court reform on the Task Force's work and to gather their concerns and recommendations. Representatives from In Motion, the New York State Judicial Committee on Women in the Courts, Children's Rights, Inc., the NYC Family Court Judges Association, Lawyers for Children, LIFT, the Feerick Center for Social Justice, the Fund for Modern Courts, the Permanent Judicial Commission on Justice for Children, and the Ad Hoc Sub-committee for More Family Court Judges, along with members of the Task Force, discussed an array of issues facing the Family Court. One issue that was of particular concern was the failure to implement recommendations from previous reports despite widespread agreement among court and agency personnel and advocates. The example of greatest concern was the recommendation of the Matrimonial Commission that Supreme Court judges retain jurisdiction over their divorce/custody/visitation cases for 18 months following disposition rather than allowing litigants to file for modifications in Family Court. Agreement with this concern led members of the Task Force to discuss this issue widely with other organizations and court personnel and to urge Chief Administrative Judge Ann Pfau and Judge Richardson-Mendelson in June 2009 to implement the recommendation. In July 2009, Judge Richardson-Mendelson announced that the Supreme Court judges would be asked to retain jurisdiction over these cases for 18 months as the Matrimonial Commission and the Task Force recommended.

The Task Force also reported its progress to the New York State Judicial Committee on Women in the Courts in March 2009 and the New York State Citizen Review Panel in July 2009. Recommendations from both of those groups were then relayed to the Task Force sub-committees as they conducted their work.

In early 2010, the Task Force determined to issue an initial report based on the work completed by some of the sub-committees and with specific recommendations for action. The Task Force intends to proceed with other sub-committee work, to conduct further investigation, to facilitate discussion on several issues, and to work collaboratively with the court system to help implement some of the recommendations contained here.

II. Highlights of and Recommendations from Sub-committee Reports

A. Introduction

Three sub-committee reports are attached to this Initial Report, submitted by the Point-of-Entry Sub-committee, Current Initiatives Sub-committee, and Trial Practice Sub-committee. In addition, a recommendation from the Information and Data Sub-committee with a supporting statement is also attached. The work of the Culture in the Courts Sub-committee is in progress and a report will be issued later.

These sub-committee reports should be viewed in the context of long-standing positions of NYCLA and the overall judgment of the Task Force. In particular, three issues frame this report: consolidation and restructuring of the court system, increasing the number of New York City Family Court judges, and rationalizing resources within the court system to provide the Family Court with essential resources to conduct its work fairly and effectively.

1. Court Consolidation

Since 1979, NYCLA has supported the consolidation of the court system to merge the Family Court (and other courts) into a Supreme Court of general jurisdiction. The Task Force continues to support this recommendation unequivocally, noting that many of the recommendations of this Initial Report would be unnecessary or enhanced through court consolidation.

2. Increasing the Number of Family Court Judges in New York City

As recently as June 2009, NYCLA urged the legislature to increase the number of Family Court judges in New York City. NYCLA has long recognized that the failure to provide additional judges to adjudicate cases precludes access to justice and diminishes the quality of justice for New York City's most vulnerable families. The Task Force remains committed to the need for additional judges, first and foremost. While this report will discuss using non-judicial hearing officers when appropriate, that recommendation is not intended to substitute for the appointment of judges with full judicial authority to hear and determine cases.

3. Rationalizing Resources within the Court System

One of the central features of court consolidation will be to rationalize resources within the court system. When the Family Court is merged into the Supreme Court, caseload and resource distribution will change. Until that happens, however, the Office of Court Administration (OCA) must use its administrative power to rationalize the distribution of resources now. Family Court is widely acknowledged to be a poor persons court and, in New York City especially, a court for poor people of color. The court, agency and legal personnel who struggle to provide justice to Family Court litigants cannot possibly do so without OCA recognizing the imbalance between the work load of Family Court and other courts of statewide jurisdiction and addressing the imbalance by purposefully shifting resources to the Family Court. Given the current economic climate, it is unlikely that the Family Court will receive additional resources except through this internal OCA shift.

The recommendations in this Initial Report are intended to assist the Family Court in doing its work better. There is no question, however, that members of the Task Force understand that such recommendations are not a substitute for legislative action to consolidate the court system and provide more Family Court judges. Nor are they intended to relieve OCA of its central duty to ensure that all litigants who enter the court system have access to justice. The words inscribed on the Supreme Court building in New York City must also apply to Family Court. Only then will the words, "*The true administration of justice is the firmest pillar of good government,*" be true for all.

B. Current Initiatives Sub-committee

Beginning in September 2008, the Current Initiatives Sub-committee set out to identify and analyze as many innovative programs as possible operating in the New York City Family Court and its stakeholders. The glossary attached to the Sub-committee's report is a comprehensive and detailed list of the initiatives that were reviewed. The Sub-committee identified six major initiative trends that also serve as the organizing rubric for the Sub-committee's recommendations. These trends are:

1. Enhanced case management, including court conferencing and expansion of early screening, triage and front-loaded services;
2. Increased utilization of non-judicial staff, including social workers, referees, judicial hearing officers, court attorneys, mental health professionals, case coordinators and ADR professionals;
3. Continued and enhanced collaboration between the Court and its stakeholders;
4. Increased utilization of mediation and court-connected services;
5. Increased utilization of diversion programs; and
6. Increased data collection and analysis.

The Sub-committee determined that these trends "reflect a good faith attempt at holistic, systemic change within the New York City Family Court and its stakeholders. Continued and increased support of these trends and the initiatives comprising them can only strengthen changes beneficial to litigants, as well as to the court and its stakeholders."

The recommendations of the Sub-committee in each area are below; the explanations for the recommendations are contained in the full Sub-committee report.

Recommendations:

- 1. Enhanced Case Management, Including Court Conferencing and Expansion of Early Screening, Triage and Front-Loaded Services**
 - OCA should continue to support enhanced case-management initiatives with additional staff resources and expansion to other specialties.

- To improve enhanced case management and to increase support for its use, OCA must develop a more uniform understanding of staff roles and a set of guidelines for those roles in each initiative.

2. Increased Utilization of Non-Judicial Staff

- OCA should continue to use non-judicial personnel to improve caseload management and allocate judicial resources more effectively.
- A balance must be found between consistency in the function and definition of non-judicial roles with the flexibility needed to utilize these resources effectively.
- OCA must develop a set of guidelines and expectations for the use of non-judicial or quasi-judicial personnel in all Family Court cases to clarify these roles and diminish role confusion and unclear expectations.

3. Continued and Enhanced Collaboration between the Court and Its Stakeholders

- Regular meetings between the Court and its stakeholders lead to meaningful policy, practice and cultural changes while also providing a forum for sharing concerns. They should be continued and expanded.
- Collaboration among stakeholders, including the highest levels of the court and executive agencies, should continue and be extended to other specialties within the court.¹

4. Increased Utilization of Mediation and Court-Connected Services

- Mediation has been used effectively throughout Family Court for a variety of case types, including custody, visitation and child permanency matters. Mediation can be used both to settle cases and as an effective overall case management tool, which results in greater satisfaction with the process and outcomes.
- Utilization of existing mediation programs should be increased.
- OCA should enhance public awareness of the benefits of mediation, improve the ability of judges to order mediation on a case-by-case basis and expand mediation to other specialties. If legislative authority is needed to enable judges to employ mediation alternatives more effectively, OCA should include this authority in its legislative agenda.

¹ Some recommendations, such as this one, may already be being implemented in the Family Court. Because the Task Force identified these recommendations during the period before they began to be implemented, it has chosen to keep them in the Initial Report to highlight their importance.

- Several court-connected services have proven successful and should be utilized more. These include institutional parent-representation legal organizations using a holistic model, parenting classes for divorcing couples or parents with children in common, and expanded use of Court Appointed Special Advocates (CASA).
- Resources should be shifted or expanded to support increased mediation and other effective court-connected services.

5. Increased Utilization of Diversion Programs

- Family Court stakeholders have developed programs to provide services to children and families without court intervention. Such programs reduce the Family Court caseload while addressing the service needs of the children and families.
- Diversion programs should be supported and expanded with increased funding by both state and city government agencies.
- Diversion programs should be evaluated to determine which programs are most effective. Funding must include support for evaluation.

6. Increased Data Collection and Analysis

- Current data projects include the development of system interoperability (*i.e.*, direct communication between individual agencies' electronic case-management systems) and evidence-based evaluation. System interoperability supports enhanced operational efficiency, decreased data entry, faster service delivery, improved communication, standardized practice and improved data validity. Data sharing along with evidence-based evaluation can benefit both the courts and agencies in their efforts to evaluate performance and monitor improvement efforts.
- Current efforts should be continued and enhanced with an emphasis on addressing the barriers to system-wide access to data and data systems and developing consistency across the system regarding data entry, including common data definitions and training of data-entry staff.
- OCA and the other agency participants must address the privacy concerns of litigants and advocates to data-sharing procedures to ensure that their concerns are addressed and to gain support for these procedures

C. Point-of-Entry Sub-committee

The Point-of-Entry Sub-committee examined point-of-entry issues for individual litigants and identified areas of concern, particularly delay. The Sub-committee focused on the events surrounding the filing of support, paternity, custody and visitation, guardianship, family offense and PINS petitions from a litigant's arrival at the courthouse to the filing of the petition. Members of the Sub-committee visited each borough court, met with all of the Supervising Judges, the Administrative Judge and the Chief Clerk of the New York Family Court, as well as other court personnel.

The Sub-committee identified three areas especially relevant to the successful filing of petitions in a timely manner:

1. Entering the Courthouse and Reaching the Petition Clerk's Office
 - Lines and Waiting
 - Internal Access/Elevators/Escalators
2. Options for Preparation and Filing of Petitions
 - In Person
 - Computer Kiosks Located in the Petition Room
 - Online Access to Forms from Any Computer
3. Staffing Issues

The Sub-committee also noted the importance of the development and expansion of Family Court Assistance Programs to improve access to justice for litigants beginning the court process

The Sub-committee determined that the administration of the Family Court is cognizant of the needs of the litigants, is working to provide litigants with information and support, and is making significant ongoing improvements. Based on its investigation – outlined in full in its report – the Sub-committee developed a set of recommendations that take into account the fiscal constraints currently faced by the court system and highlight the need to utilize more advanced technology. Nevertheless, the Sub-committee underscores that staff shortages remain the central problem in improving the point-of-entry experiences of litigants.

Recommendations:

1. Staggered Shifts for Court Officers

In some of the counties, excessive waiting lines in the lobby areas could be alleviated if there were a sufficient number of court officers to operate all available magnetometers. This would be particularly helpful during the lunch recess when there may be only one magnetometer in operation due to the court's effort to avoid overtime compensation. The court could address this concern by providing staggered hours for the court officers, which would permit the operation of additional magnetometers during the lunch break without necessitating overtime.

2. Prioritizing Litigants Held Over to the Afternoon

A modified version of the Richmond County Family Court's policy of moving waiting litigants to the front of the line in the afternoon if they were held over from the morning session may help reduce unnecessary delay within the other

counties. Each county could develop an effective system for differentiating litigants who have waited since before the lunch break.

3. Cross Training

The cross training of clerks and other staff members would provide some relief to staff shortages and should be expanded throughout the five counties. This would be particularly helpful in the petition rooms.

4. Facility Limitations

The problem of malfunctioning elevators and escalators in the Bronx County Family Court must be resolved immediately. OCA and New York City should complete the removal of the Criminal Court offices from the building as soon as possible.

5. Updated Intranet Computer System

The use of computer kiosks and the internet has helped to expedite the petition process. However, as the clerks must re-enter the information entered by the litigants, valuable time is lost. The Universal Case Management System, the Family Court's intranet database implemented in 2003, does not allow for the electronic transmission of completed petitions. An updated intranet computer system that provides for the electronic transmission of a completed petition would limit the time needed by the clerk to process the petition. Prior to the implementation of this technology, concerns regarding the confidentiality of the information transmitted to the court's database system would have to be resolved. One mechanism for addressing this issue would be the use of encryption technology, which would create secure lines. OCA should implement such technology.

6. Implementation of Online Filing

Current law does not permit remote electronic filing in Family Court.² Once the confidentiality concerns discussed above have been resolved, legislation should be enacted which permits on-line filing from remote locations for all types of cases, as this would increase efficiency and further expedite the petition process.

7. Expansion of Kiosk Programs

The kiosks should be made available as soon as possible in Spanish and other main languages to accommodate non-English speaking litigants. The kiosks should be updated as soon as possible to include access to custody, visitation, guardianship and family offense petition forms.

² ACS petitions that are transmitted electronically automate an existing in-court filing system; this is not a remote electronic filing system, which would not be permitted under current law.

8. Expansion of the Access to Justice Program

Greater expansion of the Access to Justice resource initiative should be encouraged, as it provides litigants with much-needed assistance and helps to facilitate the petition process. The inclusion of non-attorney volunteers, such as retirees and other members of the community, should be considered and encouraged. These volunteers could assist litigants with non-legal tasks like completing forms and using the kiosks.

9. Provision of Court Officers for Judicial Hearing Officers (JHO) and Referees

OCA should review the staffing patterns for court officers throughout the court system in order to determine the feasibility of shifting court officers to Family Court to staff parts presided over by JHOs and Referees. This is both a safety and an efficiency issue for the staff and litigants appearing in those parts.

D. Trial Practice Sub-committee

The Trial Practice Sub-committee identifies two significant bases for delay in the Family Court: the shortage of judges and a culture of acceptance of delay. While waiting for the legislature to increase the number of Family Court judges, the Sub-committee recommends that rationalizing the amount of time judges spend on individual cases will better enable them to shoulder the great number of cases they adjudicate. The Sub-committee recommends a range of filing, pre-trial and trial procedures to minimize delay and enhance the ability of cases to be conferenced and litigated effectively. Some of these recommendations apply to executive agencies as well as to the court. The Sub-committee makes a specific recommendation to begin a pilot program in each borough using affidavits in lieu of direct testimony in termination of parental rights hearings.³ The Sub-committee also identifies the need for additional interpretation services for litigants from the time they first enter the court.

Recommendations:

1. Judicial Personnel

- Referees who serve in a judicial capacity must be provided with court attorneys and court officers to assist them in hearing and determining cases. OCA should shift these personnel from courts where they are underutilized or less essential. Referees should be vetted to insure that they are qualified to shoulder their quasi-judicial roles. OCA should establish guidelines for vetting, training, and supervising referees.
- Judicial Hearing Officers (JHOs) are underutilized in New York City. OCA should expand the potential pool of JHOs.
 - OCA should expand the use of retired judges from outside New York City who should be screened for their competency to serve as JHOs in Family Court. This would increase the pool of potential JHOs. If the

³ See detailed recommendations in the Sub-committee report on using affidavits for direct testimony in termination of parental rights cases.

judge was not reelected or reappointed, the basis for this should be considered in the screening process.

- OCA should not reassign judges to Family Court if they are not interested in serving in the court.

2. At Initial Appearances in Family Court

- Child Protective Matters
 - The presentment agency must establish upon filing the petition that parents have been notified of the court date by every available means.
 - Transportation to court and child care should be provided for children for whom removal is being requested.
 - Parents should be provided with a copy of the petition, be assigned counsel if eligible, and counsel should be provided with the entire case file prior to the first court appearance.
 - Cases where children are removed must be scheduled for trial within 45 days.
 - Non-removal cases should be adjourned, where appropriate, for four months in contemplation of withdrawal. During that period, conferencing in consideration of settlement or other disposition should also be conducted.
- Custody/Visitation/Orders of Protection
 - All *ex parte* orders should be returnable in two days and all return dates should be no more than ten days after filing.
 - Preliminary conference orders should be completed by court attorneys on the first return date.
 - Judges or their staffs should apprise parties of all programs available to assist them, such as mediation, parent education, supervised visitation and batterers' programs.
 - Judges must have copies of all prior orders and files from any relevant proceeding in any court (Family, Criminal or Supreme).
- Child/Spousal Support
 - Parties must be informed to bring all relevant income documents to the first appearance.
 - Scheduling orders must be completed and enforced.

3. Compliance and Status Conferences in Family Court

- Trial conferences should be managed by court attorneys under judicial supervision.
 - Compliance with timely production and filing of documents and attendance must be required.
 - Attorneys should be informed of their specific obligations in preparation for and during trial conferences.
 - Trial conferences should have time certain schedules.

- Litigants should not be required to attend trial conferences until all preliminary work has been completed and meaningful settlement discussions can be conducted.⁴
- Final pre-trial conferences should be scheduled two weeks prior to the trial date.
 - All exhibits and objections to exhibits must be filed prior to this conference.
 - Exhibits will be marked, motions *in limine* argued, witness lists exchanged and evidentiary issues discussed.
- Court trial rules must be promulgated for lawyers. Every effort should be made by Family Court judges in New York City to develop complementary rules which will minimize confusion and conflict between courtrooms and boroughs.
 - Notice and the basis for a request for an adjournment must be provided by lawyers. Clear rules of court would help to insure compliance with this requirement.
- Comprehensive pre-trial orders should be issued and complied with by the parties.⁵

4. Trials in Family Court

- Trials should be held in block times on consecutive days in the morning. Guidelines for emergencies should be included in trial-blocking procedures.
- Trials should not be adjourned for more than 30 days and only for good cause shown. Trials that have begun should be completed as quickly as possible.⁶
- Judges and other judicial personnel who lead by their good example ensure access to justice and fair procedure for all. They set a standard that is appreciated and followed. Examples of such leadership include::
 - Times certain for conferences and trials are honored. Judges assume the bench on time.
 - Attorneys who are unprepared, late or who fail to appear without adequate explanation are sanctioned.

⁴ Trial conferences should be distinguished from conferences that address service needs and assistance, which litigants and other interested parties should be encouraged to attend.

⁵ See Appendices A and B for Pretrial Orders in Child Protective and Custody/Visitation Proceedings developed by the Sub-committee and provided to the Family Court as model orders.

⁶ See, e.g., Family Court Rule 205.14, which requires custody and visitation hearings to be concluded within 90 days of being commenced.

- Court parts are open to the public unless procedures outlined in the rules to close the court part are followed.⁷
- Efficient and effective alternatives to testimonial evidence should be piloted by the court system to streamline court time.
 - Written affidavits in lieu of direct testimony for all witnesses in termination of parental rights cases should be implemented on a pilot basis in each borough.⁸

5. Appellate Practice

- The Record on Appeal
 - All substantive hearings should be covered and, if an appeal is filed, transcribed by court reporters. Recordings have not been an effective substitute for court reporters. Court reporters should be held to a standard of producing transcripts within two weeks.⁹
 - Court reporters or taping services must be required to produce transcripts for stays or other interlocutory appeals in an expeditious fashion.
 - The Second Department should adopt the process utilized in the First Department of scanning the court record in termination of parental rights cases and providing it to all parties prior to the appeal being perfected. This process should be expanded in both Departments to all appeals.
 - All exhibits offered into evidence at trial should be scanned by attorneys and copies provided to all parties and the court.
 - Exhibits entered into evidence at trial or those denied but subject to review on appeal should be retained by the court and scanned onto a disk for appellate purposes.
 - The First Department should adopt the practice of the Second Department, issuing a scheduling order after a notice of appeal is filed to determine whether and when the appellant intends to perfect the appeal.
 - Once the appellant has indicated intent to perfect, the Family Court clerks should scan the original court file and provide it to the Appellate Division's Clerk who can then email the scanned file to all parties to the appeal.

⁷ Family Court is presumptively open pursuant to Family Court Rule 205.4. Exceptions to this presumption are to be made on a case-by-case basis by the court, taking into consideration factors included in the Rule.

⁸ This recommendation is currently being explored by Supervising Judge Douglas Hoffman for the New York County Family Court.

⁹ Rigorous enforcement of FCA 1121(6) & (7) would also significantly diminish delay in the production of transcripts.

- The Appellate Divisions should review their summer schedules, allowing for some Family Court cases to be heard during the summer.
 - Termination of parental rights cases that are not requesting argument could be determined during the summer.
 - Delinquency appeals if a child is placed should be heard.
 - Article 10 proceedings in which (1) a stay has been issued pursuant to FCA 1114 or (2) when a child has been removed should also be heard.
- Appellate Decisions
 - The First and Second Department decisions would guide Family Court judges and practitioners better if they contained more detailed discussion of the law and facts underlying their decisions.

E. Information and Data Sub-committee

This Sub-committee began its work just before OCA initiated a major investigation into data as part of the Child Protective Initiative. Following its initial work, the Sub-committee determined that NYCLA could be most helpful in addressing data issues in Family Court by convening a series of meetings among the Family Court stakeholders about data collection and use. The Sub-committee believes that it is necessary to have accurate, consistent data on which to base knowledgeable assessments and create a plan for improvement. This requires conforming stakeholder data-collection systems. While the Sub-committee recognizes that this is neither easy nor inexpensive, it is the first step in an effort to create a clear consensus on its necessity.

Recommendations:

The NYCLA Task Force on the Family Court should make itself available to plan, host and facilitate the suggested meetings. The framework and purpose of the meetings are:

1. Bring together all of the stakeholders in Family Court to collectively assess and compare their current data-collection systems.
2. Have the stakeholders collectively agree what data would be informative and assist them in improving their practice.
3. Have data-system experts available to listen to the goals of the stakeholders.
4. Determine if there are systems that could be used by all of the stakeholders that would standardize the collection and reporting of data.

F. Summary and Conclusion

The Task Force believes that it can be most useful to the Family Court by providing what one member of the Task Force called “concrete tools” to improve the court. Because members of the Task Force understand the resource constraints under which the court struggles, several of our recommendations suggest ways to change policies and practices that have little to no fiscal impact. Rather, they are likely to be cost and time effective almost immediately. Some of the recommendations will entail modest costs while others require a significant use of resources. Yet, even those recommendations will result, ultimately, in a more efficient, effective and just

court. At the same time, the Task Force continues to strongly endorse increased resources to the Family Court, in particular the addition of new Family Court judges. The Task Force also urges OCA to review the distribution of resources within the overall court system and to shift resources to the Family Court wherever possible.

The Task Force will continue its work. Some of the Sub-committees have achieved their stated goals and their members will work to implement some of their recommendations or turn to new issues. Other Sub-committees are hard at work on their initial mandates. The Culture of the Courts Sub-committee is exploring how to improve the experience of litigants in Family Court, to consider how to address the disproportionality of persons of color in the court, and to build on the recommendations of the Initiatives Sub-committee to divert families from unnecessary court processes. The Information and Data Sub-committee stands ready to host a series of meetings on data collection and use.

This Report focuses predominantly on how to make the Family Court a more effective court for the litigants who pass through its doors. While there is little discussion of litigants in this Report, ensuring fairness and justice for the people who are served by the Family Court was and will continue to be the central motivating force of the Task Force's work. Much is left to be done before the court is able to administer fully the grave responsibilities before it.

The Task Force stands ready to assist the Family Court in implementing our recommendations. We look forward to meeting with OCA and Family Court personnel, including judges and other stakeholders, to discuss our recommendations and to consider ways to implement them.

The Task Force would like to thank Kathryn Scheinberg, Esq., and Roberto Concepcion, J.D., for serving as reporters for the Task Force and the Sub-committees while participating in the Columbia Law School Child Advocacy Clinic. The Task Force has relied on Ruth Zipper of NYCLA for administrative assistance, especially ensuring that we have notice, show up and have a report that is professional and correct. We thank her for that essential assistance. We would also like to express our gratitude for the strong support and participation of Ann Lesk, Immediate Past President of NYCLA, and James Kobak, President of NYCLA. Finally, the Task Force could not have done its work without the extraordinary guidance and expertise of Marilyn Flood, Counsel to NYCLA. Marilyn's commitment to helping the Task Force work toward the betterment of the Family Court was extraordinary. Our thanks to her are unconditional.

Overall approval of this Report by Task Force members indicates they support the Report generally but does not mean that they agree with all of the recommendations. Also Task Force members noted their approval in their personal, not professional or institutional, capacities.

Task Force on Family Court
Hon. Howard Miller and Jane M. Spinak, Co-chairs

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** Did not approve the Report

**NEW YORK COUNTY LAWYERS' ASSOCIATION
TASK FORCE ON THE FAMILY COURT
REPORT OF THE CURRENT INITIATIVES SUB-COMMITTEE**

Introduction

Beginning in September 2008, the Current Initiatives Sub-committee set out to identify and analyze as many innovative programs operating in the New York City Family Court and its stakeholders as possible. We heard from speakers who oversee a wide range of court, agency and community-based programs, gathered examples of projects in various New York State courts outside New York City and identified initiative reports and publications wherever possible. In order to make recommendations, we analyzed all of the information gathered to determine successful trends with meaningful impact.

The attached glossary is a comprehensive and detailed list of the current initiatives we explored. We organized the glossary according to six major trends that represent the Sub-committee's set of recommendations. These recommendations include:

1. Enhanced case management, including court conferencing and expansion of early screening, triage and front-loaded services;
2. Increased utilization of non-judicial staff, including social workers, referees, Judicial Hearing Officers, court attorneys, mental health professionals, case coordinators and ADR professionals;
3. Continued and enhanced collaboration between the court and its stakeholders;
4. Increased utilization of mediation and court-connected services;
5. Increased utilization of diversion programs; and
6. Increased data collection and analysis.

Our analysis reveals that these trends reflect a good faith attempt at holistic, systemic change within the Family Court and its stakeholders. Continued and increased support of these trends and the initiatives comprising them can only strengthen changes beneficial to litigants, as well as to the court and its stakeholders.

Please note that many of the current initiatives are the direct result of significant experimentation and the evolution of ideas and practices, reflecting initiatives and projects that may no longer be active. Early in our investigation, we realized that there were over 40 initiatives being utilized in the Family Court. For the sake of brevity, we did not necessarily list all of those earlier initiatives.

I. Enhanced Case Management, Including Court Conferencing and Expansion of Early Screening, Triage and Front-Loaded Services

Several courts in New York State, including Kings County Family Court,¹ have implemented a form of differentiated case management involving court conferencing and early screening, triage and front-loaded services. The core elements of this innovative case-management effort include the judge at the center, using non-judicial staff to achieve the primary goals of assessing family dynamics, ensuring timely discovery, tailoring a service plan to the family's specific needs and otherwise moving cases toward resolution. This form of case management has been used successfully across a broad range of case types, including custody, visitation and permanency matters, with appropriate variations according to specialty. The main challenges to full implementation of these initiatives include a certain degree of resistance to change coupled with a lack of sufficient staff resources. As the initiatives are relatively new, degrees of comfort with the process and appropriate use of the resources are still being worked out.

The Sub-committee recommends continued support of these programs with additional staff resources and consideration of expanding them to other specialties. Given the wide array of specialties that are using enhanced case management, we believe that a fuller understanding of the role of each staff member involved and a set of guidelines for those roles would improve overall understanding and implementation of enhanced case management. We recommend that OCA develop a more uniform understanding of staff roles in enhanced case-management initiatives.

II. Increased Utilization of Non-Judicial Staff

Family Court is faced with burgeoning caseloads and an insufficient number of judges. As a result, many courts have begun to use non-judicial staff (or quasi-judicial personnel) in a variety of ways to better manage caseloads and allocate judicial resources. Flexibility in using non-judicial staff members has increased Family Court productivity. However, feedback from stakeholders indicates a tension between such flexibility and the need for consistency across courts. A lack of consistency, stakeholders indicate, tends to result in role confusion and unclear expectations.

The Sub-committee recommends finding a balance between consistency in the function and definition of non-judicial roles while also maintaining the flexibility to allow judges to utilize these resources as necessary. As with our recommendation concerning enhanced case management, we recommend that OCA develop a set of guidelines and expectations for the use of non-judicial or quasi-judicial personnel in all Family Court cases.

III. Continued and Enhanced Collaboration between the Court and Its Stakeholders

The Sub-committee observed that a significant number of initiatives succeeding in the Family Court were the result of ongoing collaboration between the court and its stakeholders. Regular meetings between the court and stakeholders not only provide a forum for the sharing of concerns but lead to meaningful policy, practice and cultural changes. A prime example of collaboration is the current Child Protection Plan, which mandates preliminary, pre-trial and

¹ Since the writing of this Report, enhanced case management has been expanded to all the boroughs.

settlement conferences in Article 10 cases and encourages the appropriate use of non-judicial staff. A new example of collaboration between the Court and its stakeholders is the Courts Catalyzing Change Initiative, which examines the disproportionate minority representation in the Family Court and child welfare system. The Casey Family Programs 2020 initiative and ACS One Year Home Campaign include setting time frames to reduce the foster care population and expedite permanency. These initiatives build on the New York City Child Protective Plan by setting specific goals to reduce the time to permanency, for example, adopting standards that require that fact findings be completed within 60 days of filing. While we recognize that sustained and ongoing collaboration involves upfront commitment of participant's time, eventually the time spent will save time in the future.

We recommend that the same type of collaboration, including involvement from the highest levels of the court and its stakeholders, should continue and be extended to other specialties as well. This will also ensure that initiatives complement and do not contradict each other.

IV. Increased Utilization of Mediation and Court-Connected Services

The Sub-committee observed that mediation has been used successfully throughout the Family Court for a variety of case types, including custody, visitation and child permanency matters. Research demonstrates that mediation more often than not results in agreements.² Mediation also typically results in increased party satisfaction with the process and outcomes, which often leads to greater compliance with court orders (including child support), fewer supplemental filings and increased contact between non-custodial parents and their children, and otherwise generates progress in the case. Therefore, mediation can be utilized not only to settle cases but as an effective overall case-management tool. Due to a lack of awareness of how mediation works, concern about the time commitment, and general cultural resistance to mediation, mediation in the Family Court continues to be underutilized.

We also identified several other court-connected services that have proven successful and we would recommend increasing their utilization. They include institutional parent-representation legal organizations using a holistic model, parenting classes for divorcing couples or parents with children in common, and expanded use of Court Appointed Special Advocates (CASA). As with mediation, there is a lack of awareness of these services and their benefits, as well as a lack of resources to completely maximize the potential benefits and bring the projects to scale.

The Sub-committee recommends increased utilization of existing mediation programs, increased public awareness of the benefits of mediation, exploration of judicial discretion to order mediation on a case-by-case basis, and expansion of mediation to other specialties. We also urge that efforts be made to provide increased information about the other court-connected services we identified and to shift or expand resources to support increased mediation and other effective court-connected services. If legislative authority is needed to enable judges to employ mediation alternatives more effectively, OCA should include this authority in its legislative agenda.

² Robert E. Emery, *The Truth About Children and Divorce* (Penguin Group 2004); Joan B. Kelly, *Family Mediation Research: Is There Empirical Support for the Field?* 22 /1-2 Conflict Resolution Quarterly 3, 8 (Fall-Winter 2004).

V. Increased Utilization of Diversion Programs

Family Court stakeholders have developed programs to provide services to children and families without court intervention. Such programs reduce the Family Court caseload while addressing the service needs of the children and families. The challenges faced by these initiatives are the cost for some programs and resources needed to provide the services to all eligible clients.

The Sub-committee recommends continued support of these programs, increased funding and consideration of expansion to other specialties by state and city executive agencies. We also recommend continued evaluation and funding or the development and funding of evaluation mechanisms to determine which diversion programs are most effective.

VI. Increased Data Collection and Analysis

The Sub-committee is aware that a separate sub-committee of the Task Force is investigating issues related to data collection and analysis. However, we learned of several current data-sharing projects that appear to be critical for a meaningful analysis of current operational initiatives. Some of these data projects include the development of system interoperability (*i.e.*, direct communication between individual agencies' electronic case-management systems) and evidence-based evaluation. System interoperability supports enhanced operational efficiency, decreased data entry, faster service delivery, improved communication, standardized practice and improved data validity. Data sharing, along with evidence-based evaluation, can benefit both the courts and agencies in their efforts to evaluate performance and monitor improvement efforts. The challenges involve access to data between and among agencies, technological capacity for some agencies and quality of data entry. In addition, there is a lack of consistency across the system regarding data entry, including lack of common data definitions and training of data-entry staff.

The Sub-committee recommends continued and enhanced support of these current efforts with an emphasis on addressing the barriers to system-wide access to data and data systems. Concerns about privacy issues must also be addressed if advocates and litigants are going to support increased data sharing among agencies.

Conclusion

The Family Court is burdened with a huge caseload and insufficient judicial personnel. The above recommendations reflect a holistic approach for the Family Court and its stakeholders to implement the systemic change necessary to keep pace with the growing number of families seeking the court's assistance or mandated to appear in court. The Sub-committee recommends that standards be set either by court rule or legislation for timely completion of child protective proceedings. By supporting the above recommendations, the Family Court can significantly enhance its ability to serve and protect children and families throughout New York State.

Initiatives Sub-committee

Nancy Thomson and Daniel Weitz, Co-chairs

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We wish to extend our special thanks to Joanne Pedone, JD. 2010, Columbia Law School, who was instrumental in assembling this report as well as Kathleen De Cataldo, Frank Woods and Justine Van Stratten for their insights and participation.

**TASK FORCE ON THE FAMILY COURT
REPORT OF THE CURRENT INITIATIVES SUB-COMMITTEE**

Glossary of Initiatives

This glossary is a compendium of the initiatives reviewed by the Sub-committee; it is intended to be descriptive and not to endorse any particular initiative.

I. Enhanced Case Management

1. New York Family Court Child Protection Plan (“CPP”): This initiative, created by the Office of Court Administration in conjunction with the Family Court administration, mandates preliminary, pre-trial and settlement conferences for Article 10 proceedings. The CPP also encourages the use of non-judicial staff by, in part, allowing staff to gather information about family dynamics and make service referrals.
2. New York City Family Court Blueprint for Change: The focus of the Blueprint is to build institutional capacity (by, in part, the collection of data and a clear delineation of the role of supervising judges), enhance collaboration (by, in part, engaging judges, administrative staff and selected stakeholders in conversations around guiding principles for permanency planning), and improve case flow and calendar management.
3. Children Come First: This initiative utilizes mental health and ADR professionals, who conduct early screening and triage of families (preferably during the first appearance), to identify levels of conflict and family dynamics. The information gathered assists the judge in tailoring orders and services to the specific needs of the case.
4. Erie County, the Family Services Team (“FST”): It triages families, develops a family-specific service plan and refers the family to community resources to address its particular needs. Designed specifically to defer youths from entering the PINS system, the program front loads services in the hopes of stabilizing the family unit. Cases that are not resolved at the early intervention stage are referred back to FST for more intensive diversion services.
5. New York City and Erie County Departments of Probation risk assessment and diversion of juvenile delinquency cases.
6. Administration for Children's Services (“ACS”) Conference Initiatives: The Administration for Children’s Services has implemented the Improved Outcomes for Children, which requires that all significant decisions involving children and families in child welfare cases be decided at a family team conference that brings together ACS staff, foster care agency staff, parents, service providers, community supports and children over ten years of age.
7. ACS Juvenile Justice Initiative: This initiative was created, in part, to reduce recidivism rates, improve family functioning, shorten the length of stay in placement and shift the culture of the court from placement to community-based alternatives. In every borough,

evidence-based services (*i.e.*, multi-systemic therapy, functional family therapy and multidimensional-treatment foster care) are provided as an alternative to OCFS placement.

8. Citywide Weekend Juvenile Delinquency Arraignments: Judges in Manhattan Criminal Court are designated Acting Family Court judges for pre-petition detention hearings for young persons arrested on weekends instead of detaining the youth until Family Court is in session on Monday.
9. Queens County Domestic Violence Compliance Part: The Part ensures that respondents comply with program mandates, which are included as part of the protective order. As a condition of their disposition, respondents are required to reappear in court to demonstrate compliance with the terms of the order.
10. Institutional Parent Representation Groups with Holistic Model: The New York City Criminal Justice Coordinator's office granted contracts to three groups to provide representation to parents in child protective cases in Bronx, Brooklyn and Manhattan. These groups assign a social worker to work with each attorney, providing the client with referrals to preventive-service programs. Some also include parent advocates who serve as peer advisors and supporters.
11. Kings County Reorganization Plan: In the child protection context, the reorganization plan creates a timeline by which FCA 1027 and 1028 hearings, settlement conferences, fact finding and dispositions are to be held. It also incorporates elements of the Children Come First model for custody and visitation cases.

II. Increased Utilization of Non-Judicial Staff

1. New York City Family Court Child Protection Initiative: (See Part I)
2. Kings County Reorganization Plan: (See Part I)
3. New York City Family Court Blueprint for Change: (See Part I)

III. Continued and Enhanced Collaboration between the Court and Its Stakeholders

1. New York State's Child Welfare Court Improvement Project ("CIP"): CIP is a federally funded initiative created to improve the court's capacity to ensure the safety, permanency and well-being of children in the child welfare system. CIP supports the Family Court's efforts to implement earlier, more frequent and more thorough reviews of child welfare cases to ensure the achievement of safe and permanent homes and to monitor the well-being of children in state care. CIP also enhances the capacity of courts to promote collaborative decision making in child welfare matters through the development of conferencing and mediation programs.

2. New York City Family Court Child Protection Initiative: (See Part I)
3. Partnerships with the Center for Court Innovation (“CCI”): The CCI Partnerships is a front-end model meant to avoid placement. CCI is in the process of bringing resources together to start a substance abuse treatment court for youth, with the goal of avoiding placement on the front end.
4. OCFS Division of Juvenile Justice and Opportunities for Youth Services: The Division provides a continuum of services from entry through discharge and is supported by the Office of Community Partnerships (“OCP”). A Community Service Team (“CST”) case manager is responsible for maintaining contact with the youth and family and monitoring the progress of the youth, both upon reentry and throughout his/her time under community supervision or aftercare services. Community and family partnerships are intended to connect the youth and families to services that will support them after the youth leaves the custody of OCFS.
5. Erie County Family Court Juvenile Justice Model Court: Formed in 2006 by the Erie County Family Court in cooperation with the National Council of Juvenile and Family Court Judges (“NCJFCJ”) and the United States Department of Criminal Justice Services (“DCJS”), the Model Court aims to incorporate 16 principles, one of which is to engage community-support systems as stakeholders. By March 2008, there was collaboration between the Model Court and the Departments of Probation, Detention and Mental Health to redesign the intake process for all youth according to the NCJFCJ guidelines.
6. Courtroom Advocates Project (“CAP”) and the Integrated Domestic Violence (“IDV”) Court: CAP, which relies heavily on attorneys who offer their services *pro bono*, trains over 1,000 students a year to assist domestic violence victims with filing orders of protection. Victims are first represented by a student and, provided there is litigation, then a CAP attorney.
7. Electronic Filing and Data Sharing (LUC): New York City Family Court and the Administration for Children’s Services have developed a data-sharing project *that* will allow for the electronic filing of child protective petitions and permanency hearing reports. The project will also allow ACS and the courts to share hearing-outcome data electronically and to submit proposed orders electronically.
8. High Bridge Project: The Project permits lawyers to be assigned to parents before the filing of an abuse or neglect petition, which may avert the filing of the petition by advising parents of the process and the consequences of failing to cooperate with ACS.
9. Citywide Weekend Juvenile Delinquency Arraignments: (See Part I)

10. ACS Racial Equity and Cultural Competence Work Group: ACS is working with its staff to raise awareness of the role race plays in decisions the staff make relating to the investigation of reports of suspected abuse or neglect and throughout the families' involvement in the child welfare system. ACS staff are being trained on race and cultural competence. In addition, data on outcomes by race are being gathered.
11. National Council on Juvenile and Family Court Judges Courts Catalyzing Change Initiative: Statewide and citywide work groups are addressing the disproportionate representation of children of color in the foster care system.
12. Casey Family Programs 2020 Initiative. In 2006, Casey Family Programs launched its 2020 Strategy for America's Children, which promotes influencing the safe reduction in the nation's foster care population by 50 percent by the year 2020. Casey believes that safely preventing placement, when possible, and expediting permanency are the most effective strategies to safely reduce the number of children in foster care. Savings that occur as a result of reduction of placements can then be reinvested in the system to strengthen families and to improve well-being outcomes in the areas of education, employment and mental health for children in care. Casey is working with courts and child welfare agencies on strategies to achieve these goals, including legislation.
13. ACS One Year Home Campaign: The Administration for Children's Services announced in December 2009 that it and the foster care agencies were committing to:
 - Working to see that as many children as possible who enter care will achieve permanency within one year—through safe return home or placement with a family willing to make a permanent commitment to them should they be freed for adoption.
 - For children reaching the ages of 18-21, no youth will leave care without a chance for stable housing, employment, medical coverage, a connection to a caring adult and a support plan. Further, the agencies will work to increase the percentage of youth who leave foster care for family settings each year for the next several years.
 - By July 1, 2010, children in care will have a specific, time-targeted plan for permanence within one year. These plans will be developed through family team conferences and recommendations to the Family Court.

To achieve these targets, ACS seeks to reduce time by being ready to proceed to fact finding 60 days from the date of filing and to complete disposition within 90 days of filing.

IV. Increased Utilization of Mediation and Court-Connected Services

1. New York City Family Court Child Permanency Mediation Program: The Child Permanency Mediation Program, one of two citywide court-based mediation programs established by the Family Court, is operated under the supervision of the Citywide Family Court ADR Coordinator and administered in collaboration with the New York Society for the Prevention of Cruelty to Children. The program handles matters involving issues of child abuse and neglect with a professional team of court staff and contract agency mediators.
2. New York City Family Mediation Program: The Family Mediation Program, the second citywide court-based mediation program established by the Family Court, handles child custody, visitation, juvenile delinquency and persons in need of supervision cases pending in court. This program is also administered in collaboration with the New York Society for the Prevention of Cruelty to Children. Staff members conduct intake interviews to determine if matters are appropriate for mediation services and assign cases to a roster of consultant mediators who have been approved for the roster based on stringent training and experiential requirements.
3. Community Dispute Resolution Centers: These centers provide a statewide network through which child custody, visitation, juvenile delinquency and persons in need of supervision cases are handled.
4. New York State's Child Welfare Court Improvement Project: (See Part III)
5. New York City Family Child Protection Initiative: (See Part I)
6. Children Come First: (See Part I)
7. Court Appointed Special Advocates ("CASA"): The role of CASA programs is to assist Family Courts in making crucial decisions affecting children who have been abused and neglected. CASAs, specially trained and supervised community volunteers, are appointed by a Family Court judge to help secure safe and permanent homes for these children by investigating and monitoring cases involving children in foster care. CASAs take only one or two cases at a time, allowing ample time to gather thorough information. After reviewing all the records and documents pertinent to a child's case and completing

interviews with all relevant parties, the volunteer then submits a formal report to the court. This report details information and concerns about where the child can find a safe, stable and nurturing home, as well as what services are required for the child and non-offending family members and caregivers.

8. New York State Parent Education and Awareness Program, New York City Family Court P.A.C.T. Program (Children and Parents Together)
9. Institutional Parent Representation Groups with Holistic Model: (See Part I)
10. Children's Centers: The Children's Centers, which are available in all of New York City's Family Courts, provide free child care in a comfortable and enjoyable place for children waiting for their parents to finish their business with the court. Visiting children range in age from infants to six years old. The children play with toys, puzzles and blocks, engage in arts and crafts and paint pictures. The Children's Center staff also provide a snack for the children. Referrals are also provided for child care programs, Head Start and child health and nutrition programs and other entitlements.
11. Teen Days: These are held yearly in each New York City Family Court (two times per year in Queens County) with providers of services for young people in foster care present to provide information to the young people on services such as housing and education.

V. Increased Utilization of Diversion Programs

1. ACS Child Safety Conferences: (See Part I)
2. Community Dispute Resolution Centers: (See Part IV)
3. Recommendations of the Task Force on the Future of Probation in New York State: This Task Force has made a number of recommendations, including that probation departments statewide employ validated risk-assessment instruments in connection with their recommendations to the court for detention and disposition decisions. According to the Task Force, diversion without court involvement is necessary to prevent a large number of PINS cases from being referred to the Family Court.
4. OCFS Division of Juvenile Justice and Opportunities for Youth Services: (See Part III)
5. Kings County Implementation Plan for JD/PINS Cases:

6. ACS Family Assessment Program (“FAP”): FAP is an ACS-led initiative (formerly handled by the Office of Probation) in New York City to divert youth on PINS cases from entering foster care. A family deciding to file a PINS petition will meet with FAP staff, who will make an initial assessment and refer the family for general preventive services, if applicable, assuming the child is present. If the parents of the child are unaware of the whereabouts of the child, they are asked to file a missing person’s report and obtain a warrant for the child; upon the return of the youth, FAP requests from the court that the family continue the diversion process. If it is determined that the youth and family will not benefit from further attempts to divert, FAP will write a report to attach to the petition.
7. Erie County Detention Reform: As a result of this initiative, detention is now viewed within the wider context of community safety. As part of detention reform, a Risk Assessment Instrument (“RAI”) was constructed to provide an objective measure for decision making. It is used to determine which youth need to be detained for community safety concerns, which should be released with an appearance ticket and which require community monitoring while their case is in the court system.
8. New York City Department of Probation Delinquency Diversion: (See Part I)
9. Erie County PINS Diversion- Family Services Team: (See Part I)
10. Alternatives to Detention:

VI. Increased Data Collection and Analysis

1. New York City “Legal Tracking System/Universal Case Management System/CONNECTIONS” or “LUC” Data-Share project: (See Part III)
2. CIP, CCI, Chapin Hall Court Data Metrics Project: In 2010, the Child Welfare Court Improvement Project, with the assistance of the Center for Court Innovation and Chapin Hall Center for Children, will release a report to introduce a statewide set of child welfare court data metrics. Based on emerging national standards, the metrics are designed to assess court performance in child welfare cases within a child-outcomes framework. The report integrates child welfare court data with the OCFS Foster Care Profile data. Using metrics from both court and agency data sets provides an up-to-date, comprehensive view of the status of New York State's child welfare system from removal to permanency. Eventually these data will be promulgated via a web-accessible, "executive dashboard" user interface. This will provide a user-friendly method of retrieving and displaying critical child welfare data

in an organized fashion. This interface will provide significant insight into both short-term operational effectiveness and long-term trends to serve as the basis of policy development.

3. New York City Family Court Child Protection Initiative, Including the Conferencing Model: (See Part I)
4. New York City Family Court Blueprint for Change: (See Part I)
5. Kings County Reorganization Plan: (See Part I)

**NEW YORK COUNTY LAWYERS' ASSOCIATION
TASK FORCE ON THE FAMILY COURT
REPORT OF THE POINT-OF-ENTRY SUB-COMMITTEE**

Introduction

The goal of the Point-of-Entry Sub-committee was to examine point-of-entry issues for individual litigants, as opposed to governmental entities, and identify areas of concern. Our focus was on the events surrounding the filing of support, paternity, custody and visitation, guardianship, family offense and PINS petitions from a litigant's arrival at the courthouse to the filing of the petition. We were especially concerned with any delay in this process. We met with the Administrative Judge for the New York City Family Court, the Chief Clerk for the New York City Family Court and all of the Supervising Judges, as well as with various other court personnel from the five counties.

The following areas were identified as issues relevant to the successful filing of petitions in a timely manner and are discussed below:

- Entering the Courthouse and Reaching the Petition Clerk's Office
- Options for Preparation and Filing of Petitions
- Staffing Issues

I. Entering the Courthouse and Reaching the Petition Clerk's Office

A. Lines and Waiting

All buildings within the New York City Family Court are wheelchair accessible. The lines to get through the magnetometers are often backed up in some courts (Kings and Bronx Counties), while other courts (New York, Queens and Richmond Counties) report little to no delay. In Kings County, there are more magnetometers present in the courthouse than are in operation on a daily basis because there is not adequate staff to operate all of them. Additionally, in both Kings and New York counties, only one magnetometer is in operation during the lunch hour as a result of staff shortages and monetary concerns. Assigning officers to the metal detectors during the lunch hour has fiscal implications (overtime pay) that affect staffing decisions, which can result in longer than desired lines.

Excessive lines in the Bronx County Family Court stem partially from the Family Court sharing building space with the Criminal Court, which despite having its own building as of two years ago, continues to be a co-tenant in the Family Court building occupying administrative office space on the first floor and four arraignment parts on the second floor. The Criminal Court does, however, maintain its own separate entrance. Both courts have tried to work together to ease congestion. When there are lines outside the building, which can be upwards of 50 people, security personnel for both courts work in tandem, sending the public to whichever entrance is less busy to better facilitate access throughout the day.

Richmond County Family Court is unique in its policy of moving waiting litigants to the front of the line in the afternoon if they had been waiting since before lunchtime. Although this practice does help move things along, it may not be feasible in the other counties due to a higher volume. Richmond County is doing an efficient job despite its severe space constraints.

In all counties, the courts use a triage method to ease the flow of traffic into the courthouse. Whenever possible, at least one petition clerk is made available to speak with waiting litigants on line in an effort to direct them to their appropriate location within the courthouse. For Spanish-speaking litigants requiring an interpreter when filing their petitions, the court has one on staff. For litigants speaking other languages, the court has access to an interpreter through a telephone-interpreting service.

B. Internal Access/Elevators/Escalators

The New York City Family Court has spent considerable time and effort on resolving elevator-service issues. This is an extremely important issue because stairway access by litigants is prohibited for security reasons. Malfunctioning elevators have resulted in significant court delays, particularly in the Bronx County courthouse. While two additional elevators are now in service in that courthouse, breakdowns remain a continuous problem. These service interruptions result in longer waiting lines and have a profound impact on the court's calendar. It has been reported that cases have been called while litigants wait in the lobby or outside the building, raising concerns that litigants could be penalized for systemic malfunctions. Currently, the court is in the final stage of its overhaul of the building's escalators, which will provide access to the lower main floor and first floor. It is expected that these escalators will be in operation by the end of the year. When the project is completed, a *pro se* petition clerk will be located on the lower main floor, which will reduce the flow of people into the elevators and the higher floors of the building. Once the Criminal Court offices are moved out of the building, the court plans to move the Support Parts to the lower main floor together with the Support Petition Room. There is also the possibility of locating on the lower main floor a Part that may issue temporary orders.

II. Options for Preparation of Petitions

A litigant generally has three options for preparing his/her petition:

- In-Person Interview with Petition Clerk
- Preparation of Forms on Computer Kiosk Located in Petition Room
- Online Access to Forms from Any Computer

A. In Person

In-person filing is the traditional and most time consuming way to file a petition. The litigant is interviewed by a clerk, who creates the petition based on the information provided by the litigant. The amount of time needed to obtain information from the litigant can vary, depending on the nature of the case, the clerk's interviewing skills and the communication skills of the

litigant. The clerk then files the petition. Return dates vary.¹ A summons package and information sheet is given to each litigant.² Those litigants who arrive at the courthouse by 9:00 a.m. will generally be finished by 11:00 a.m. For those litigants who arrive after 9:00 a.m., the average waiting time is approximately three hours, depending on that day's particular volume and how late in the morning they appear.

B. Computer Kiosks Located in the Petition Room

The litigant also has the option of using a computer kiosk located in or near the petition room. The use of computer kiosks reduces the amount of time spent by the clerks conducting in-person interviews. Currently, the computer software program is only available in English. The court intends to make this program available in Spanish in the near future. The litigant is prompted by the computer's software to provide the necessary information. The completed form is then printed out and taken to a petition clerk, who re-enters the information and creates a petition.

The kiosks can now be utilized in some types of cases, but not all. Currently, the kiosks can be used for paternity and support modification petitions in all counties, with the exception of Richmond County, which does not have any kiosks due to space constraints. It is expected that the kiosks in all counties will include custody and visitation cases before the end of the year.

¹ Approximate Return Dates Reported by Court Personnel:

Support: Original petition 3 to 6 weeks (Support Collection Unit 8 weeks), modifications 6 to 8 weeks (In Kings County all new Support filings are directed to an expedited part; if not capable of resolution, adjourned 8 weeks)

Paternity: 3 to 6 weeks (In Kings County all Paternity filings are directed to an expedited part; if not capable of resolution, adjourned for 4 weeks)

Custody and Visitation: 2 to 6 weeks: If litigant goes before judicial officer or official on the day of filing; return date varies but is generally less than 2 weeks.

Guardianship: All petitioners in all courts see a judicial officer on the day of filing; then adjourned for 2 to 6 weeks;

Family Offense Petitions: All petitioners in all courts see a judicial officer or official on the day of filing; if Temporary Order of Protection issued with exclusionary order, return date is 1 to 3 days (all counties); otherwise anywhere from 2 to 8 weeks.

PINS: In all courts litigants may file after unsuccessful diversionary efforts by the Administration for Children's Services. Petitioners see a judicial officer or official on the day of filing; then adjourned for 2 to 6 weeks.

² For those litigants seeking applications for Temporary Orders of protection, Family Court Act § 153-b (c) requires that unless the petitioner specifies otherwise, the court is obligated to transmit the Temporary Order of Protection and related documents to law enforcement for service.

C. Online Access to Forms from Any Computer

Similarly, it is possible to access forms from an outside computer via the internet using the New York State Access to Justice Program. Currently, litigants seeking to file support, paternity, modification of custody/visitation, guardianship and family offense petitions may utilize the internet forms to begin the process. The forms must be printed out and brought to a petition clerk for further processing. Current law does not permit remote electronic filing in Family Court.³

III. Staffing Issues

All courts report that they are understaffed. Some courts have tried to ameliorate the situation by cross training their clerks and other staff members so shortages can be filled by an alternative staff member. Some counties, like Kings, have not begun this practice. The Bronx Family Court has a particularly severe staffing shortage. When the Family Court took over the main floor and the third floor from the Criminal Court two years ago, there was no increase in staffing. Thus, the limited number of court officers and clerks now have to cover even more Parts and areas of the building to meet the staffing needs of this additional space. Staffing shortages clearly play a major role in the pace of processing petitions.

In addition to the shortages of court officers to facilitate entrance to the courthouse and clerks to assist litigants in filing petitions, each county reported a lack of sufficient court officers in the Referee and Judicial Hearing Officer (JHO) Parts. In view of the volatility of the cases heard in these Parts, and the often small rooms in which these proceedings are commenced, the lack of security officers presents very serious safety concerns. Additionally, this shortage of court officers creates extra work for the clerks as they must often work alone. In the past, the court officers in the Referee and JHO Parts assisted the clerks with checking people in, calling cases and swearing in witnesses.

IV. Family Court Assistance Programs

In an effort to provide litigants with greater access to the court and to expedite the petition process, Help Centers have been established in the courthouses in all five counties. These centers provide information and assistance to parties commencing court proceedings, and are staffed by court personnel and members of various organizations that have collaborated with the New York City Family Court under the auspices of the New York State Access to Justice Program. These combined efforts have resulted in the creation of a number of programs that provide legal and procedural information, including instructional packets and court forms, hands-on assistance with the completion of court forms, and assistance with the use of computer kiosks.

An example of this initiative is the New York City Family Court Access to Justice Volunteer Program. There are currently over 200 *pro bono* attorneys involved, representing 19 law firms, who provide advice and counsel in 30-minute sessions to unrepresented litigants on issues including child support, visitation, custody, guardianship and paternity. Since its inception in

³ ACS petitions that are transmitted electronically automate an existing in-court filing system; this is not a remote electronic filing system, which would not be permitted under current law.

2006, this project alone has assisted over 3,000 litigants. The New York City Family Court Access to Justice Volunteer Program and others like it provide an effective and efficient way for the Family Court to address the urgent needs of the unrepresented.

V. Recommendations and Conclusions

As noted above, in examining point-of-entry issues, we believe that much of the delay encountered by litigants and court personnel in the Family Court is due to staff shortages. An immediate increase in staffing levels is unlikely given the current budgetary conditions of both the city and the state. Accordingly, where possible, we took into account the fiscal constraints faced by the court in developing the following recommendations:

• Staggered Shifts for Court Officers

In some of the counties, excessive waiting lines in the lobby areas could be alleviated if there were a sufficient number of court officers to operate all available magnetometers. This would be particularly helpful during the lunch recess when there is only one magnetometer in operation due to the court's effort to avoid overtime compensation. The court could address this concern by providing staggered hours for the court officers, which would permit the operation of additional magnetometers during the lunch break without necessitating overtime.

• Prioritizing Litigants Held Over to the Afternoon

A modified version of the Richmond County Family Court's policy of moving waiting litigants to the front of the line in the afternoon if they were held over from the morning session may help reduce unnecessary delay within the other counties. We would encourage each county to develop an effective system for differentiating litigants who have waited since before the lunch break.

• Cross Training

The cross training of clerks and other staff members would provide some relief for staff shortages and should be expanded throughout the five counties. This would be particularly helpful in the petition rooms.

• Facility Limitations

The problem of malfunctioning elevators and escalators in the Bronx County Family Court should be resolved immediately. We would urge OCA and New York City to complete the removal of the Criminal Court offices from the building as soon as possible.

• Updated Intranet Computer System

The use of computer kiosks and the internet has helped to expedite the petition process.

However, as the clerks must re-enter the information entered by the litigants, valuable time is lost. The Universal Case Management System, the Family Court's intranet database implemented in 2003, does not allow for the electronic transmission of completed petitions. An updated intranet computer system that provides for the electronic transmission of a completed petition would limit the time needed by the clerk to process the petition. Prior to the implementation of this technology, concerns regarding the confidentiality of the information transmitted to the court's database system would have to be resolved. One mechanism for addressing this issue would be the use of encryption technology, which would create secure lines. We recommend that OCA implement such technology.

• Implementation of Online Filing

Once the confidentiality concerns discussed above have been resolved, the court's website should be expanded to include online filing for all types of cases, as this would increase efficiency and further expedite the petition process.

• Expansion of Kiosk Programs

The kiosks should be made available as soon as possible in Spanish and other main languages to accommodate non-English-speaking litigants. The kiosks should be updated as soon as possible to include access to custody, visitation, guardianship and family offense petition forms.

• Expansion of the Access to Justice Program

Greater expansion of the Access to Justice resource initiative should be encouraged, as it provides litigants with much-needed assistance and helps to facilitate the petition process. The inclusion of non-attorney volunteers, such as retirees and other members of the community, should be considered and encouraged. These volunteers could assist litigants with non-legal tasks like completing forms and using the kiosks.

• Provision of Court Officers for Judicial Hearing Officers and Referees

We recommend that OCA review the staffing patterns for court officers throughout the court system in order to determine the feasibility of shifting court officers to Family Court to staff parts presided over by JHOs and Referees. This is both a safety and an efficiency issue for the staff and litigants appearing in those parts.

In conclusion, it is evident that the ongoing examination by the Family Court administration of point-of-entry issues has resulted in significant improvements in this area. The Family Court is cognizant of the needs of the litigants and is working to provide them with information and support. That task, however, will continue to be a challenge unless sufficient resources are supplied and the courts begin to utilize more advanced technology.

Point-of-Entry Sub-committee

Harriet Weinberger and Elliot Wiener, Co-chairs

Members

Joana Eder

Jan Fink

Maxine Ketcher

Gayle Samuels

William Silverman

**NEW YORK COUNTY LAWYERS' ASSOCIATION
TASK FORCE ON THE FAMILY COURT
REPORT OF THE TRIAL PRACTICE SUB-COMMITTEE**

Participants in NYCLA's two conferences on the Family Court, as well as members of the Task Force on the Family Court, discussed the trial process in Family Court and identified delay in proceedings as the most serious issue. The Trial Practice Sub-committee reviewed the recommendations to reduce delay identified by conference participants and by other organizations that have studied the trial process and examined procedures used in the federal court system and other jurisdictions. Recognizing the enormous caseloads and the numerous problems arising in the trial context, the Sub-committee recommends an array of filing, pre-trial and trial procedures to reduce delay. Some of these recommendations, while alleviating delays in trials, may have implications for other Family Court operations, and could be tested in carefully monitored and assessed pilot projects.

SUMMARY OF RECOMMENDATIONS

The Sub-committee identified two main causes of delay: (1) a shortage of judges and (2) a culture of acceptance of delay. While waiting for the legislature to increase the number of Family Court judges, these two problems can be addressed in the short term by rationalizing the amount of time judges spend on cases and by requiring the use of a comprehensive Preliminary Conference Order with firm deadlines in every case. To assist in rationalizing judicial time spent on cases, the Sub-committee recommends that court attorneys handle trial conferences, reporting to judges only if there is disagreement on particular issues. Similarly, court attorneys could handle adjournments, with judges setting an outside time limit for the adjournment.

To assist in reforming the current culture of delay, the Sub-committee recommends the use of a Preliminary Conference Order for cases requiring the most disclosure--child protective cases and custody and visitation cases. Sample Orders are attached as appendices. Such Orders will impress upon all counsel the need to move quickly to prepare cases for trial and will reduce court and judicial time. However, these Orders will be of minimal use unless Family Court judges enforce them rigorously. Although the Appellate Divisions may reverse such rulings in some cases, the Sub-committee believes the Appellate Divisions will recognize the need for such rigor.

Interpretation has, and will continue to be, an issue confronting the Family Court and contributing to delays. Despite a statewide mandate to provide interpreters to all litigants with limited English proficiency, interpreters are not always available. Litigants should be informed of their rights to interpretation at the first contact with the court. Judges and court personnel should be trained to ensure that court interpretation functions properly. They must know how to determine if a party needs an interpreter, and how best to use interpreters.

The Sub-committee is recommending a new approach to reduce delay—the use of written affidavits in lieu of direct testimony in certain hearings. Guidelines on the use of affidavits, based on experience in the federal courts, are detailed in this report's section on trials.

In its specific recommendations, the Sub-committee recognizes that proposed solutions must be tailored to the different kinds of cases handled by the Family Court. For example, if there were delays in a juvenile delinquency case, which has statutory time limits for discovery, pre-trial proceedings, fact-finding hearings and trials, they would be addressed differently from those in child protective proceedings. The Sub-committee intends that some of these recommendations apply to executive agencies as well as the court.

RECOMMENDATIONS

I. Initial Appearances

A. Child Protective Matters

Because the first appearance is crucial for determining the issues, attorneys for the presentment agency must establish to the court that the agency has notified parents upon filing, and the notification has been done by every available means. Furthermore, transportation to and from court and child care during the proceeding should be provided as children (if age appropriate), should be present in Court to speak to their attorney when a removal application is being heard. At the initial appearance, parents should be provided with a copy of the petition and assigned an attorney, if eligible, and attorneys should receive the entire case file prior to the first court appearance. Preliminary Conference Orders should be completed. (See Appendix A for the sample order that was presented to the New York City Family Court Child Protective Plan whose final Preliminary Conference Order incorporated aspects of this sample order.) Finally, removal cases should be scheduled for trial within 45 days and non-remand cases should be adjourned for four months in contemplation of withdrawal.

Implementation of these steps will ensure a meaningful first appearance, with all parties represented, present and knowledgeable about the proceedings.

B. Custody/Visitation/Orders of Protection

Often the initial appearance at a custody/visitation and/or order of protection matter sets the tone for the entire proceeding. As these cases can last several years, it is important to allow both sides an opportunity to be heard before temporary orders get put in place for lengthy periods of time. Preliminary Conference Orders should be completed as soon as possible so that the matter can begin to move forward. (See Appendix B for a sample.)

All *ex parte* orders should be returnable in two days and all return dates shall be no later than ten days after filing. On the first return date, Preliminary Conference Orders should be filled out by the court attorney and the parties' attorneys or by the court if the parties are *pro se*. Judges and their staffs should be aware of all programs currently available to litigants, such as mediation, parent education, supervised visitation agencies and batterers' programs, and apprise litigants of these options. The judges should have copies of all relevant prior orders in the case from any court (Family, Criminal or Supreme Court) and should have copies of all relevant files.

C. Child/Spousal Support

Because decisions about child and spousal support are based on the income of the parties, accurate information from all parties is necessary to create either temporary or permanent orders. Particularly because a temporary order usually continuing for the length of the matter, is set at the first appearance, the parties must be told to bring in all documentation of their income. Also, scheduling orders must be completed and enforced.

II. Compliance/Status Conferences

Most court appearances in Family Court are compliance conferences or status conferences. Trial conferences should be managed by court attorneys, with judicial supervision of compliance and adjourn dates. Because of the importance of these conferences, where discovery, disclosure and the status of the parties and the children are discussed, it is crucial to create an environment that moves a case forward, encourages settlement and seeks a final resolution. For these conferences to be productive, they must be scheduled at times certain and attorneys must know what is expected of them.

Court attorneys should be responsible for making sure that the necessary documents and reports are available and have been filed in advance of an adjourned date. The court should set firm dates by which documents are to be produced. Litigants should not be required to attend these conferences until all documents have been produced and there can be meaningful settlement discussions. Trial conferences should be distinguished from conferences that address service needs and assistance, which litigants and other interested parties should be encouraged to attend.

Two weeks prior to trial, pre-trial conferences should be held. Prior to this pre-trial conference, parties should have exchanged all exhibits and served objections to the exhibits, along with the basis for the objection. At this conference, a party seeking an adjournment should provide notice of such and proof of its necessity. Also exhibits should be pre-marked, motions *in limine* argued, witness lists exchanged and all evidentiary issues discussed. The court's trial rules should be provided to all attorneys. Every effort should be made by Family Court judges in New York City to develop complementary rules that will minimize confusion and conflict between courtrooms and boroughs.

III. Trials

Because trials are time consuming for judges, they must block a significant number of hours on their calendar. All litigants have a right to be meaningfully heard by the court, which may take considerable time. When, as now, trials are adjourned for months between testimony, litigants and other participants may forget their earlier testimony.

A. A Pilot Program to Utilize Affidavits for Direct Testimony in Termination of Parental Rights Hearings

The use of affidavits to replace direct testimony has been successfully employed in the federal courts and should form the basis of a model program in Family Court, with its use carefully monitored and assessed. The affidavit system has two major advantages: it improves the record for trial and appellate courts and it decreases courtroom time. Federal and state court judges relying on this approach (on a voluntary basis) report that it leads to more efficient, speedier trials as counsel present, in advance, a clearer and more succinct statement of their direct case. The cross examination and re-direct, which take place in court, tend to be more focused than they otherwise might be but still enable the court to assess credibility and demeanor. The judge reserves discretion to call a witness to the stand if further clarification is required. Attorneys, who are called on to do more pre-trial preparation and less in-court work, tend to embrace the approach as it enables them to present their strongest case and make a clear trial record. Often, the in-court trial can be concluded in a matter of hours, which would be an enormous help to Family Court judges.

The Sub-committee recommends that a voluntary, pilot program be implemented, with one judge participating in each of the four large boroughs, in which all direct testimony in termination of parental rights bench trials before that judge would be submitted by affidavit. Even with a limited program, lawyers and judges would require some training in advance, which NYCLA could partner with the Family Court to provide. Because it uses a new approach, the pilot project would need to be reviewed at regular intervals and assessed fully at the end of the pilot time frame.

As practiced in some federal and state courts, the procedure is very straightforward. On an appropriate date certain before the trial date (*e.g.*, two or three weeks in advance), the attorneys are required to submit affidavits for all the trial witnesses, fact and expert witnesses alike. The affidavits must be based upon actual knowledge, *i.e.*, no hearsay, including appropriate pedigree information. In the case of expert witnesses, the affidavits include opinion testimony. The program should initially be limited to English-speaking witnesses, although judges who rely on direct testimony affidavits report that where translations are needed, they tend to be more accurate and produced faster because the interpreters are reviewing written rather than oral communications. The length of the affidavits is up to the judge in accordance with his or her individual rules of practice; some set limits of up to ten pages double-spaced and normal margins.

The court may allow brief pre- or post-trial written submissions by the attorneys of any evidentiary objections they may have to the affidavits. The court attorneys are responsible for ensuring that all affidavits are submitted in a timely fashion so that there is no delay in the in-court proceedings. (In exceptional circumstances, the proceedings may be postponed until all the affidavits are presented.) On the day of trial, the affiants are present and the proceedings begin with the cross examination (followed by any re-direct) of the petitioner's witnesses and then the cross examination (followed by any re-direct) of the respondent's or attorney for the child's

witnesses. The judges then, sometimes from the bench and sometimes later, issue their findings of fact and conclusions of law, resolving any evidentiary issues in the process.

If the pilot affidavit program proves beneficial, the procedure may also be tried in other contexts, such as abuse and neglect proceedings.

B. Trial Schedules

In addition to recommending the use of affidavits to make more efficient use of court time, the Sub-committee recommends that trials should be held in blocks (*e.g.*, 9:30 a.m. – 1:00 p.m.) for each matter. Holding all trials in the morning would also alleviate the lines entering the court houses at 9 a.m. Trials should also be held on consecutive days and should not be adjourned for more than 30 days and then only for good cause. Trials that have begun should be completed as quickly as possible.¹ Guidelines for emergencies should be included in trial-blocking procedures.

C. Other Trial-Related Issues

Problems other than the timing of trials currently add to the culture of delay. Attorneys who are unprepared are not sanctioned. Litigants encounter difficulty in entering courthouses due to long lines. Court parts are still closed to the public.

Judges and other judicial personnel who lead by their good example ensure access to justice and fair procedure for all. They set a standard that is appreciated and followed. Examples of such leadership include:

- Times certain for conferences and trials are honored. Judges assume the bench on time.
- Attorneys who are unprepared, late or who fail to appear without adequate explanation are sanctioned.

Court parts are open to the public unless procedures outlined in the rules to close the court part are followed.²

IV. Judicial Personnel

The Family Court has a well-documented shortage of judges that undermines the court's ability to provide fair procedures and justice to litigants. To compensate for this shortfall, the court utilizes referees in a capacity very similar to that of judges. Litigants are sent to referees to hear and determine matters. Referees write decisions, issue orders and handle all aspects of cases. Some litigants, after assignment to a referee, never go back to a judge. The Sub-committee recommends that referees be provided with essential resources for their roles, such as court

¹ See *e.g.*, Family Court Rule 205.14, which requires custody and visitation hearings to be concluded within 90 days of being commenced.

² Family Court is presumptively open pursuant to Family Court Rule 205.4. Exceptions to this presumption are to be made on a case-by-case basis by the court, taking into consideration factors included in the Rule.

attorneys and court officers. Referees should be vetted to insure that they are qualified to shoulder their quasi-judicial roles. OCA should establish guidelines for vetting, training, and supervising referees.

Judicial Hearing Officers (JHO) are currently underutilized in Family Court. The Sub-committee recommends that the court expand its candidate pool by reaching out to retired judges outside of New York City. Potential JHOs should undergo a screening process to ensure knowledge of and experience with the Family Court. As part of the review, OCA should consider whether the candidate exhibits an interest and capacity to address the complex interpersonal issues that Family Court judges must consider. Also, competency to perform must be evaluated and the bases for which the candidate was not reappointed should be investigated.

Many stakeholders in New York City Family Court are concerned that judges who may not be interested in family matters are nevertheless appointed to serve in the Family Court. The Mayor should take this factor into consideration very seriously. Stakeholders also express concern that OCA may temporarily assign judges to Family Court who similarly are uninterested in the work and do not want the assignment. Every effort should be made to appoint and assign only those judges willing to commit to the heavy duties of a Family Court judge.

V. Appellate

A. Obtaining the Record

Difficulties in obtaining the record on appeal constitute a significant source of delay, including obtaining adequate transcripts, the court record and exhibits. Most transcripts now are prepared from recordings made in the courtroom. Many of the transcripts resulting from these recordings are practically useless as a large percentage of the testimony and questions are rendered in the transcripts as “inaudible.”

Obtaining transcripts in a timely manner from court reporters or from transcribers of the recordings continues to be a challenge. It is not unusual to have to wait weeks for transcripts, particularly in cases where stay applications are being made and a timely transcript is crucial. Some court reporters contend that if transcripts are ordered for an appeal, the court reporter has 30 days to produce the transcript.

The Sub-committee recommends that all substantive hearings should be covered and, if an appeal is filed, transcribed by court reporters. Recordings have not been an effective substitute for court reporters. Court reporters should be held to a standard of producing transcripts within two weeks.³

³ Rigorous enforcement of FCA 1121(6) & (7) would also significantly diminish delay in the production of transcripts.

Many appellants do not provide a copy of the court record for their adversaries. Responding to an appeal, therefore, requires counsel to obtain the file at the Appellate Division and copy it there. In the Second Department, the only machine available for copying is one in which \$.35 must be inserted for each page copied. Aside from the waste of money, this is a tedious, laborious process. In the First Department, the Clerk has arranged for the records in appeals of orders terminating parental rights to be scanned and emailed to the appellant and to the responding attorneys. This procedure is extremely beneficial. Not only do all counsel have easy access to the record, but they are also able to access the record in advance of the appeal being perfected. Once the appeal is perfected, there is less delay in responding to it.

The Sub-committee recommends that the procedure used in the First Department for records on appeal be implemented for all Family Court appeals in all Departments.

Often the exhibits entered into evidence are difficult to obtain on appeal. The court does not necessarily retain a copy and sometimes counsel has not retained a copy. The Sub-committee recommends that all exhibits entered into evidence should be part of the court record and should be retained by the court for appellate purposes. Additionally, attorneys should scan all exhibits to disk at the time of trial, and provide a copy of the disk to all adversaries, the court and the Appellate Division.

After a notice of appeal is filed and the appellant has indicated his or her intent to perfect, Family Court clerks should scan the original court file and email the scanned file to the Appellate Division Clerk's Office. The Appellate Division Clerk can then email the scanned file to all the parties to the appeal. In the Second Department, the Court issues a "scheduling order" after the notice of appeal is filed to determine whether the appellant intends to perfect and when. The Sub-committee recommends that a similar system could be employed by the First Department to determine which cases are likely to be perfected.

B. Summer Hiatus

Because appeals are not heard during the summer, some cases experience long delays. If an appeal is not perfected by mid to late spring, there will be no decision on an appeal until after the summer break. Thus, a Family Court order rendered in early March will not be reviewed until September, an almost six-month period.

The Appellate Divisions should reconsider this policy, thus making it possible for at least some Family Court cases to be heard during the summer months. Appeals of termination of parental rights cases in which no party is seeking to argue should be considered during the summer. Delinquency appeals in which the child is in placement should also be heard. Finally, Article 10 proceedings in which (1) a stay has been issued pursuant to FCA 1114 or (2) when a child has been removed should also be heard.

C. Decisions

Decisions in Family Court matters from the Third Department contain more detailed discussions of facts and legal analysis than those from the other Departments. Such decisions provide guidance to practitioners or Family Court judges in future cases. The First and Second Departments should be encouraged to issue decisions that include references to the underlying facts or legal reasoning forming the basis of the court's conclusions, allowing these cases to guide practitioners and the judiciary.

CONCLUSION

The Sub-committee created these recommendations not as an exhaustive list but as a set of priorities for reducing delays as well as the culture of delay in Family Court. We believe that if the Family Court and its stakeholder partners implemented these recommendations, litigants, judges and court personnel would experience the court as a more effective, efficient and just component of our judicial system.

Trial Practice Sub-committee

Hon. Stephen G. Crane and Laura Russell, Co-chairs

Members

Hon. Richard Berman

David Lansner

Jane Schreiber

Alan Sputz

Judith Waksberg

FAMILY COURT OF THE STATE OF NEW YORK

COUNTY OF _____

-----X

In the Matter of

:

A Child Alleged to be Abused/Neglected by _____ :

Docket No.: _____

Part No.: _____

:

Respondent,

Administration for Children's Services,

Petitioner. _____ :

-----X

PRELIMINARY CONFERENCE STIPULATION/ORDER

ARTICLE TEN CASE

PRESIDING: _____

Family Court Judge

The parties and counsel have appeared before this Court on _____ at a preliminary conference on this matter:

A: BACKGROUND INFORMATION:

(1) Attorney for Petitioner

Phone: _____

Fax:: _____

E-mail: _____

(2) Attorney for Respondent

Phone: _____

Fax:: _____

E-Mail: _____

(3) Attorney for Children

Phone: _____

Fax:: _____

E-mail: _____

(4) Attorney for Respondent

Phone: _____

Fax:: _____

E-Mail: _____

B. SETTLEMENT:

The matter/issue(s) have been settled in the following manner:

C. DISCOVERY SCHEDULE:

1. Hard copies or electronic copies of the following discovery has been provided OR will be provided to all attorneys by the date listed:

- a) ORT To Be Received by Other Parties by: _____
- b) Agency case records To Be Received by Other Parties by: _____
- c) Hospital records To Be Received by Other Parties by: _____
- d) Judicial orders in related cases To Be Received by Other Parties by: _____
- e) Expert reports To Be Received by Other Parties by: _____
- f) List of witnesses To Be Received by Other Parties by: _____
- g) Other To Be Received by Other Parties by: _____
- h) Pre-Marked Proposed Exhibits To Be Received by Other Parties by: _____

(Designation for Exhibits: Petitioner—numbers;
Respondent-Mother—RM + letters; Respondent-
Father—RF + letters; Attorney for the Child:
A/C + letters.)

- 2. Objections to Admissibility of Discovery to be filed by _____.
 - 3. Response to Objections to Admissibility to be filed by _____.
 - 4. Depositions scheduled for the following dates: _____
-

D. TRIAL SCHEDULE:

Trials should be continued day to day (*i.e.*, Court shall hear 2.5 hours of testimony each day). Remand and removal cases must be scheduled for trial within 45 days. Attorney requests for adjournments will be not be granted after trial schedule is set except in emergency circumstances unless application made at pre-trial conference or seven days before trial by affirmation upon notice to all parties.

The following dates and times are agreed upon for trial:

E. COMPLIANCE CONFERENCE DATE: _____.

Compliance conference to deal with evidentiary objections; in limine motions; and any other matters to be determined prior to trial. Compliance conference date should be set for three weeks before trial.

Dated: _____

J.F.C.

FAMILY COURT OF THE STATE OF NEW YORK

COUNTY OF _____

-----X

In the Matter of

_____ :

Petitioner, :

Docket No.: _____

-against-

Part No.: _____

_____ :

Respondent. :

-----X

**PRELIMINARY CONFERENCE STIPULATION/ORDER
CUSTODY/VISITATION MATTER**

PRESIDING: _____

Family Court Judge/Referee

The parties and counsel have appeared before this Court on _____ at a preliminary conference on this matter:

A: BACKGROUND INFORMATION:

_____ is requesting a translator in the _____ language.

(1) Attorney for Petitioner

Phone: _____

Fax:: _____

E-mail: _____

(2) Attorney for Respondent

Phone: _____

Fax:: _____

E-Mail: _____

(3) Attorney for Child(ren)

Phone: _____

Fax:: _____

E-mail: _____

(4) Was paternity established? _____ If yes, how? _____.

Date of Marriage (if applicable): _____.

Name(s) and date(s) of birth of child(ren):

(5) There is or is not an Order of Protection issued against _____,
from _____ Court. The order is dated _____ and is / is not
currently outstanding.

(6) Has a cross petition for custody or visitation been filed? _____.

B. ORDERS

Parent Education:

The Court: _____ has provided information as to parent education.

_____ has taken no action with respect to parent education.

_____ **hereby orders the parties to attend parent education.**

C. SETTLEMENT:

The matter/issue(s) have been settled in the following manner:

D. SCHEDULE:

1. Copies of the following documents have been provided OR will be provided to the attorneys listed below by the below date:

a) Releases for school/daycare records of the child (ren) To Be Provided by: _____
to the Attorney for the Child (ren) on or
before _____

b) Releases for medical records of the child (ren) To Be Provided by: _____
to the Attorney for the Child (ren) on or
before _____

c) Other To Be Provided by: _____ to
_____ on or before _____

E. CONFERENCE DATE: _____. On this date, a conference shall be held and the Court shall determine the need for an a forensic evaluation, if not already decided.

F. TRIAL SCHEDULE:

The following dates and times are agreed upon for trial:

Petitioner

Respondent

Attorney(s) for Petitioner

Attorney(s) for Respondent

Attorney for the Child(ren)

Dated:

SO ORDERED:

Judge of the Family Court/Referee

**NEW YORK COUNTY LAWYERS' ASSOCIATION
TASK FORCE ON THE FAMILY COURT
REPORT OF THE DATA SUB-COMMITTEE**

The Data Sub-committee was formed to explore the use and availability of data tracking the flow of cases through the Family Court. Previous reports, both historical and recent, prepared by a myriad of organizations and task forces have confronted the difficulty of collecting and examining data that would assist in an analysis and assessment of the way in which a Family Court case progresses or stalls.

The Data Sub-committee met with most of the principals in the child protective practice area as part of the Sub-committee's fact-finding mission, and was struck by the volume of information being collected, how it is being collected, the purpose for which it is being collected, and yet how little of the data is comparable. Each agency and office that participates in Family Court practice maintains internal reports. But the various agencies do not collect the same information nor do they use the same criteria to collect similar information. The result is that reports collected from the various agencies cannot be analyzed together to make thoughtful conclusions about how Family Court practice might be improved.

The Sub-committee identified several areas where better coordination of data collection is critical to improving the system. For example, all participants in Family Court agree that children and families spend far too much time waiting for resolution of their cases. There are endless reports as to what and who causes delay, but in the absence of agreed-upon data, these reports do not provide a solid foundation on which to build a meaningful examination leading to reform.

Shortly after the NYCLA Task Force was constituted, the Office of Court Administration (OCA) rolled out its Child Protective Initiative. Focusing first on child protective cases, a group assembled by OCA was charged with implementing changes that would expedite and enhance Family Court practice. A Data Committee was created and charged with assessing the impact of the Initiative. In order to report accurately, it was necessary to establish pre-initiative practice baselines.

And so, data collection has become the focus of a more appropriate level of attention. The Office of Court Administration has dedicated resources and developed new systems to collect and report on the procedural and substantive results of court appearances. At the time of this writing, OCA is beginning to issue reports based on the newly collected data about the effectiveness of time certain appearances and preliminary conferencing.

Our Sub-committee has developed recommendations regarding other methodology that would be useful going forward in the effort to collect accurate and useful information.

1. Bring together all of the stakeholders in Family Court to collectively assess and compare their current data-collection systems.
2. Have the stakeholders collectively agree what data would be informative and assist them in improving their collection practices

3. Have data-system experts available to listen to the goals of the stakeholders.
4. Determine if there are systems that could be used by all of the stakeholders that would standardize the collection and reporting of data.

The NYCLA Task Force could make itself available to plan, host and facilitate the suggested meetings. The Sub-committee believes that it is necessary to have accurate, consistent data on which to base knowledgeable assessments and create a plan for improvement. We further believe that this requires conforming stakeholder data-collection systems. We recognize that this is neither easy nor inexpensive, but the first step is to create a clear consensus on its necessity.

Data Sub-committee

Peter v. Z Cobb, Hon. Ronald E. Richter and Jane Schreiber, Co-chairs

Members

Hon. Joseph Lauria
Andrew White