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Committee on Children and Families

Senator Durell Peaden, Jr., Chairman

REVIEW OF FAMILY COURTS DIVISION AND THE MODEL FAMILY COURT: OTHER SERVICES AND SYSTEMS FOR CHILDREN AND FAMILIES

SUMMARY

Family courts across the states, including Florida, are recognizing the inefficient and fragmented manner in which a family's legal proceedings are handled. Although a single family appearing in court may be experiencing a multitude of complex problems, different courts or judges may be addressing only one family issue at any one time. A family's legal problems frequently flow from or are exacerbated by non-legal issues. However, these issues often go undetected or unaddressed either because the court or the judge is unaware of the family's situation or lacks the knowledge or ability to link the family with needed services. Therefore, although the legal issue may be resolved, the underlying issue is not, necessitating or contributing to repeated appearances in the judicial system.

In addition to the complexity of family court cases, the volume of these case filings and the percentage of families unrepresented by legal counsel have dramatically increased over the last 10 to 15 years, placing a greater demand on the judicial system.

These factors have spurred the initiative for family court reform. A number of states have examined and begun implementing the unified family court model for both organizing the court system and resolving the family legal issues. Defined by one scholar, the unified family court is –

“. . . a single court system with comprehensive jurisdiction over all cases involving children and relating to the family. One specially trained and interested judge addresses the legal and accompanying emotional and social issues challenging each family. Then under the auspices of the family court judicial action, informal court processes and social services agencies and resources are coordinated to produce a comprehensive resolution tailored to the individual

family's legal, personal, emotional and social needs. . .”¹

Florida has been moving toward family court reform for 10 years. It began with the legislatively established Commission on Family Courts in 1990 and includes most recently the Florida Supreme Court's endorsement of the Family Court Steering Committee's guiding principles and characteristics of a model family court.

Key stakeholders in the family court and surrounding systems that support families have identified the major areas of focus in Florida's implementation of a unified family court and legislative actions that would facilitate this process. The actions developed for that portion of the unified family court process that pertains to the services and systems for children and families in the court system include promoting a continuum of alternatives to litigation; providing a phase in of standards, training, certification and monitoring for supervised visitation programs; allowing for cross-over use of guardians ad litem; strengthening the parenting education requirements for divorcing parents; providing legislative guidance for effective collaboration between the courts and social services; and reconciling inconsistency in the statutory definitions of domestic violence.

BACKGROUND

As with many other states, Florida has experienced a tremendous growth in its family court cases. The number of domestic relation court filings in Florida increased by 68.5 percent from 1986 to 2000 and juvenile delinquency and dependency court filings increased by 56.6 percent.² These domestic relations, juvenile delinquency and dependency cases accounted

for 44.4 percent of all cases heard in circuit courts in 2000.

In addition to growth, the complexity of family court cases places further demands on the judicial system. Family court cases frequently involve at least one other related legal proceeding. For example, a family in a dissolution of marriage filing may have one or more family members involved in another proceeding such as a hearing for a domestic violence injunction or for delinquency. In many cases, the parties are appearing before a different judge in each proceeding. According to a survey conducted by the National Center for State Courts, approximately 40 percent of families appeared before the court more than once for family related matters.³ In one particular cross-over study of court file cases in Marion County, Florida, the Supreme Court's Office of State Courts Administrator found that 63 percent of the family court case files included parties (or other family members including children) with previous, concurrent or subsequent involvement in other related family court cases.⁴

An increasing number of litigants in family court cases are also foregoing legal counsel. In Florida, an examination of family court cases conducted by the Office of State Courts Administrator found that petitioners in dissolution of marriage filings were represented by attorneys in 52 percent of the cases reviewed. Only 19 percent of the respondents were represented in the initial stages of the cases.⁵ Since many of these litigants are minimally or totally unfamiliar with the judicial process, these pro-se cases traditionally place greater demands for time and assistance on the judicial system.

Additionally, the legal issues before the family court often have their genesis in other underlying social problems such as unemployment, inadequate housing, drug or alcohol abuse, domestic violence and poverty. These underlying non-legal issues frequently complicate the particular legal problem brought before the court and, further, may go undetected or unaddressed or services and resources may be unavailable. The court's limited authority and jurisdiction to resolve a family's non-legal issues may significantly undermine the effective long-term comprehensive resolution of the legal issues before the court.

This convergence of growth, complexity, and demand is triggering the need for court reform in many states. One family court reform concept receiving considerable attention is the proposed unified family

court model. The unified family court consolidates the fragmented courts for families by providing comprehensive jurisdiction over all cases involving children and families. One judge or one team coordinates the different court cases for a family and ensures that each family is viewed as a whole. Beyond the organization or operation of the courts to unify a family's multiple court cases, the unified family court concept embraces a new way of thinking about the justice system, that of emphasizing the resolution not only of the family's legal problems but also the underlying problems that created the need for the family's interaction with the court system, and of providing opportunities to build the family's ability to resolve their own disputes. Both of these elements build family skills, functioning and responsibility which, in turn, reduces the need for judicial intervention.

Florida began its move towards family court reform over 10 years ago when the Legislature established the Commission on Family Courts (ch. 90-273, L.O.F.). The Legislature directed the Commission to: 1) develop guidelines for the implementation of a family court division within each circuit, 2) provide statutory, regulatory, and organizational changes, and 3) recommend necessary support services. The Commission's recommendations were formally adopted by the Florida Supreme Court on September 12, 1991. The Court also required each judicial circuit to develop local rules for the establishment of a family court division or alternatively, some other means to coordinate family law and related matters that affected one family. In a subsequent opinion issued on March 10, 1994, the Florida Supreme Court further refined and directed the courts to implement their plans for the creation of family court divisions.

The Court also appointed the Family Court Steering Committee to provide support and assistance in the development and full implementation of the family court division. One of the primary responsibilities of the Committee was to develop a consensus recommendation on the characteristics of a unified family court model, including organization, policy, procedures, staffing, resources, and linkages to the community. In June 2000, the Committee released its recommendations for a model family court model. On May 3, 2001, the Florida Supreme Court issued an order formally endorsing the Committee's guiding principles and characteristics for a model family court model. Since July 2001, three pilot programs for unified family court model programs have been implemented statewide.

The May 2001 Florida Supreme Court order for a model family court embodies the unified family court concept and offers an opportunity to move Florida's family courts toward a system that is more efficient and focused on child and family outcomes. The scope of the recommendations and direction of the Florida Supreme Court indicate that legislative action may assist in the successful implementation of the unified family court in Florida.

METHODOLOGY

This interim project was conducted jointly with the Committee on Judiciary and emphasized the key stakeholders' identification of legislatively based issues and actions that would facilitate the implementation of the model family court in Florida. The recommendations developed stemmed from the actions identified by the key stakeholders. A questionnaire provided the starting point for the project. Thirty responses were received primarily from judges and related judicial staff, but also from state agencies, community agencies and universities, and identified the broad topic areas and some of the key issues in implementing the recommendations contained in the Florida Supreme Court decision for a model family court. Two workgroup meetings were held with all stakeholders interested in the unified family court initiative, followed by additional meetings of stakeholders on specific topics. Staff conducted site visits to Pinellas and Pasco counties' pilot unified family court projects. A review of literature was conducted on various aspects of the unified family court model and other states' practices.

For purposes of dedicating attention to specific issues and actions, each committee had lead responsibility for a set of the major issue areas of the unified family court initiative and this interim project. The Committee on Judiciary was responsible for case management; information, technology and public records accessibility, admissibility, confidentiality and privacy; intake and referral; and family law. The Committee on Children and Families was the lead committee for alternatives to litigation, services to assist litigants in the court process, and coordination and delivery of services to assist families with their non-legal problems, as well as certain aspects of the family law area. Each committee's interim project report focuses its *Findings* and *Recommendations* sections on solely that committee's respective issues and related recommendations.

FINDINGS

ALTERNATIVES TO LITIGATION

Deciding specific disputes between parties regarding contested issues such as custody, support, visitation and dependency case plans is an integral component of the court's family law decision making function. With the continuous growth in family law cases and in the number of parties not represented by attorneys, greater attention is being given to the appropriate utilization of the judicial system for dispute resolution. There is research, for example, indicating that very high conflict cases regarding basic parenting issues continue for a number of years for a small but significant number of parents, consuming an enormous amount of time and energy of the judges.⁶ The effectiveness of a traditionally adversarial judicial process in adequately resolving family legal problems that are often so intertwined with highly charged emotional and social family problems has also increasingly come into question. As a result, unified family court efforts in states such as Oregon have examined and begun integrating into their systems alternative avenues to assist families to resolve their disputes and to provide them with the tools to appropriately deal with future conflicts, as well as to improve the efficiency of the court system.

Currently, the Florida statutes which guide alternative dispute resolution for civil actions focus primarily on court-ordered mediation and arbitration. Chapter 44, F.S., sets forth the statutory framework for mediation alternatives to judicial action. The alternatives provided for in ch. 44, F.S., are court-ordered nonbinding arbitration, voluntary binding arbitration, voluntary trial resolution and court-ordered mediation, the latter of which is the alternative most frequently applied in family law cases. The Supreme Court is authorized to establish standards and provide a certification process for mediators and arbitrators. Each board of county commissioners is permitted to levy a service charge as designated in s. 44.108, F.S., on any county or circuit court proceeding or on any petition for a modification of a final judgment of dissolution to fund mediation services. According to the Office of State Courts Administrator, many counties levy the permitted service charge. These service charges and county commission court allocations are the primary source of funding for mediation services, in addition to the fees assessed the parties who are able to pay for the mediation services. Section 44.201, F.S., also allows for circuits to establish citizen dispute settlement

centers to provide communities with an informal forum for the mediation and settlement of disputes. The family law chapters 39, 61, and 741, F.S., reference the permitted use of mediation services by the courts.

Florida's court system has utilized alternative dispute resolution avenues for over 25 years. As of August 2001, there were 15 citizen dispute centers, 41 county mediation programs, 23 family mediation programs, 13 circuit civil mediation programs and 20 dependency mediation programs. Florida's Office of State Courts Administrator's assessment of family court cases found documentation of court-ordered mediation in approximately 20 percent of contested cases, a potentially underreported utilization.⁷

However, respondents to the Senate survey and participants at the interim project workgroup meetings have identified a need for more non-judicial resolution techniques and opportunities to be available to families, both prior to and through court intervention. More specifically, a continuum of alternatives to litigation should be available and include a prevention component to educate parents on how to resolve conflicts constructively, services to assist families in conflict and how to resolve future conflict, pre-suit alternative dispute resolution options to assist families to resolve the conflict prior to court action, and court ordered alternative dispute resolution options. These alternatives to direct court intervention are being seen as less adversarial avenues that can more effectively address the full scope of family issues and more efficiently and appropriately use the overburdened judicial system. Evidence of the potential benefits of alternative dispute resolution can be ascertained from Florida's assessment of family court cases that found in the contested and uncontested cases where mediation was ordered and held, 58 percent reached a settlement and 11 percent settled on some but not all of the issues.⁸

SERVICES TO ASSIST LITIGANTS IN THE COURT/LEGAL PROCESS

There are a number of services to families in the judicial process that are the outgrowth of the courts' need for information that will assist them in their decision making functions and in assuring the safety of the children. Services also have been and continue to be developed that assist the families to successfully navigate the judicial process and achieve the desired outcomes. Each of these types of services contains a common feature of facilitating the effective and

efficient outcome of the judicial process. Some of these services have been implemented and are funded by the courts. However, as courts consider the implications of the amendments to Article V of the Florida Constitution pertaining to the funding of court costs, discussions have ensued as to whether such services are a core function of the court and should remain or be added as a judicial service.

Guardian Ad Litem: Guardians ad litem are individuals who are appointed by the court for a child to represent or act in the best interest of the child. A number of sections of family law allow or even require the court to appoint a guardian ad litem for the child including ch. 39, F.S., in dependency proceedings, ch. 61, F.S., in dissolution of marriage proceedings, ch. 63, F.S., for abandoned newborns in termination of parental rights proceedings, ch. 914, F.S., for children who are witnesses in criminal proceedings, ch. 984, F.S., in child in need of services proceedings, and in ch. 985, F.S. in delinquency proceedings. These chapters also delineate the functions of the guardian ad litem, qualifications, access to information and confidentiality provisions.

While there is commonality across the chapters in such aspects as the basic goals and functions, there are discrepancies, such as in the role permitted and limitations placed on guardians ad litem. These divergent statutes governing the actions of the guardians ad litem combined with separate courts handling different family matters, each assigning its own guardian ad litem, result in different guardians ad litem for the same child. Providing the same child with different guardians ad litem for different proceedings is an inefficient use of an extremely limited resource and does not contribute to the comprehensive focus on the family and child that the unified family court concept promotes. As a result, participants in the interim project workshops pointed to the need for statutory provisions to clearly allow for cross-over use of guardians ad litem between dependency and domestic relation cases, and to provide more consistency in the guardian ad litem requirements across the different family court statutes.

Domestic Violence Assistance Services: Sections 741.30 and 741.31, F.S., require the clerks of the courts to assist petitioners who are seeking either an injunction for protection or enforcement of the injunction by providing necessary forms and instruction in completion of the forms, as well as brochures on the local domestic violence center services available. Domestic Violence Centers have been established by the Legislature to provide services

to victims of domestic violence including emergency shelter, a hotline, counseling, case management and information and referral (s. 39.905, F.S.). In some courts, the assistance available to victims of domestic violence is focused primarily on filling out the paperwork necessary to apply for an injunction for protection. Some courts have also developed partnerships with the domestic violence centers in offering domestic violence advocacy services to the victims who are pursuing an injunction.

There is a growing recognition, however, that victims of domestic violence need more assistance in the legal system than the minimally required paperwork instruction. Victims of domestic violence need an advocate to assist them with the legal process, access to legal representation, assurance of safety while at the courthouse, assistance in navigating the child protection system if potential child abuse is involved, and linkages with services available to support the victim's efforts to keep themselves and their family safe. Given the complexity of the domestic violence issues, meaningful actions were determined to require continued dialogue and attention.

Supervised Visitation Programs: A supervised visitation program provides the opportunity for contact between a noncustodial parent and a child in the presence of a third party responsible for observing and ensuring the safety of those involved [s. 753.001(1), F.S.]. Cases served by supervised visitation programs include dependency, domestic violence and divorce cases. There are currently 40 supervised visitation programs in Florida. While the Chief Justice of the Supreme Court established minimum guidelines for supervised visitation programs used by the courts, there are no standards by which to assess the quality of the programs, no monitoring capabilities to assure the safety of the clients, the staff and the community, and no reporting requirements to track the services provided. Participants recommended phasing in training, adequate standards, a certification and monitoring process and strengthened security for supervised visitation programs.

Parent Training and Education Services: All parties in a dissolution of marriage or paternity proceeding where minor children are involved are required to complete the Parent Education and Family Stabilization course prior to the court's entry of the final judgment (s. 61.21, F.S.). This course is designed to educate, train, and assist the parents as to the consequences of divorce on the parents and children, and must be approved by the judicial circuit. Workgroup participants

pointed to the need to tighten the time frame in which the course is completed from the current requirement of prior to entry of the final judgment to within 45 days of filing. In addition, it was noted that the quality of the course differed across the state. This may be attributable, in part, to the current statutory requirement that parenting courses be approved by each judicial circuit. Options to improve the quality include review and update the minimum curriculum to include 1998 revisions to the intended content, require that the minimum curriculum be the core course content required in each circuit, provide for a state level approval of the education programs that meet the curriculum and provide minimum standards for providers of the course.

COORDINATION AND DELIVERY OF SERVICES TO ASSIST FAMILIES WITH THEIR NON-LEGAL PROBLEMS

One of the guiding principles endorsed by the Florida Supreme Court in its May 3, 2001 order for a model family court is the key role that therapeutic justice should play in the family court process. "Therapeutic justice" is defined in the order as the process that "attempts to address the family's interrelated legal and non-legal problems to produce a result that improves the family's functioning". The order recognizes that underlying issues, such as drug abuse, domestic violence, and family dysfunction form the basis for the family's interaction with the judicial system. This attention to assisting families with not only their legal issues but with their underlying non-legal problems in order to enhance their functioning and their ability to constructively resolve their disputes is supported in literature and is linked with more effective court resolution of family cases and minimizing the need for continuing court intervention.⁹ Minimizing and even preventing family involvement with the judicial system is a fundamental objective of the unified family court concept.

The court system alone is unable to provide families with the services needed for achieving the positive and lasting outcomes desired for families. Therefore, strong community partnerships with a variety of agencies and shared responsibility for the outcomes of families must be formed. Many family courts have already developed partnerships with individuals and organizations in their communities to offer court related services, such as supervised visitation, legal assistance, and domestic violence advocacy. However, the unified family court focus on improving a family's functioning

comprehensively necessitates a broader scope of coordination. The respondents to the interim project survey and participants at the interim project workgroup meetings have conveyed that a system of coordination between the courts and social service agencies is needed to facilitate building the courts' awareness and knowledge of the services available to children and families in the community, determining how to link children and families to needed services, sharing of information, and preventing duplication of resources.

The need for funding and the inadequacy of professional resources in the social services needed by families in the court were strong common themes in discussions with stakeholders, particularly as it pertains to the rural areas. Workgroup participants pointed to the need to adequately fund children and family services and identified options for increasing community and federal funding. The need to eliminate barriers and promote the sharing of resources for children and families served by multiple agencies was highlighted as a mechanism for more efficiently using state resources. The reluctance to share available resources can result in a child or family not receiving a needed service solely because of the location of the state funds. One population group for whom developing greater shared responsibilities is particularly needed includes the youth who cross the jurisdiction of the Department of Juvenile Justice's delinquency system and the Department of Children and Families.

While developing a system of coordination between the courts and social service agencies provides a mechanism for making services needed by families more easily accessible through the court system, multiple collaborative efforts already exist in the social services arenas to address other specific coordination needs. Some participants in the interim project discussions have pointed to the opportunity the implementation of the unified family court model presents to explore a common collaborative mechanism to create greater unity in the delivery of all family and children services.

FAMILY LAW

In light of the effort to coordinate related cases under a unified family court model framework, statutory provisions were identified where jurisdiction and procedural conflict exist. One area of attention was ch. 741, F.S., as it pertains to the injunction for protection against domestic violence and its

relationship with the child abuse provisions of ch. 39, F.S. Specifically, the definition of domestic violence in s. 741.28, F.S., provides for an inconsistent directive for two groups of household members and, therefore, raises the question as to whether the definition of domestic violence applies to either of these two groups: those in which there is a child in common who have never lived together and those involving individuals related by blood or marriage who have never lived together. This same definition appears in ch. 39, F.S., as well as other sections of Florida law.

CONCLUSION

Implementing the unified family court model in Florida involves the organization and operation of the court system to manage family cases across different family law categories and proceedings. Just as important, it requires the interconnection of numerous systems with the children and families in the court, the flexibility of court and non-court systems and services to apply beyond the limitations of existing family law categories, and the creation of opportunities for families to resolve disputes and solve their problems without court intervention. Such an endeavor will require a multifaceted approach and a continuous effort over an extended period of time. Below are the predominate actions identified by stakeholders in the involved systems that would move forward Florida's effort to implement the unified family court model.

RECOMMENDATIONS

Alternatives to Litigation:

- Provide for a continuum of alternatives to litigation from prevention, to assisting families in conflict, to pre-filing alternatives and court ordered alternative dispute resolution.
- Make information on alternatives available to parents and others.
- Allow for either voluntary or court-ordered alternatives.
- Strengthen statutory provisions to promote alternatives to litigation.

Services to Assist Families in the Court/Legal Process:

- Increase the availability of services to assist families in the court/legal process.
- Tighten the time frames to complete the parent education course to 45 days and improve the consistency of the quality.
- Provide supervised visitation programs with training, adequate standards, a certification and

monitoring capability, and adequate funding through a phase-in approach.

- Allow for cross-over use of guardians ad litem and provide consistency in requirements across different family courts.
- Encourage the use of independent evaluators.

Coordination and Delivery of Services to Assist Families with the Non-Legal Problems:

- Provide legislative intent, encouragement and guiding principles for effective collaboration between courts and social services.
- Dedicate resources to develop system linkages between social services and courts, such as a position in the court to act as liaison between the systems.
- Provide education and training to all parties.
- Explore funding options such as providing incentives to expand the creation of Children's Services Councils, improving the identification and utilization of federal and other available funding sources, and identifying strategies for sharing resources among state agencies.

Family Law:

- Reconcile inconsistency in the statutory definitions of domestic violence.

Symposium, Family Law Quarterly, Fall 1999, page 92.

¹ Jessica Pearson, *Court Services: Meeting the Needs of Twenty-First Century Families*, Family Law Quarterly, Fall 1999, Page 73.

² Office of State Courts Administrator

³ Andrew Schepard, *Introduction to the Unified Family Courts*, New York Law Journal, Volume 217, Number 72, April 16, 1997, page 70.

⁴ Sondra Williams and Sharon Buckingham, *Dissolution of Marriage in Florida – Preliminary Assessment Findings*, Family Court Review, April, 2001, page 31.

⁵ Williams and Buckingham, *Supra*, page 27.

⁶ Andrew Schepard, *Parental Conflict Prevention Programs and the Unified Family Court: A Public Health Perspective*, Family Law Quarterly, Spring 1998, page 101.

⁷ Williams and Buckingham, *Supra*, page 30.

⁸ Williams and Buckingham, *Supra*, page 30.

⁹ Barbara Babb, *Fashioning An Interdisciplinary Framework for Court Reform in Family Law: A Blueprint to Construct a Unified Family Court*, Southern California Law Review, March 1998, Pages 8, 12, 13, and 18; Jessica Pearson, *Court Services: Meeting the Needs of the Twenty-First Century Families*, Family Law Quarterly, Fall 1999, pages 74-76; and Jeffery A Kuhn, *A Seven Year Lesson on Unified Family Courts: What We Have Learned Since the 1990 National Family Court*