

Family Justice Initiative

PRINCIPLES
FOR FAMILY
JUSTICE REFORM



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The Family Justice Initiative (FJI) is guiding courts toward improved outcomes for families, while managing costs, controlling delays, and facilitating healthy outcomes.

FJI is a partnership of the National Center for State Courts (NCSC), the Institute for the Advancement of the American Legal System (IAALS), and the National Council of Juvenile and Family Court Judges (NCJFCJ). It is supported with a grant from the State Justice Initiative (SJI).

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Introduction

The Family Justice Initiative (FJI) was established to provide courts across the country with validated, data-informed strategies for improving the way they process domestic relations cases.

It draws upon domestic relations case management data, promising practices, and program evaluations nationwide to recommend practices that promote better outcomes for families. FJI was undertaken as a partnership between the National Center for State Courts (NCSC) and the Institute for the Advancement of the Legal System (IAALS) and the National Council of Juvenile and Family Court Judges (NCJFCJ). FJI received oversight and guidance from a subcommittee of the Conference of Chief Justices (CCJ) and the Conference of State Court Administrators (COSCA) Joint Committee on Children and Families. FJI follows from the Civil Justice Initiative (CJI), extending and modifying the CJI Recommendations to address domestic relations cases.

Readers familiar with the CJI Recommendations will find similarities in approach. This is intentional, given the documented successes of a number of courts that have implemented CJI Recommendations.¹ The 13 FJI Principles that follow also incorporate an approach rooted in resolving family problems and improving case management through a triage strategy that matches cases and parties to appropriate resources and services.

The Principles are based on an assessment of the current Landscape of Domestic Relations Cases in State Courts and best practices in domestic relations cases—a first-of-its-kind study looking at family cases nationwide.² They are divided into four sections:

- Problem-Solving Approach
- Triage Family Case Filings with Mandatory Pathway Assignments
- Training and Stakeholder Partnerships
- Data Collection, Evaluation, and Technology Innovation

A companion document sets forth best practices for this approach that can be adapted to fit local realities.³ The next phase of the project will involve several jurisdictions pilot-testing the recommendations. Successes in improving the management of domestic relations cases can then be shared broadly to help guide courts toward improving outcomes for families while managing costs, limiting delays, and facilitating healthy outcomes.

¹ A number of states including Arizona, Florida, and Utah have documented case management efficiencies from implementing CJI Recommendations. See e.g. <http://iaals.du.edu/blog/learning-arizona-s-success-civil-justice-leaders-share-their-experiences>; 11th Judicial Circuit Court of Florida. (2018). *Civil Justice Initiative Pilot Project: Performance Report*.

² National Center for State Courts. (2018). *Family Justice Initiative: Landscape of Domestic Relations Cases in State Courts*. Available at <https://www.ncsc.org/~media/Files/PDF/Services%20and%20Experts/Areas%20of%20expertise/Children%20Families/FJI/FJI%20Landscape%20Report%20mb.aspx>

³ National Center for State Courts. (2019). *A Model Process for Family Justice Initiative Pathways*.

Problem-Solving Approach

Principle 1 – Direct an Approach that Focuses on Problem Solving

The court must lead case management. In domestic relations cases, this requires directing a problem-solving approach.⁴

COMMENTARY

Given the unique aspects of domestic relations cases and parties, adversarial court processes and traditional approaches to managing cases may be ill-suited to healthy family reorganization. In fact, each case is as unique as each family. Unlike civil cases, which frequently involve a snapshot in time of past events, the issues in many domestic relations cases evolve throughout the course of a case and well into the future. Resolution of family disputes requires an assessment of past events to shape

future behaviors and relationships. The dispute resolution process itself must be fluid and flexible in this evolving environment. Thus, teaching the parties cooperation and problem-solving skills throughout the court-related life of a family case is important.

Where children are involved, the relationship between the parties

continues well beyond the resolution of the case. Given the far-ranging and long-term impacts that judicial decisions have on parents and children, the court system has substantial reason to encourage parties to reach resolution themselves, with careful attention to the safety of the parties, rather than undergo a full adversarial proceeding and receive a determination by the judge. Self-determined resolutions are more likely than a court-imposed decision to address both the substantive and underlying interests of the parties; therefore, parties are more likely to comply with and support agreements that they reach on their own.⁵

This is particularly important in family cases, which frequently come back to the court to adjust for new circumstances, resolve new disputes, or resolve pre-existing disputes that were not effectively addressed the first time. Further, the system should model a positive decision-making process for the parties. The message sent by the legal system about what type of dispute resolution is appropriate and effective for families will have life-long impact. At the same time, some cases are not suitable for a facilitated approach or require additional safety measures to be made suitable. Those cases should be identified as soon as possible and monitored.

Unlike civil cases, which frequently involve a snapshot in time of past events, the issues in many domestic relations cases evolve throughout the course of a case and well into the future.

⁴ Much has been learned from problem-solving courts. The problem-solving term is used in a general descriptive sense to differentiate between traditional and adversarial proceedings. <https://www.nesc.org/Topics/Alternative-Dockets/Problem-Solving-Courts/Home.aspx>

⁵ National Center for State Courts. (2016). *Civil Justice Initiative: Call to Action: Achieving Civil Justice for All, Recommendations to the Conference of Chief Justices by the Civil Justice Improvements Committee*, page 16. Available at <https://www.nesc.org/~media/microsites/files/civil-justice/nesc-cji-report-web.ashx> [hereinafter Call to Action].

Problem solving in many domestic relations cases will rely on the deployment of non-adversarial court processes. The adversarial process can exacerbate existing tensions between parents at a time when it is best for their children that they focus on working together to co-parent and collaborate in planning for the future (so long as safety of the children is protected). In this context, courts should be mindful of the language used to refer to parties and case types in domestic relations cases. Descriptors such as “contested” and “complex,” or “plaintiff” and “defendant,” can automatically place parties in a position of being adversaries and/or in conflict. The adoption of understandable, neutral, and non-adversarial descriptions and categories can facilitate the problem-solving approach.

The problem-solving approach, however, also recognizes that not all parties and cases will present to the court with outstanding issues and unresolved problems.

Many divorce and separation cases come into the court uncontested, with parties having agreed to all terms prior to filing. In these cases, parties look to the court for a legal ratification and serving this need with minimal delay or complication is part of the court’s responsibility to problem solve as appropriate.

The problem-solving mindset does not abdicate the court’s ultimate responsibility for managing family cases. At the heart of the Civil Justice Initiative Recommendations “is the premise that the courts ultimately must be responsible for ensuring access to civil justice. Once a case is filed in court, it becomes the court’s responsibility to manage the case toward a just and timely resolution.”⁶ FJI similarly recognizes the importance of courts having ultimate control of ensuring access to family justice. The problem-solving mindset provides the contours of the process around which courts should manage domestic relations cases.

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⁶ Call to Action *supra* note 5, at 16.

Problem-Solving Approach *continued*

Principle 2 – Involve and Empower Parties

Courts have ultimate responsibility for managing domestic relations cases but should empower both parties to play a proactive role in charting a course that is best suited to the family's situation and needs.

- 2.1 Parties must be empowered with information about available process and service options, including the implications of each.
- 2.2 Court control over managing domestic relations cases must be balanced against parties' self-determination to decide what is best for their family.
- 2.3 Courts should be receptive to innovations in domestic relations case management and procedures that streamline the requirements imposed on the parties, particularly those who are self-represented.

COMMENTARY

Court staff and judges cannot assume that they know better than the parties what processes and services are best suited to a healthy reorganization for that family. Parties should be empowered to play a proactive role in charting their course through the court. To that end, courts should provide parties with information and the understanding needed to make educated decisions about how to shape a divorce or separation process in a manner that is most appropriate to the family's ever-changing situation and needs. Motivational interviewing techniques have been shown to be helpful to empower parties when assisting families to problem-solve issues within their case. With growing numbers of self-represented parties, it is imperative in domestic

relations cases for courts to effectively communicate requirements and expectations in plain language.

Party self-determination to influence the course of their case, however, must not come at the expense of children involved in the case. When children are caught in the middle of parents' adversarial posturing or left in limbo because of delays in the process, these uncertainties can create and magnify anxiety in children, and that increases the likelihood of negative consequences arising out of the divorce. Children's need for stability and predictability gives the court a reason to restrict the self-determination of the parties.

Court ownership of family case management is entirely appropriate, and the universe of stakeholders who share primary responsibility for doing so includes an interdisciplinary group of service providers, in addition to traditional court personnel. Where possible, courts should coordinate delivery of services to make the process more seamless for the parties who need it.

Court staff and judges cannot assume that they know better than the parties what processes and services are best suited to a healthy reorganization for that family.

Problem-Solving Approach *continued*

Principle 3 – Courts are Safety and Trauma-Responsive

Courts should be trauma-informed and trauma-responsive. Court processes should empower parties to make their own decisions and should be proactive in ensuring the safety of the parties, children, and others involved in the case.

- 3.1 To the extent possible, court processes should be designed to minimize re-traumatization and to facilitate effective participation by parties, including children, who have experienced trauma.
- 3.2 Courts must be knowledgeable and aware of the signs and dynamics of domestic violence, child abuse, substance abuse, and other critical issues to ensure safety and a fair process in each case.
- 3.3 Screening with reliable tools should be ongoing and behavior-specific rather than relying on labels. When screening reveals possible signs of violence, abuse, or trauma, further assessment to ascertain the nature and extent of any risk to the parties, children, or others is warranted.
- 3.4 If assessment reveals a threat to the safety of the parties, children, or others, courts should be prepared to take appropriate steps to protect those impacted by the threat.
- 3.5 When safety concerns arise in a case involving domestic violence, the survivor's voice should be heard regarding how best to address those concerns. Self-determination remains a primary

goal in such cases, and intervention may be required to protect a survivor from the abuser's coercion, intimidation, and control.

COMMENTARY

As the Adverse Childhood Experiences Study showed, an alarmingly high proportion of the population has experienced some form of trauma.⁷ When the trauma takes the form of domestic violence or child abuse that is directly related to a pending domestic relations case, the effects on the court case are exacerbated. An affected party's effective participation in the case can be impaired by a court environment and processes that are not trauma-informed. All judges, court staff, and court-related professionals who interact directly with parties should receive training in recognizing the signs and dynamics of critical issues, including domestic violence, child abuse, and substance abuse. This includes training in understanding the effects of trauma and how they may present in typical court and court-related processes (e.g., mediation and parental education programs), as well as reasonable measures that can be taken to promote a trauma-responsive process and environment.⁸

⁷ National Center for Injury Prevention and Control, Division of Violence Prevention. (2014). *The Adverse Childhood Experiences (ACE) Study*. cdc.gov. Atlanta, Georgia: Centers for Disease Control and Prevention, Archived from the original on 27 Dec. 2015.

⁸ Trauma-informed means taking into account the whole person, their past trauma and the resulting coping mechanisms when attempting to understand their behaviors. Trauma-informed courts take active steps to avoid stressing or re-traumatizing parties in court to resolve family issues whether or not trauma is actually present. Specifically, universal precautions in the context of administration of justice should support the core conditions of healing from trauma or adverse experiences and reduce unnecessary environmental stress. Shawn Marsh & Mari Kay Bickett, *Trauma-Informed Courts and the Role of the Judge* (Feb. 11, 2015), available at <https://www.ncjfcj.org/trauma-informed-courts-and-role-of-judge>

To be trauma-informed, court-related professionals must realize the widespread impact of trauma and understand potential paths for recovery and be able to recognize signs and symptoms in clients, families, staff, and others involved with system.

To be trauma-responsive, courts should endeavor to integrate knowledge about trauma into policies, procedures, and practices and seek to actively resist re-traumatization.

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To the extent possible, such measures should be standard. Domestic violence and child

abuse are more often hidden than disclosed, and at the outset the court may not be aware of which parties and children are affected. Screening, using reliable tools, should be ongoing rather than occurring only once at the beginning of the case, and it should be specific as to behaviors rather than simply asking about labels (e.g., not questioning parties about “domestic violence,” rather, asking about who controls the finances, who makes decisions, whether the party has felt unsafe, intimidated, or threatened, whether physical violence has occurred, whether sexual violence or coercion has occurred). Also, parents who use battering or coercive control often couch accusations against the other parent

in terms of concern for the children, attempting to portray protective efforts as being motivated by malicious intent. Court staff and judges should become well-versed with domestic violence screening and risk assessment tools as well as the dynamics of abuse and how the court case can become a means of further manipulation and control.

If screening reveals a concern, the case should be assessed to determine the nature and extent of any risk. Each court works differently, and who completes the assessment will vary, depending on the court’s organizational structure and staff, resources, and community partners. Rather than impose a blanket solution in all cases, any steps taken or orders entered should be tailored to the circumstances of the particular case. This could mean the imposition of additional security measures, adjustments to typical court or dispute resolution processes, or substantive orders in the case if the risk factors present so warrant. The parties’ voices should be heard in determining the most effective responses as they know their family best and may have suggestions the court would not have considered.

Safety must remain the top priority. Protection of the self-determination promoted in Principle 2 will assist in achieving safety by fostering thoughtful consideration of the individual circumstances and risk factors in the case. Providing information about (and assuring an understanding of) process and service options in a safe, protected environment can facilitate informed determinations by parties about their safety and their lives.

⁹ “A trauma-informed approach to services or intervention acknowledges the prevalence and impact of trauma and attempts to create a sense of safety for all participants, whether or not they have a trauma-related diagnosis. Becoming trauma-informed requires re-examining policies and procedures that may result in participants feeling loss of control in specific situations, training staff to be welcoming and non-judgmental, and modifying physical environments. The goal is to fully engage participants by minimizing perceived threats, avoiding re-traumatization, and supporting recovery. There is often little or no cost involved in implementing trauma-informed principles, policies, and practices.” Substance Abuse and Mental Health Services Administration. (2013). Essential Components of Trauma-Informed Judicial Practice, available at https://www.nasmhpd.org/sites/default/files/DRAFT_Essential_Components_of_Trauma_Informed_Judicial_Practice.pdf. See also the six key principles of the trauma-informed approach: 1. safety; 2. trustworthiness and transparency; 3. peer support; 4. collaboration and mutuality; 5. empowerment, voice, and choice; 6. cultural, historical, and gender issues. Substance Abuse and Mental Health Services Administration. (2014) A Concept of Trauma and Guidance for a Trauma-Informed Approach. HHS Publication No. (SMA) 14-4884. Rockville, MD: Substance Abuse and Mental Health Services Administration. Available at https://www.nasmhpd.org/sites/default/files/SAMHSA_Concept_of_Trauma_and_Guidance.pdf

Problem-Solving Approach *continued*

Principle 4 – Provide Information and Assistance

Courts should provide clear, straightforward information to parties about the court process. Courts should provide assistance to self-represented parties including procedural information and available resources to assist the family.

- 4.1 Court self-help information and materials should be in plain language so that self-represented parties can understand and apply the information to their case.
- 4.2 Access to self-help materials, court forms, and other documents and resources must be available in not just English.
- 4.3 Informational resources should be made available both in digital format on court websites and kiosks as well as in hard copy formats at the courthouse.
- 4.4 Courts should provide staff and/or digital tools that direct and guide parties through each stage of the domestic relations process and provide appropriate resources and assistance along the way.
- 4.5 Informational resources and efforts to provide proactive court staff assistance should be comprehensive but purposefully curated to address common barriers that self-represented parties encounter in the domestic relations process.

COMMENTARY

The Conference of Chief Justices and Conference of State Court Administrators, through Resolution 5: Reaffirming the Commitment to Meaningful Access to Justice for All (2015), supported the “aspirational goal of 100 percent access to effective assistance for essential civil legal needs.”¹⁰ The Resolution called on a wide swath of stakeholders to fulfill this goal but recognized that “the Judicial Branch has the primary leadership responsibility to ensure access for those who face impediments they cannot surmount on their own.”¹¹

There are various vehicles through which courts can facilitate the “continuum of meaningful and appropriate services” that the Resolution envisions. Expanded self-help information and services are foundational components. Of course, this Principle and the broader CCJ/COSCA Resolution on Access to Justice do not direct courts and court personnel to provide parties with legal advice. While the line between legal information and legal advice may still be problematic in some contexts, there is considerable—and growing—guidance available to state courts for navigating this line.¹²

¹⁰ National Center for State Courts. (2015). *Resolution 5, Conference of Chief Justices and Conference of State Court Administrators*. Available at https://www.ncsc.org/~media/Microsites/Files/access/5%20Meaningful%20Access%20to%20Justice%20for%20All_final.ashx

¹¹ Directive Concerning Colorado Courts’ Self-Represented Litigant Assistance, CO 13-01 (2013) (providing guidance to clerks, family court facilitators, self-represented litigant coordinators, and others to litigants or potential litigants in non-criminal matters); John M. Greacen, “No Legal Advice From Court Personnel: What Does That Mean?” *The Judges Journal* (Winter 1995).

¹² Call to Action, *supra* note 5, at 19.

Most courts today provide some degree of legal information to self-represented parties about court processes and procedures, and available resources to assist self-represented parties. Not all self-help information is created equal, however. Providing parties with verbatim court rules and extensive, complex information about court processes is an important step, but simply replicating the complex, difficult-to-understand rules and information is of limited help for self-represented parties. Legalese, complex concepts, and lengthy narratives can render some self-help efforts just as much a barrier to access as if the information was not available at all. Additionally, as society becomes increasingly multilingual, presenting written and video content in English and other languages is an important aspect of access to justice.

Self-help materials that facilitate meaningful access help parties translate the information into action, to move their case forward, or achieve another goal within the court process.

An increasing number of courts are experimenting with self-help services that go beyond the traditional self-help service model in terms of the function and timing of intervention. Whereas chat bots, court self-help centers, and other common efforts to help self-represented parties are reactive in nature—engaging only when prompted by the party—new innovations are creating opportunities to provide more proactive and ongoing assistance to navigate parties through the court process.¹³ Other services, such as child care, may also be beneficial.

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¹³ Greacen, J.M. (2018). *Eighteen Ways Courts Should Use Technology to Better Serve Their Customers* (Rep.). Institute for the Advancement of the American Legal System. Available at <http://iaals.du.edu/publications/eighteen-ways-courts-should-use-technology-better-serve-their-customers>

Triage Family Case Filings with Mandatory Pathway Assignments

Principle 5 – Use a Service-Based Pathway Approach

Courts should establish a flexible pathway approach to triage domestic relations cases that matches parties and cases to resources and services.

- 5.1 Case assignment to an appropriate pathway should occur at the earliest possible time.
- 5.2 Pathway assessment can be assisted through the capture of specific data elements or via a cover sheet that collects sufficient information on the family and factors to facilitate the selection of an appropriate pathway.
- 5.3 Pathways must be flexible, allowing cases to move between pathways in the event additional information or subsequent events suggest reassignment is appropriate.
- 5.4 Courts must coordinate with interdisciplinary professionals, within or outside the courthouse, to serve domestic relations parties and cases effectively.

COMMENTARY

The Civil Justice Initiative adopted a right-size approach to civil case flow management that is centered on triaging cases into appropriate pathways at filing.

“[T]he premise behind the pathway approach,” according to the Committee, “is that different types of cases need different levels of case management and different rules-driven processes. Data and experience tell us that cases can

be grouped by their characteristics and needs. Tailoring the involvement of judges and professional staff to those characteristics and needs will lead to efficiencies in time, scale, and structure.”¹⁴

The Civil Justice Initiative’s triage approach—that is being applied here to domestic relations cases—goes beyond the traditional Differentiated Case Management techniques in that a pathway assignment is undertaken at filing; is based on a broader array of case characteristics and needs than case type; and is flexible, allowing a case to move across pathways if and when necessary. This pathway approach—and the broader notion that one size does not fit all—is particularly important in domestic relations cases.

The current distinction in most state courts between “uncontested” and “contested” cases does not allow for tailored assignment of court resources and services within each of these very broad categories. As a result, parties are often required by the court to engage in services and processes that are unnecessary or inappropriate for their case, often at a financial cost. This creates delays, increases expenses, and can escalate tension between the parties. These overly broad categories also misdirect judicial and staff resources toward cases that do not need that level of attention. Scarce judicial resources must be

¹⁴ Call to Action, *supra* note 5, at 19.

focused on the cases and parties that need them most, and right-sizing of court resources avoids the imposition of unnecessary, time-consuming steps that render the family justice system burdensome for many parties who need little court involvement.

As envisioned in the CJI Recommendations, pathway assignment can be made early in the life of a case by capturing key data elements about case characteristics and needs—for example, length of the marriage or relationship, length of the separation, presence of children and their age, type of property and debt, and representation status of parties. Whether a workable legal solution is obvious or exists and whether parties’ expectations are in the realistic range of legal alternatives may be relevant to triage determinations. Additionally, courts may find it useful to solicit party perspectives on whether they have come to agreement on any issues to date and also on whether they anticipate being able to cooperate in order to reach agreement on outstanding issues. Finally, domestic violence, indicators of power asymmetry, and related considerations can impact triage decisions. Because initial triage determinations will be made upon case information at the time of filing, before the complete set of pleadings has been filed, it will be necessary to gather the filing party’s estimates with respect to some of these factors, for example, the financial components of the case.

These Principles do not route post-judgment filings into their own pathway. Rather, these cases will also be triaged at filing and assigned to a pathway based on the characteristics and needs of the case and parties. This reflects the diversity of post-decree issues in the sense that:

- Some involve uncontested issues;
- Some should be mediated, and parties encouraged to problem solve;

- Some may benefit from other alternative dispute resolution processes; and
- A few require judicial resolution and intensive case management.

E-filing, electronic case management systems, and data analytics can facilitate collection of data elements that inform the pathway assignment. Technology can also help identify later changes in a case’s characteristics that may justify management adjustments. As part of a package of resources to assist courts in implementing the CJI Recommendations, the Civil Justice Improvements Committee released recommended criteria for implementing an automated triage process that conforms to the pathway approach.¹⁵

Courts seeking to implement a pathway approach often express concerns about staffing.

While many family courts have designated case managers that assist in reviewing cases at filing and helping cases progress to decree, a dedicated staff person is not a feasible option for many courts and should not be seen as a barrier. A number of courts have successfully developed screening sheets to identify objective criteria. Parties themselves may be able to set forth the factors, thus requiring minimal review by the family court staff, in performance of other typical case management responsibilities. Further, if families receive court services tailored to their specific

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¹⁵ National Center for State Courts. (2017). *Civil Justice Initiative: Criteria for Automating Pathway Triage in Civil Case Processing*. Available at <https://www.ncsc.org/~media/Microsites/Files/Civil-Justice-Automated%20Civil%20Triage.ashx>

needs from case initiation, this approach should reduce case management activity that results from multiple hearings. The Alaska courts found that implementing their Early Resolution Program did not increase court staffing costs and led to decrees that lasted as long as decrees issued after an adversarial process. Many courts have created self-help centers or positions to assist self-represented parties, a practice recommended by other CCJ/COSCA resolutions supporting access to justice, but these programs do not include case management functions.

The procedures involved in implementing this Principle can and likely will evolve over time as emerging technologies help courts become more efficient and effective at triaging domestic relations cases.

In domestic relations cases, right-sizing requires appropriately identifying resources and services within the court and in the broader community from which families and children would benefit. In addition to non-legal services (e.g., mental health, financial planning, job training/placement, and substance abuse services, child care including care of special needs of children), these might include referrals to legal services (e.g., partnering with bar associations to provide lists of limited scope practitioners and mediators). When engaging interdisciplinary professionals is appropriate, the court must not abdicate responsibility for managing the case, and the engagement of these experts must not protract the process.

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Triage Family Case Filings *continued*

Principle 6 –Streamlined Pathway

A Streamlined Pathway is appropriate for cases that require minimal court resources and little or no exercise of judicial discretion, and that benefit from swift resolution.

- 6.1 The goal of the Streamlined Pathway is to provide parties with a swift resolution using minimal court resources and entry of decree without appearance.
- 6.2 Although this pathway is administrative in nature, court staff should ensure that parties have filed all necessary documents and that all legal criteria have been satisfied.
- 6.3 Appropriate case types for the Streamlined Pathway include those that are focused on limited issues, have full party agreement, do not require significant court involvement or the exercise of judicial discretion, and can be resolved through administrative proceedings.
- 6.4 Because of the limited involvement of the court, there must be an explicit process for potential reassignment of tracks.

COMMENTARY

The Streamlined Pathway is assigned to cases where little exercise of discretion is appropriate. While statutes in some jurisdictions require appearance in uncontested

cases, this is an expenditure of judicial time that may not be necessary. This pathway can be assisted by online form preparation and filing, and online reminders to facilitate process completion within a short timeframe. Examples of typical processes that fit this pathway are administrative proceedings focused on limited issues (e.g., child support enforcement, default proceedings, uncontested cases, and simplified process cases) where the parties seek an order approving a stipulated result.

The Landscape of Domestic Relations Cases in State Courts study confirmed that a majority of cases (64.3%) in participating courts are uncontested.¹⁶ Where parties have reached full agreement on all issues before filing, the only problem that remains in most cases is receiving legal recognition of the agreement by the court. A low level of facilitation may be appropriate to assist in resolving the case when the issues are limited. In cases involving children, a cursory review of the underlying substance of an uncontested agreement may be appropriate to assess and identify any red flags that suggest power asymmetries or other issues that may impact the fairness of the stipulated agreement.

¹⁶ National Center for State Courts. (2018). *Family Justice Initiative: Landscape of Domestic Relations Cases in State Courts*. Available at <https://www.ncsc.org/~media/Files/PDF/Services%20and%20Experts/Areas%20of%20expertise/Children%20Families/FJI/FJI%20Landscape%20Report%20mb.ashx>



Triage Family Case Filings *continued*

Principle 7 – Tailored Services Pathway

A Tailored Services Pathway is appropriate for cases that require more than the minimal resources of Streamlined Pathway cases but less than what are required for Judicial Specialized cases, and that presents an opportunity for problem solving between parties.

- 7.1 The goal of the Tailored Services Pathway is to provide resources and services that empower parties to problem-solve to reach resolution through active case management.
- 7.2 The court must ensure that families have access to information on alternative dispute resolution and other services that can help parties reach agreement.
- 7.3 Mediation, early neutral evaluation, parenting coordination, and other alternative dispute resolution mechanisms are at the core of this pathway. Online dispute resolution, which encompasses mediation, may also be appropriate for parties in this pathway.
- 7.4 Courts should consider the bifurcation and resolution of issues where appropriate. However, the decree should not be entered until all issues have been resolved.
- 7.5 Cases involving domestic violence, substance abuse, and related issues should not automatically foreclose case assignment to the Tailored Services Pathway, but the court and service providers must take appropriate safeguards.

COMMENTARY

The ability to solve problems together and cooperate throughout the process is essential for parties and cases on the Tailored Services Pathway. Where parties are capable of and amenable to safely engaging together in the process, referrals to self-help resources, court services, and non-adversarial dispute resolution processes, like mediation and the Collaborative Law processes can encourage problem solving toward resolution. A tailored resolution offers the advantage of a result that is more likely to meet the family’s needs because the parties are invested and have agreed to the outcome. This should not require additional resources, but reallocating existing services based on need.

The ability to solve problems together and cooperate throughout the process is essential for parties and cases on the Tailored Services Pathway.

Mediation and other non-adversarial, alternative dispute resolution processes are at the core of this pathway. Courts must provide information on mediation, the Collaborative Process, and similar processes so that parties are fully informed about their alternatives to

traditional court-centered processes. Courts must also ensure that these processes are robust and responsive to the needs of the case and the parties. In some cases, courts might consider the bifurcation of issues through alternative dispute resolution processes, to resolve key issues. Resolution through these processes would facilitate further resolution and/or would provide children with certainty and stability.

Even cases with complicating factors such as domestic violence may be appropriately assigned to this pathway if the parties are capable of engaging in solving problems together and sufficient safeguards can be taken,

such as remote participation, shuttle mediation, advocacy support. Any resolution must be completely voluntary. A careful screening and assessment may assist in determining whether this pathway is appropriate, and if safety can be assured, a survivor's decision to attempt a Tailored Services Pathway resolution should generally be respected. Having domestic violence trained mediators or other third-party neutrals is essential if cases involving domestic violence are mediated or subject to other facilitated processes.



Triage Family Case Filings *continued*

Principle 8 – Judicial/Specialized Pathway

A Judicial/Specialized Pathway is appropriate for cases that necessitate substantial court-based or community services and resources to reach resolution. This track is appropriate for cases in which parties cannot or should not problem solve together without court facilitation and supervision.

- 8.1 The goal of the Judicial/Specialized Pathway is to tailor resources, services, and judicial involvement to the needs of the case and the parties.
- 8.2 Court management of the case should begin as early in the case as possible and should be active throughout the life of the case.
- 8.3 The court should consider marshalling additional multi-disciplinary court-based or community resources for the benefit of the parties and any children involved in the case.
- 8.4 Specialized domestic relations judges and court staff should be assigned cases to the Judicial/Specialized Pathway. In jurisdictions where specialized judicial assignments or dedicated domestic relations dockets are not feasible, judges and court staff should be sufficiently trained in the complex issues that arise in these case types and the means for addressing them.

COMMENTARY

Those cases that have either more complex issues or a high level of conflict benefit from a greater degree of judicial involvement in order to appropriately and efficiently route parties to resources and services. The court should begin active management of these cases as early as possible.

When one or both parties are self-represented, these cases can be extremely challenging for judges. Court provision of information regarding representation and other legal services is appropriate here and encouragement of unbundled representation may be especially desirable.

Allowing remote attendance at court hearings and digital submission of evidence can assist in streamlining some services in high-conflict cases. Higher complexity also introduces the importance of maintaining a list of parties' personal needs that helps ensure needed services are arranged. The greater judicial involvement for this pathway may lead to a facilitated, agreed result rather than litigation, but the issues presented by the case are sufficiently complex to require more judicial oversight throughout the process than the Tailored Services Pathway.

Judges and staff managing cases on this pathway must be adequately trained on these complex issues. Additionally, while it is considered best practice for a single judge to handle a case from beginning to end, these Principles recognize the reality that this is difficult in many courts due to rotation schedules and individual calendars.

Training and Stakeholder Partnerships

Principle 9 – Implement High Quality Judicial and Court Staff Training/Education

Because of the complex, unique nature of domestic relations cases, judges and court staff must possess additional specialized knowledge, skills, and qualities.¹⁷

- 9.1 Judges handling domestic relations cases should have regular training in diverse areas of the law including but not limited to criminal, civil, immigration, bankruptcy, military issues and tax law.
- 9.2 Judges and court staff handling domestic relations cases should be familiar with non-legal issues that present in these cases, including but not limited to an understanding of child development and family dynamics, cultural factors, implicit bias, indicators of domestic violence, child abuse, and substance abuse, and intervention strategies and the standards for each.
- 9.3 Judges and court staff should seek out information on innovative approaches to address the issues and problems arising in domestic relations cases.
- 9.4 Judges, court staff, and court-related professionals should be familiar with procedural justice, trauma-informed processes, and practical techniques for effectively addressing the needs of self-represented parties.
- 9.5 Court leadership should provide appropriate guidance for court staff on how to navigate the line between legal information and legal advice.

COMMENTARY

Judicial education is imperative, no matter the case type, and domestic relations cases present the need for in-depth and diverse judicial education programs. It is common for judges hearing domestic relations cases to encounter wide-ranging issues such as bankruptcy law, estate planning, contract law, tax law, military law, immigration law, general civil law, and criminal law. It is important, then, for judicial education programs to focus on substantive legal issues that extend beyond traditional family law statutes and cases.

Additionally, “Divorce, separation, and parental responsibility cases often present complicated emotional and non-legal issues, requiring a family court judge to have familiarity with theories and research in disciplines such as social work, psychology, and dispute resolution.”¹⁸ There is too much at stake to forgo this kind of comprehensive training:

“Without adequate specialized judicial education, at best a family court judge gains expertise over time, through hands-on experience or self-education; at worst, outcomes, families, and communities are negatively impacted.”¹⁹

Judges should monitor and regularly update training in areas that have progressed in their field or changed over

¹⁷ Knowlton, N.A. (2014). *Modern Family Court Judge: Knowledge, Qualities & Skills for Success* (Rep.). Institute for the Advancement of the Legal System. Available at <http://iaals.du.edu/publications/modern-family-court-judge-knowledge-qualities-skills-success>

¹⁸ Knowlton, *supra* note 17, at 2.

¹⁹ Knowlton, *supra* note 17, at 11.

time (e.g., mental health). Judges should seek not only to consider cultural factors and check implicit bias, but to strive to continually deepen their own cultural competency.

Non-judicial court staff and clerk's office personnel should also be trained in the dynamics of family issues and the unique needs of and challenges faced by parties and children. Particularly important is the ability to identify and screen for safety issues, such as intimate partner violence, child abuse, and substance abuse, and the knowledge of how to respond when these issues are detected.

Issues specific to self-represented parties present another opportunity for both judicial and non-judicial staff training. With respect to judicial personnel, understanding how best to navigate cases with self-represented

parties, especially those involving one represented party and one self-represented party, is particularly important. Court and clerk's staff can also benefit from training in how to provide appropriate help to self-represented parties. Specifically, navigating the line between legal information and legal advice is important for clerks and other staff who routinely interact with family court self-represented parties. Courts should provide comprehensive and clear guidance to court staff, outlining the parameters of what constitutes appropriate legal information. A Chief Justice Directive or Court Order to this effect can provide court staff with needed cover and greatly increase the staff's ability to effectively assist parties.²⁰ Such tools are consistent with the U.S. Supreme Court's holding in *Turner v. Rogers* (2011)²¹

Courts should provide comprehensive and clear guidance to court staff, outlining the parameters of what constitutes appropriate legal information.

²⁰ Chief Justice Bender. (2013). Directive Concerning Colorado Courts' Self Represented Litigant Assistance. Supreme Court of Colorado, Office of the Chief Justice. Available at https://www.courts.state.co.us/Courts/Supreme_Court/Directives/13-01.pdf

²¹ *Turner v. Rogers*, 564 U.S. 431 (2011).

Training and Stakeholder Partnerships *continued*

Principle 10 – Identify and Strengthen Community Partnerships

Courts managing domestic relations cases benefit from strong partnerships with community organizations, legal professionals, and service providers.

- 10.1 Judicial leadership at all levels is necessary to effectively marshal resources and supports for domestic relations and, more fundamentally, to advocate for innovation and adequate court resources in the first instance.
- 10.2 Courts should identify resources available to parties within the court and broader community and gather the information necessary for making appropriate and effective referrals from community, bar, and other groups.
- 10.3 Courts should support limited scope representation based on models that have been shown to be successful and make available materials that provide domestic relations attorneys the guidance and judicial approval they need to incorporate these models into their practice.

COMMENTARY

There is a very real gap in most state courts between available resources and necessary resources. Courts should be aspirational when they think about resources, focusing not just on what resources are available, but also on what resources should be available to facilitate lasting and meaningful outcomes for families. Judicial leadership plays an important role in communicating the importance of domestic relations cases and in helping courts secure adequate resources from other

branches of government and organizations in the broader community.

Courts are turning to community partnerships as a means through which to increase access to court services and information—for example, partnering with attorneys and community organizations to host off-site legal advice clinics or equipping stakeholders outside the court with important information about the legal system. Fostering community relationships, especially within diverse communities, is important to improve trust. This would include collaboration with tribal court systems and federal courts handling tribal cases as well as outreach to underserved communities. Additionally, courts are looking to increase community partnerships as a means through which to increase access to justice broadly. As framed by the Alaska Court System:

“Expanding access to justice requires innovation and moving past the idea that an attorney or a courtroom is the best or only solution for [people]. Partnering across legal, social services, medical and information providers to address the array of justice needs that people face may be the key to the early detection, diagnosis and intervention necessary to empower [people] to solve their problems before they find themselves in the legal system.”²²

²² “Justice for All,” Alaska Court System (2019), available at <http://www.courts.alaska.gov/jfa/index.htm>.

Engagement with legal practitioners and local bar associations is a fundamental partnership between courts and community members and organizations. Dialogue across the country is focusing on the role of family bar attorneys in working toward continuous improvement in the family justice system. There is a clear recognition that the courts cannot do this on their own. There must be partnerships with individual attorneys, bar associations and local social service agencies. As stewards of the system, family law practitioners should partner with courts and communities to remove obstacles that interfere with service to families. This necessarily requires educating

the bar because too many attorneys do not have the awareness or knowledge to even recognize this issue, let alone participate in being part of a solution. There is also increased attention on alternative legal services delivery models such as limited scope (unbundled) representation. New CLE programs and bench/bar conferences should inform practitioners about important aspects of these new models and how they can offer complementary services for parties. The CJI Recommendations also recognized the important role of lawyers in influencing the effectiveness of any court pilot projects, rule changes, or case management innovations.



Data Collection, Evaluation and Technology Innovation

Principle 11 – Improve Ongoing Data Collection, Analysis, and Use of Data to Inform Case Management

Courts should gather baseline data to understand the landscape of their domestic relations caseload and then implement standardized, ongoing monitoring and development of evidence-informed practices.

- 11.1 Baseline domestic relations caseload assessments and ongoing monitoring should be tailored to reflect the unique aspects of domestic relations cases and domestic relations case management.
- 11.2 Court data elements should be precisely defined to ensure clarity in data collection and analysis and to facilitate data standardization across courts.
- 11.3 Courts should follow proven practices with respect to the use of common data definitions, routine counting of cases with one or more self-represented parties and recording outcomes to enable the development and ongoing improvement of evidence-based practices.
- 11.4 Courts should regularly make caseload assessments available to the public.

COMMENTARY

Smart data collection, analysis, and use are central to the effective administration of justice and can significantly improve decision-making. Experience and research demonstrate that courts cannot manage what is unknown. Each court system should gain a firm understanding of its current domestic relations case landscape. Using technology for this purpose will increase

the ability of courts to take an active, even a proactive, approach to managing for efficiency and effectiveness. Although court administrators appreciate the importance of recordkeeping and performance measurement, few judges routinely collect or use data or analytical reports.

Courts must systematically collect descriptive information about their cases, processes, and people. An inventory should not be a one-time effort. Courts can regularly use inventories to gauge the effectiveness of previous management efforts and “get ahead” of upcoming caseload trends. Additionally, the information gathered can help courts fully appreciate the ecology of resources needed to serve domestic relations court parties.

As made clear in previous recommendations, the entire court system acting as a team must collect and use data to improve case flow management and reduce unnecessary costs and delay. This can be accomplished by enlisting court system actors at different levels and positions in developing the measurement program, by communicating the purpose and importance of the information to all court staff, and by appointing a responsible oversight officer to ensure accuracy and consistency. Encouraging the cooperation of the clerks of court can further facilitate data collection efforts.

To promote comparability and analytical capacity, courts should use standardized performance measures such as CourtTools as the presumptive measures because there is a consensus on the outcomes targeted. Courts should only depart from these measures where there is good reason to do so. Consistency—in terms of what data are collected, how they are collected, and when they are collected—is essential for obtaining valid measures upon which the court and its stakeholders can rely.

Concerns have been raised about the retention of records, such as screening tools, that may indicate the presence of family violence. While a valid concern, these are not new issues. Parties must be notified that confidentiality and record retention is an issue and documents may be public records, accessible by the other

party. Existing court practices designed to protect party information, especially in the presence of family violence, should be applied to pathway documentation as well.

Finally, transparency in data collection and reporting is important, and courts should periodically publish court data elements. Courts must compete for limited resources to be able to serve the public and should demonstrate that they are good stewards of public dollars. Communicating court data and metrics is also a way to increase public trust and confidence in the courts. Where the data suggest opportunities for improvement, proactive court communication can build public trust while allowing the court to frame the narrative.

Consistency – in terms of what data are collected, how they are collected, and when they are collected – is essential for obtaining valid measures upon which the court and its stakeholders can rely.

Data Collection, Evaluation and Technology Innovation *continued*

Principle 12 – Collect and Analyze User-Evaluation Metrics

Court and domestic relations caseload monitoring criteria should include user-centric metrics, such as party satisfaction, with various aspects of the process, including court resources and services. Courts also should consider periodically engaging former parties in exploring ways to improve the process.

COMMENTARY

The court user is central to family justice. With an increasing number of parties in family and civil cases engaged in the court process without attorneys, courts must embrace a customer- service mindset. This mindset should extend to data collection. Courts should be striving to meet the needs of the constituency rather than telling them what their needs are or merely providing services that meet only a small portion of their needs. Accordingly, courts will need to gather information to be able to assess whether constituent needs are, in fact, being met.

Court users are a foundational source of information on what is working well with respect to court processes and services and what might be improved. Courts should employ party surveys, focus groups, and other forms of user engagement to continuously improve court procedures, services, and self-help materials. This is a very different approach from current practice in most domestic relations courts, but courts and judges must not be afraid of change. As with any data collection, courts adopting this mindset will also need to analyze the information gathered from court users and present findings in a manner that will clarify areas of needed improvement.



Data Collection, Evaluation and Technology Innovation *continued*

Principle 13 – Implement, Innovative and Appropriate Technology

Courts should deploy innovative and appropriate technology solutions whenever possible to assist domestic relations parties, as well as judicial officers and court staff handling domestic relations cases.

13.1 Courts should offer parties digital solutions and virtual means of engaging with the court, but technology solutions should not entirely replace the in-person and in-court resources available to parties.

13.2 Courts should adopt a component-based case management system that allows for flexibility in vendor selection and system functionality.

COMMENTARY

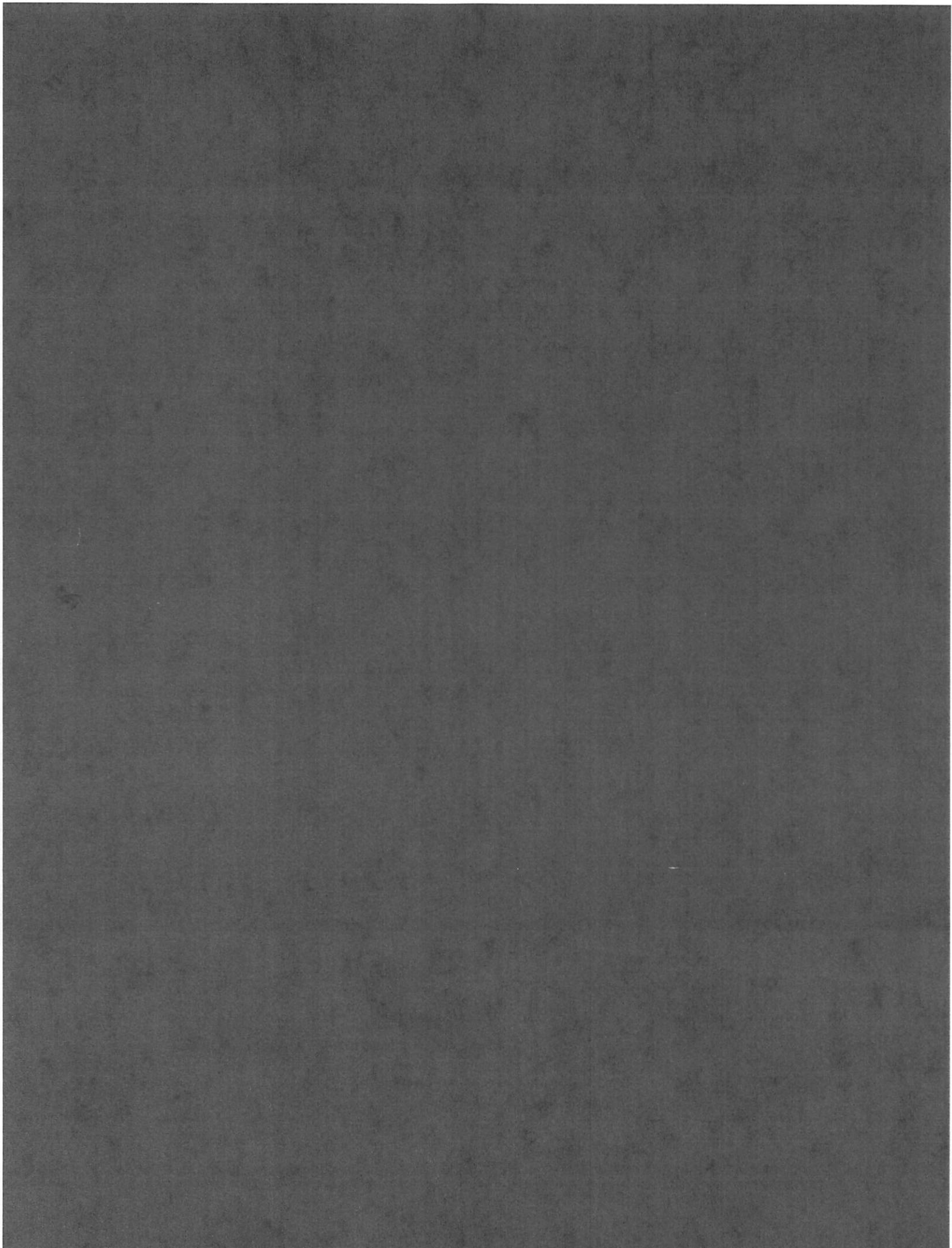
Technology is creating efficiencies in court and case management, and in helping parties in divorce and separation cases navigate the process. While many facets of judicial system operations—and everyday life more broadly—are moving online, courts must not assume that everyone who needs their services can and will access self-help information digitally. Many parties lack access to the Internet due to poverty, language barriers, being in transition due to the separation, or being apprehensive of technology, and must have access to the court via other means. Self-help materials and information should be available to parties through multiple

channels to ensure broad accessibility by parties with varying levels of technological sophistication and Internet access. Where the court adopts technology solutions that interface with parties, these solutions should reflect the reality that the large majority of those who access information online will be doing so from a smartphone. Ensuring that court websites are mobile optimized is an important aspect of accessibility.

Technology is also essential to internal court case management. The Joint Technology Committee of NACM/NCSC/COSCA NextGen Court Standards suggest a move away from traditional monolithic case management systems provided by a single vendor.²³ Instead, the NextGen Standards propose a component-based approach that facilitates a grouping of functional capabilities that may be implemented independently from one another. IAALS has explored this component-based model in the context of serving self-represented parties, detailing the many ways in which these parties benefit from this model.²⁴

²³ Conference of State Court Administrators, National Center for State Courts and National Association for Court Management, Joint Technology Committee. (2017). Introduction to the Next-Generation Court Technology Standards Application Component Model. Available at <https://www.nesc.org/~media/Files/PDF/About%20Us/Committees/JTC/JTC%20Resource%20Bulletins/NextGen%20Court%20Component%20Model%202017-12-08%20FINAL.ashx>

²⁴ Greacen, *supra* note 13, at 9.





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