

## **Family Law Resource Guidelines**

### **DIFFERENTIATED CASEFLOW MANAGEMENT IN FAMILY LAW: A Guide to Efficiency and Access**

#### **Preface**

The Family Law Resource Guidelines project grew out of work done by the trial courts at a series of statewide conferences in which court teams met to discuss and plan for the efficient and effective management of their family law caseload. Subsequently, in response to requests from trial court leadership and building on the accomplishments of the courts in organizing and managing their family law caseload, a working group of judges and court executives initiated this project to address the critical need for resources in California Family Law Courts. The Family Law Resource Guideline Project has built on the ongoing work of the Family and Juvenile Law Advisory Committee, the Task Force on Self-Represented Litigants, the Domestic Violence Policies and Procedures Task Force and the Elkins Family Law Task Force.

The project is led by a Drafting Team consisting of seven family law judicial officers and a court executive officer. This Drafting Team was supported by over sixty court experts from twenty-seven local trial courts, divided into seven groups of subject matter specialists. The topics addressed by the court expert groups were: (1) differentiated case management, (2) operations, (3) hearings and trials, (4) assistance to self-represented litigants, (5) Title IVD Matters, (5) child custody mediation, (6) domestic violence, and (7) workload data and research. (See appendix A for list of trial court subject matter experts)

The work of the court experts in identifying, assessing, describing and combining these practices and procedures was the first step in this project. The second step was a research component, conducted by Greacen Associates, LLC. that sought to assess the workload implications of these effective practices and the resources needed for implementation.

The result is a set of topical guides on practices identified as effective and efficient in family law courts. These guides remain works in progress and are intended to encourage input so that they can be modified as the courts move forward. This guide addresses the topic of differentiated caseload management.

## Acknowledgments

### Drafting Team:

- Hon. Sue Alexander, Commissioner, Alameda
- Hon. Jerilyn Borack, Judge, Sacramento
- Hon. Leonard P. Edwards (Ret.), AOC Judge-in-Residence
- Hon. Donna J. Hitchens (Ret.), Judge, San Francisco
- Hon. Mark A. Juhas, Judge, Los Angeles
- Hon. Laura Masunaga, Presiding Judge, Siskiyou
- Mr. Mike Roddy, Executive Officer, San Diego
- Hon. Nancy Wieben Stock, Judge, Orange

Great appreciation is owed to the members of the court expert groups without whom this project could not have been completed. These individuals brought expertise from court operations, management, family court services family law facilitators offices and other self-help centers, and the bench to develop these suggested practices they believe will work well to benefit the public, modernize family court operations, and support family justice overall.

Thank you to Mr. John Greacen of Greacen Associates who took on the task of traveling to 13 California courts to gather data on workload implications raised by the practices and procedures recommended by our experts, and then to organize and report on his findings and to Ms. Barbara Seibel who used her substantial organizational and writing skills to get an enormous amount of information from many individuals working in many courts compiled and written.

Special thanks to Center for Families, Children & the Courts staff for their work on this project.

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A Guide to Efficiency and Access**

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DRAFT

# DIFFERENTIATED CASEFLOW MANAGEMENT IN FAMILY LAW:

## A Guide to Efficiency and Access

### INTRODUCTION

An effective family law court needs to implement a plan to manage its flow of cases, from beginning to end, in an orderly and systemic manner. The caseflow management strategy is the organizational core around which all the specialized parts can connect, clarify their responsibilities, and communicate and coordinate their work. The result is an effective court process that improves outcomes, avoids unnecessary and inefficient use of resources, offers high-quality customer service for litigants and their attorneys, and makes serving in the court more rewarding.

In 2005, the Administrative Office of the Courts, Center for Family Children & the Courts (CFCC), held workshops for trial courts on the topic of effective practices in family law caseflow management. The workshops were organized by court size. 209 court representatives from 37 of California trial courts participated in the workshops. The participants worked together in various configurations to develop action plans for family law caseflow management to take home to their local courts. In 2006 and 2007 Greacen Associates led teams to provide technical assistance visits to 10 local courts to help with the implementation of their action plans. These technical assistance teams were made up of judges and court staff from other courts along with CFCC staff.

In 2007, in response to requests from trial court leadership, and building on the ongoing work of the courts in the management of family law caseflow, a working group of judges and court executives initiated the Family Law Resource Guideline Project to address the serious need for additional resources in family law. This project drew on the expertise of judges, commissioners, business office staff, administrators, family law facilitators, self-help center attorneys and staff, family court services mediators, and research and planning staff to identify and describe a set of effective practices for a well designed family law court system that would serve the needs of the court for efficiency and the public for access to justice. For the next two years (2007-2009), these court experts (See Appendix A) met in person and by conference call to develop the set of practices set out in the Family Law Resource Guidelines project materials. Greacen Associates was contracted to assess the workload implications of the practices identified by the court experts. Since no court had implemented all of these procedures and practices, 13 courts were identified that had

**“The courts cannot manage limited resources efficiently without the ability to manage the flow of cases ...”**

*Elkins Family Law Task Force: Final Report and Recommendations, 2010*

one or more of these practices in operation. In 2010-2011 the researchers visited the 13 local courts, collected workload data, and analyzed the data.

At the center of the effective practices identified by the court experts was the need for differentiated case flow management. The recommendations of the Elkins Family Law Task Force reflected this priority its recommendations made to the Judicial Council in 2010. The first of these recommendations called for courts to effectively manage the flow of its family law cases. Subsequently, the legislature amended Family Code sections 2450 – 2451 (See Appendix C) to allow the court to order case management on its own motion and required the Judicial Council to adopt a statewide rule of court to implement family centered case resolution (family law case management). In 2011, the Judicial Council adopted California Rule of Court 5.83, effective January 1, 2012, implementing family centered case resolution (See Appendix B).

**The implementation of family law caseflow management will provide data that can significantly help document the need for additional resources to family law in the future.**

Ideally, additional resources would be provided to family law courts to support caseflow management, as well as other family law functions. However, in times of serious resource constraints, implementation of caseflow management is still possible and desirable. Although there has not been extensive evaluation of caseflow management, early evidence suggests that courts would achieve workload efficiencies in some areas that would allow reallocation of existing family law staff to other tasks. For example, in courts that have implemented caseflow management, family law staff tend to spend a lower proportion of their time on document processing.<sup>1</sup> The implementation of family law caseflow management will provide data that can significantly help document the need for additional resources to family law in the future.

This guide is intended to serve as a tool for reviewing and revising the management of family law caseflow practices and procedures, and to assist in the implementation of CRC 5.83. First, the guide outlines some fundamental components of caseflow management, then addresses suggested approaches and procedures, and finally analyzes possible resources necessary to implement the practices by providing specific program examples.

## **METHODOLOGY**

The first phase of the Family Law Resource Guidelines project involved the drafting team and groups of court experts working to develop the sets of practices and

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<sup>1</sup> 2010 Workload Study

procedures they believed were effective for family courts.<sup>2</sup> Over a two year period, these individuals participated in five structured meetings, and series of telephone conferences to gather information and ideas. Once each group had completed its process, the procedures identified were reviewed by each of the other groups. As stated, these groups built on the ongoing work of the Family and Juvenile Law Advisory Committee, the Task Force on Self-Represented Litigants, the Domestic Violence Policies and Procedures Task Force and the Elkins Family Law Task Force.

Once these court experts had completed the task of identifying and describing the following effective practices, work began on assessing the workload implications of many of those tasks. No single court had implemented all of the practices identified by the court experts. Therefore, the researchers elected to visit courts that had implemented one or more of the tasks as described by the court experts. Over the course of the following 2 years, Greacen & Associates working as research consultant, visited 13 California courts gathering data on family law court workload. In addition to observation, interviews and management reports collected during the court visits, each of the 13 courts completed a baseline survey setting out the workload requirements for basic family law functions such as filing, calendaring, handling default and uncontested paperwork, numbers of hearings set and new cases filed, etc. Once the data collection process was completed, the data was analyzed and the results are set out in the Resource Analysis section at page 28.

### **Differentiated Case Management Fundamentals**

- Courts routinely review the status of family law cases and assess their progress toward disposition according to court standards.
- Use of differentiated case management techniques throughout a case to organize events in ways that leverage staff and judicial time, and solve procedural problems at the earliest possible point in a case.
- Settlement opportunities are offered to litigants at hearings and status conferences.
- Assistance to self-represented litigants with paperwork is available at the time of a hearing or status conference.
- Court intervention which results in unnecessary appearances for litigants and their attorneys, and use of court resources is avoided.
- Use of readiness reviews to ensure that cases are ready to move forward for hearing or trial as scheduled.
- Trials are not continued once commenced. Once a trial has begun, it should be completed before another trial is started.

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<sup>2</sup> See Appendix A

## **FUNDAMENTAL COMPONENTS OF CASEFLOW MANAGEMENT**

Components of an effective caseflow management system include the following:

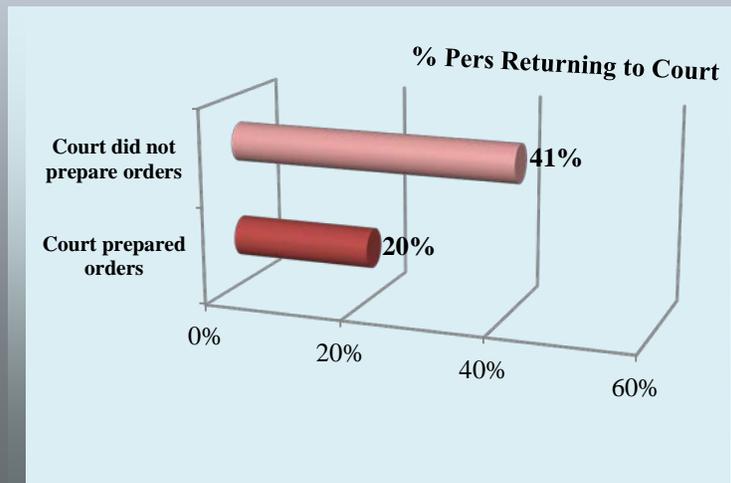
### ***FOCUS ON EFFECTIVE COURT OPERATIONS***

An integrated system of practices and procedures focused on planning and accountability are fundamental to efficient court operation. These goals are interrelated. Effectively handling cases and meeting the needs of litigants and their attorneys promotes court efficiency and can translate into cost savings. A family law court can be more effective if it operates as a coordinated system.

The roles played by the judicial officers and courtroom staff, business office and operations, family law facilitators/self-help centers staff, custody mediators, and others are all critical to the process. An example is a seamless process between the family law facilitator/self-help center and the clerk's office. These are the two parts of the family court system that interact with the highest daily volume of professionals and members of the public. Close collaboration between these two parts is needed to eliminate duplication of tasks and efficiently assist the public with filing paperwork.

#### **PREPARATION OF ORDERS SAVES TIME**

One court conducted a study on the effect of providing pro per litigants with orders after hearing. Over 2.5 years, it was found that if the court prepared orders immediately after the hearing for pro per litigants, those litigants returned to court for further orders on the issues involved only half as often as litigants who did not receive this service.



### ***STANDARDS***

Family law court caseflow management systems need to collect good data and have standards to measure against to know if they are efficiently providing responsive service and optimizing the benefits of effective caseflow management.

## **CASEFLOW MANAGEMENT BEGINS BEFORE FILING**

Caseflow management begins prior to case initiation. A litigant's attorney assesses the case, determines what paperwork needs to be filed, and ensures it is correct before it is filed. In the case of a self-represented litigant, the family law facilitator/self-help center can assess the case, identify potential options for the litigants, and help make sure the correct paperwork is filed. Caseflow management continues throughout the case until judgment and through postjudgment matters.

## **TRACKS CASES**

Caseflow management systems work most efficiently when supported by electronic information systems that track cases at various procedural benchmarks to see that cases are not lingering needlessly without progress for years. Courts can identify systemic logjams, such as high continuance rates, and identify and address the causes of the problems. Tracking the court's caseflow on several performance points will help ensure that matters are being calendared for hearings promptly and cases are getting the time they need before the judicial officers.

## **DIFFERENTIATION**

The key to managing caseflow is the ability to address varying needs of different cases, referred to as "differentiated caseflow management." While all cases need to be resolved, they cannot all be resolved in the same manner or in the same amount of time. Some cases are completely uncontested and can proceed without ever needing courtroom services. Other cases require one hearing, but then can move toward disposition with settlement negotiations and assistance with paperwork. A court that differentially manages its caseflow can identify these cases early in the process and quickly facilitate their completion, thereby freeing up resources for cases requiring more attention.

## **SETTLEMENT SERVICES**

Settlement services are critical to efficiency. The opportunity to participate in settlement discussions should be available to both attorney-represented and self-represented litigants at the earliest possible point. This practice is central to family law caseflow management. Because successful settlement discussions significantly reduce use of courtroom time, reallocating qualified staff

**Courts that provide assistance to self-represented litigants to resolve cases at the first court appearance save future court hearings. The cost of providing this service is \$.45 for every \$1.00 saved. When the costs to the litigants of attending the eliminated hearings are included, the cost of the services falls to \$.14 for every \$1.00 saved.**

Greacen Associates  
Cost/Benefit Study of Six Central Valley courts

attorneys to work as qualified third-party neutrals for parties who wish to participate in settlement discussions helps cases move forward without the need of a hearing or trial.

### **MAXIMIZE TIME TO HEAR CASES**

The amount of time judicial officers spend on nonjudicial functions in the courtroom should be minimized so that they can maximize courtroom time hearing cases. When judicial officers review files, they should be looking at cases that are ready to proceed, and in which the parties and their attorneys, if applicable, will be present and ready to move forward as scheduled. If mandatory mediation is required, it should be completed with appropriate information on the outcome available in the file. In appropriate cases, information on related cases, from domestic violence background checks, financial forms and documentation, and other information for judicial officers, should also be present in the file. Cases where service is not complete, where required documents are missing or have critical errors, and cases in which agreements have been reached but are not documented, should have been identified and resolved prior to hearing. If litigants or their attorneys need help with information or settlement assistance at the time of the hearing, qualified support staff should be available to provide it. The judicial officer's time should be spent hearing cases. To achieve this goal, there must be effective caseflow coordination and cooperation between the clerks, the family law facilitator/self-help center staff, custody mediators, courtroom staff, and judicial officers.

### **ESTABLISHING AN APPROACH TO DIFFERENTIATED CASEFLOW MANAGEMENT**

Differentiated caseflow management simply takes into account the unique characteristics of cases to determine the most appropriate steps needed to resolve them in a timely manner and the amount of court resources required. It ensures that events are scheduled in a timely and effective manner, and moves the cases efficiently through the court process. When implementing a differentiated caseflow management approach, cases are generally classified as procedural, substantive, or individual.

### **PROCEDURAL ASSESSMENT**

Procedural differentiation is the simplest and broadest application of differentiated caseflow management. A case is assessed based on its procedural progress toward disposition by asking, "*Is the case meeting some standard set of procedural milestones in a reasonably timely manner?*"

CRC 5.83 (c)(4)<sup>3</sup> sets out a list of possible procedural milestones that a family law court might use to assess the progress of cases:

(A) A proof of service of summons and petition should be filed within 60 days of case initiation;

(B) If no response has been filed, and the parties have not agreed on an extension of time to respond, a request to enter default should be submitted within 60 days after the date the response was due;

(C) The petitioner's preliminary declaration of disclosure should be served within 60 days of the filing of the petition;

(D) When a default has been entered, a judgment should be submitted within 60 days of the entry of default;

(E) Whether a trial date has been requested or scheduled; and

(F) When the parties have notified the court that they are actively negotiating or mediating their case, a written agreement for judgment is submitted within six months of the date the petition was filed, or a request for trial date is submitted.

CRC 5.83 (c)(5) sets out some possible time standards for disposition in dissolution, legal separation, and nullity cases:

(A) At least 20 percent are disposed within 6 months from the date the petition was filed;

(B) At least 75 percent are disposed within 12 months from the date the petition was filed; and

(C) At least 90 percent are disposed within 18 months from the date the petition was filed.

Procedural differentiation of family law cases can be classified into four basic categories, based on where cases are in the process and determining what needs to happen next procedurally.

- **Almost all courts that have implemented caseflow management have family law clearance rates higher than the statewide average.**
- **Most courts that have not implemented caseflow management have clearance rates lower than the statewide average.**

JBSIS

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<sup>3</sup> See Appendix B.

## Cases with No Activity

These are cases that have been initiated but have no further activity. The court has not received anything from the petitioner or respondent subsequent to the petition, and neither party appeared at any noticed events of any kind. In such cases, after 18 months from the date the petition was filed, the court's obligation for further review of the case can be stopped until the case qualifies for dismissal under Code of Civil Procedure section 583.210 or 583.310 or until the parties reactivate participation in the case. These "no activity" cases can be put into a suspense file, separate from any judicial officer's inventory of pending cases. (CRC 5.83(c)(3).)

It is important to note that neither Family Code sections 2450-2451<sup>4</sup> nor CRC 5.83 provides any authority to dismiss a case as a sanction for failure to comply with caseflow management (family centered case resolution) rules.

## Default Cases

Default cases are cases in which the respondent has been properly served with the initial petition and summons but does not file a response. In some cases, the respondent will have been served with a request for order along with the petition and summons. The respondents can attend the hearing on the request for order without filing a response or responsive declaration. In this situation, the case will technically be a default, but there may be potential for negotiations and stipulated dispositions.

*"Because of our caseflow management system we are able to group cases that are alike and can then structure our calendars and our resources most effectively. It allows us to leverage our scarce resources. It also allows us to get our cases completed and into permanent storage at a lower cost rapidly by finishing cases earlier."*

Trial Court CEO

## Uncontested-negotiating Cases

These are cases where the respondent has participated in the case, and the parties are willing to try to reach agreement on the issues. In these instances, the respondent has filed a response. As stated, even when no response has been filed, there may be potential for negotiation if the respondent appears at other court events such as a hearing on a request for order or a status conference.

## Contested Cases

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<sup>4</sup> See appendix C for FC 2450-2451.

These are cases where both parties are participating, and there is only partial or no agreement on the issues after settlement discussions have occurred or the parties choose not to participate in settlement discussions. Contested cases will require courtroom time for hearings or trial.

### **Flexibility of Differentiation**

Cases may move between procedural classifications. A case may be contested at one point, but become negotiating at another, or be default at one point and become negotiating at another. Litigants may be able to negotiate all but one or two issues and may need a trial on the remaining issues. Differentiated caseload management needs to be designed to provide orderly and effective progress specific to the each case's needs and to assist the parties to understand the process for their particular case.

Procedural differentiation can facilitate leveraging of staff workload because it allows clustering of scheduling for future status reviewing events, settlement conference hearings, and trials. For example, if a default case needs to return for a second status conference, it can be scheduled with other returning default cases, with the expectation that the focus of that particular event will be on executing paperwork. Cases in which the litigants are negotiating a disposition may require more court resources and can be scheduled with other returning negotiating cases at a time when resources for settlement discussion can be made available. There would most likely be fewer cases set at a time designed for settlement discussions. Likewise, contested cases could be clustered to more effectively address routine pretrial matters.

### ***SUBSTANTIVE ASSESSMENT***

Substantive differentiation looks at the issues raised in a case to help determine whether it appears to be more or less complex so that planning can be made for effective use of court resources. The more common issues courts focus on in considering substantive differentiation include parentage, dissolution of marriage, matters related to children, support of the parties, property and debt, attorney fees and costs, and domestic violence.

Analyzing the potential complexity of a case can be challenging. Both substantive and procedural aspects need to be considered in identifying which cases are likely to be more complicated and resource intensive for the court. For example, a case may be complex in terms of the number of issues involved, but simple in terms of the court resources it needs because the parties have all the information and documentation they need to settle their case, are in complete agreement, and only need assistance with paperwork. On the other hand, a case with fewer and less complex issues can demand significant court resources when documentation is not immediately available or the parties are unable to agree on issues.

In considering substantive differentiation, cases may be divided into four basic categories.

### **Little or No Intervention Required**

These are cases in which the parties are in complete agreement. Either with or without attorneys, they have no disputes for the court to resolve. The only reason they have come to court is to dissolve their marriage or domestic partnership, to formally establish their parentage, or to formalize some other agreement. Their paperwork is complete, and they do not need assistance from the court other than the timely processing of their documents. In a comprehensive caseflow management system, these cases can be quickly identified so that the court avoids unnecessary court appearances for attorneys and self-represented litigants, or unnecessary use of other resources.

### **Simple Cases**

The caseflow characteristic of a simple case is that the case can be completed to disposition at the first court visit.

Simple cases can exist within two of the procedural categories. First, a simple default occurs when a case has issues of property or support that are either so minor that no documentation is required to complete the case to judgment or the petitioner has the required documentation on hand so that paperwork for judgment can be completed in one session.

Second, an uncontested-negotiating case can be simple when the parties are working on a settlement and the issues such as property or support are either so uncomplicated that no documentation is required to conduct the informed settlement discussions or the parties have the required documentation with them. A simple uncontested case has completed the discovery work necessary for the parties to conduct informed settlement discussions and has reached agreement on all issues, and staff can assist in completing the stipulated judgment paperwork in one visit.

### **Complex Cases**

Complex cases are characterized by the need to attend more than one court event to accomplish disposition of the case.

Default cases can be complex. A default becomes complex when there are issues such as property or support, or complex custody matters that require additional work by the litigant to collect information or documents to properly complete judgment paperwork.

Uncontested-negotiating cases become complex when the parties are working on a settlement and need to gather more information and documentation before they can pursue informed settlement discussions. They may need an appraisal on the family home, information about the value of a pension, or other information necessary to work out a mutual agreement. Consequently, they cannot complete their negotiating in one visit. The complex uncontested-negotiating case is characterized by the necessity of multiple settlement discussions and additional information, and the continued willingness to pursue settlement.

### **Contested Cases**

These are the cases that will require trials to reach disposition. The ability of attorneys and judicial officers to make good time estimates is fundamental to an efficient process.

There are occasionally cases in which a response has been filed, but there has been no further activity by the respondent. Similarly, there may be a case in which the petitioner has taken no further action after a response is filed. In either instance, only one party is seeking to accomplish a final disposition, and the trial is likely to proceed by default. These simple contested cases can be scheduled for an expedited trial with an expectation that they will not take significant courtroom time.

Other cases with fairly simple substantive matters at issue and that do not anticipate witnesses beyond the parties or significant documentary exhibits may not require significant court time.

In complex cases with multiple contested issues or issues that are more legally complex and that anticipate multiple witnesses, exhibits, or experts, or because cases cannot seem to move forward to trial setting for some reason, additional judicial oversight and management may be required. These are the cases in which the court may be more likely to decide to schedule a family centered case resolution conference to develop and implement an individualized family centered case resolution (judicial case management) plan. (FC §§ 2450–2451.)

CRC5.83 (7) sets out some factors that, in addition to procedural analysis, should be considered in deciding to order a family centered case resolution (judicial case management) plan:

- (A) Difficulty in locating and serving the respondent;

- (B) Complexity of issues;
- (C) Nature and extent of anticipated discovery;
- (D) Number and locations of percipient and expert witnesses;
- (E) Estimated length of trial;
- (F) Statutory priority for issues such as custody and visitation of minor children;
- (G) Extent of property and support issues in controversy;
- (H) Existence of issues of domestic violence, child abuse, or substance abuse;
- (I) Pendency of other actions or proceedings that may affect the case; and
- (J) Any other factor that would affect the time for disposition.

### **INDIVIDUAL ASSESSMENT AND DIFFERENTIATION**

Individual differentiation refers to specific characteristics of litigants that may require specific types of court resources. Examples include lack of English proficiency, cultural issues, or inability to get to the courthouse because of incarceration or geographic distance.

Individual differentiation also includes cases involving particularly complicated physical or mental health issues in parents or children, problems with alcohol or other drugs, and homelessness or other difficult personal issues. Individual differentiation helps ensure that needed court resources are available in the courtroom, at mediations, and at other court events and interactions. It also helps predict if additional time should be scheduled to assist the parties in preparing for trial or in the courtroom.

When cases are individually differentiated, the court understands more specifically what court resources are and are not required, and at what point they are required. Individual differentiation can help identify those cases that can sometimes benefit from judicial case management or by participation in specialized court calendars

*“...our Family Law Case Management program is successful in achieving the following:*

- *Helps to reduce acrimony of the parties*
- *Reduces the number of contested hearings (law and motion and trials)*
- *Provides for the more efficient use of judicial resources by focusing the issues*
- *Facilitates the early bifurcation of contested custody issues. Once custody is resolved, parties often able to resolve other issues through settlement*
- *Provides a more informal forum for self-represented litigants to ask questions about the process and to walk away with a checklist of next steps, ultimately bringing the matter to judgment.”*

*Judicial Officer*

such as family drug courts, unified family courts, or domestic violence courts and calendars.

### **TRACKING THE PROGRESS OF CASES**

An effective caseflow management system includes a method by which the court can determine the progress of its cases and evaluate the need for intervention to help move the case forward, often referred to as “case tracking.” The progress of all dissolution, legal separation, nullity, and parentage cases would generally be tracked by the court from filing to disposition.

Rule 5.83, requires courts to implement a family centered case resolution (caseflow management) process to track all dissolution, legal separation, nullity, and parentage cases, and assist them through the court process toward disposition effectively in a timely manner. The rule requires that courts review cases no later than 180 days from initial filing and at least every 180 days thereafter until disposition.

#### ***WHEN A CASE IS NOT PROGRESSING***

If the court determines that cases are not proceeding in a reasonable manner according to the court’s procedural standards, a status conference or family centered case resolution conference (judicial case management conference) must be scheduled to assist case progress. (CRC 5.83(c)(2).)

#### **Status Conference**

A status conference is a court event involving the parties and their attorneys to determine the status of the case and the next best steps needed to accomplish a disposition. The manner in which status conferences are conducted is at the court’s discretion. For example, a status conference may or may not be held in a courtroom. A court may choose to schedule status conferences in the office of the family law facilitator or the self-help center. Courts may choose their own method of record keeping; a minute order is not necessarily required. Status conferences may be conducted in person or by telephone. Assistance at status conferences can be provided by the family law facilitator or other self-help staff, an attorney case manager, attorney volunteers, or others with sufficient legal knowledge to assess case status and determine the next best step toward disposition. There is no requirement that a status conference be conducted by a judicial officer. In many cases, the required assistance is not complex and cases can be completed after one or two status conferences without judicial intervention. In cases that are more complex, judicial management of the case may be required.

## **Family Centered Case Resolution Conference**

A status conference and a family centered case resolution conference differ from each other significantly. A family centered case resolution conference is intended to implement a judicial case management plan. It is more formal than a status conference and is most useful when working with cases that, because of the complexity of legal issues or other matters, need significant judicial assistance in moving forward to an effective, fair, and timely disposition. The family centered case resolution conference is a judicial case management conference and must be conducted by a judicial officer. The purpose of the conference is to develop and implement a family centered case resolution plan under Family Code section 2451.

*“Issues get discussed at the case management conference that would otherwise result in an ex parte request. It cuts down on ex parte requests. Some requests for orders also are eliminated by the way that some settlement discussions are conducted at the case management conferences. Furthermore, the initial case management conference does a good job of educating the pro pers about the process and keeps cases from languishing uselessly in the system.”*

**Family Court Manager**

## **CASE PROGRESS CHECKPOINTS**

The family court process provides several possible “checkpoints” to review the status of a case and offer assistance if needed. Perhaps the two most commonly used checkpoints are status conferences and hearings on requests for orders. When a case is set for hearing, a status review can be a routine part of the file review. A judicial officer does not need to do this review, but it should be performed by an attorney or other legally competent staff. When both parties are present, an opportunity for settlement discussions should be offered.

For cases that have been filed but no request for orders made, some other tracking mechanism is required. Frequently, courts set status conferences to review all cases. These are usually set between 45 to 180 days from case initiation. Some courts set status conferences only for cases without a future hearing date scheduled. Some courts are able to use their electronic case management systems as checkpoints to inform them which cases are not moving forward as expected. Once those cases have been identified, they can be scheduled for a status conference or a family centered case resolution conference.

The tracking and review of cases at regular intervals during the court process need not necessarily trigger an increase in the number of judicial events. For example, once a case is identified as needing some assistance in moving forward, creative use of a status conference can provide the required assistance. This type of nonjudicial caseflow

management is designed to accomplish four basic functions: (1) review case status to identify the next best step, (2) provide assistance to complete as much required paperwork as possible as soon as possible, (3) offer the opportunity for comprehensive settlement discussions, and (4) when cases are contested, help ensure that cases are ready for full and fair adjudication as scheduled.

### ***PROVIDING ASSISTANCE AND AVOIDING UNNECESSARY COURT APPEARANCES***

Whenever self-represented litigants are required to make a court appearance, such as at a hearing or status conference, it is critical that as much assistance as possible is provided to complete paperwork at that time. This reduces the number of trips to the courthouse for litigants and the drain on staff resources. Continuing cases at one of these events in order for the litigants to seek assistance with paperwork at some other place or time will create backlog and delay disposition.

Trips to the courthouse for attorneys and their clients should also be minimized. Appearances by telephone or by submission of written status reports should be employed whenever possible.

### **MANAGING STATUS REVIEWS AND CONFERENCES**

As stated, there is no requirement that a judicial officer conduct status reviews or status conferences. Status review and related assistance can be provided by legally qualified staff. The qualifications of staff providing services at status conferences should be consistent with the requirements set out in the *Guidelines for the Operation of Self-Help Centers in California Trial Courts*.<sup>5</sup> Attorneys or experienced and qualified paralegals are needed for tasks such as case assessment and settlement discussions. If these functions are carried out by paralegals or other nonattorney legal assistants, then they need to be supervised by an attorney who is also working in the program and immediately available for consultation. With appropriate protocols in place, other qualified court staff should be able to contribute significantly to tasks such as the file and overall readiness reviews.

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<sup>5</sup> Administrative Office of the Courts, *Guidelines for the Operation of Self-Help Centers in California Trial Courts*, 2007, [http://www.courtinfo.ca.gov/reference/4\\_24legalsvcs.htm](http://www.courtinfo.ca.gov/reference/4_24legalsvcs.htm). These guidelines require five years of family law experience for a managing attorney, and two years for a staff attorney.

**CONDUCTING STATUS CONFERENCES**

The purpose of a status conference is simply to ascertain the current status of the case, determine the next best step toward disposition, and provide assistance to self-represented litigants with necessary paperwork. The parties should not have a hearing if the setting is for a status conference only. This does not mean that litigants who are negotiating cannot stipulate to orders and judgments. Litigants and their attorney should be provided with an opportunity for settlement discussions if both parties are willing. Assistance with paperwork that will move the case toward disposition should be provided to self-represented litigants at the time of the status conference. In cases where parties need a hearing for temporary orders, attorneys for represented parties can file appropriate pleadings, or, if self-represented, referrals are made to the family law facilitator/self-help center for assistance in filing appropriate paperwork. When a hearing on a request for order is also intended to serve as a status conference, and the litigant is self-represented, family law facilitator/self-help center staff should be available to provide courtroom assistance with the issues raised by the request for order. Clustering cases that involved self-represented litigants at a particular time will help leverage the availability of staff. Support services to the courtroom on a self-represented litigant’s calendar would include such tasks as answering questions, helping settle issues, completing paperwork, and preparing and explaining orders after hearing. It is optimal to have that same staff also conduct the status conference tasks at that time.

*“Our caseload management process saves us time and effort; lots of wasted court appearances are avoided by providing targeted assistance that makes every court appearance effective and move the case one more milestone toward final disposition.”*

**Trial Court CEO**

**Default and Uncontested Cases**

The first task of a status review is to determine whether the respondent has appeared in the case. When the respondent has not appeared, the next issue to address is the status of service of process. Assistance should be provided if there is a problem. If the petition and summons were properly served and a response has not been timely filed, the case proceeds as a default.

**Default Cases**

Once a case has been determined to be a default case, the next question to be addressed

**In courts that have implemented caseload management, family law staff tend to spend a lower proportion of their time on document processing. In the 2010 trial court staff workload study, 5 of the 6 courts that spent the lowest proportion of time on document processing were those that had implemented caseload management.**

**Trial Court Workload Study, 2010**

is whether property, support, or other issues are complicated and require additional documentation or information to properly complete a judgment.

If at least 30 days have passed since service of the summons and if the litigant is self-represented, caseload management staff help prepare the forms required for a default judgment under Family Code section 2336 for signature by the assigned judicial officer. Attorneys prepare the forms for their clients.

If complicated issues do exist, after identifying and explaining the documentation necessary to deal with these issues, the court sets a status review date for the litigant to return with the documentation. When all documentation and information is gathered that is necessary for the judgment, staff will assist self-represented litigants with preparing the 2336 judgment forms. Attorneys prepare the forms for their clients.

If the status review occurs at a hearing based on a request for order for temporary orders and the default case cannot be completed to judgment that day, and if the litigant is self-represented, the family law facilitator/self-help center staff assists with preparing the findings and orders after hearing on the petitioner's request for order as part of the courtroom services. Staff should also ensure the litigant leaves the courthouse with the orders in hand. Caseload management staff set a date for the next status review with the goal of completing the case to judgment.

If all that is required is assistance with simple 2336 paperwork, attorney-supervised paralegal or legal assistant staff can assist while attorneys work on more complicated matters, supervise, and review completed paperwork.

### ***Uncontested-negotiating***

When both parties have appeared in the case, or both parties are present, the first step is to determine whether they are willing to participate in settlement discussions. If they are, the next question to address is whether property, support, or other complex issues require documentation or information for settlement discussions. The next question is whether parties have all needed documents in hand to settle the issues or whether they need to gather documents or information.

If the issues are not complex, and needed information is available, the caseload management staff can begin settlement discussions by determining whether the parties are in agreement with all issues or some of the issues. If the parties agree on all issues, and if required documentation is in hand, the staff assist self-represented litigants with preparing the 2336 judgment paperwork for signature by the judicial officer. Attorneys prepare the paperwork for their clients.

If the parties do not have all needed documents, after explaining what documentation is needed on the issues, the court sets another status review for documents to be obtained with the goal of completing the case to judgment at that time.

When parties have the required documentation, and are in agreement with some issues, parties need to determine whether they want to continue settlement discussions on the remaining issues on another date or litigate these issues. Caseflow management staff assist self-represented litigants with drafting a proposed stipulation for entry on the agreed issues, and depending on the litigants' decision, either set another status review to continue settlement discussions or reclassify the case as contested. Any remaining issues are identified. Attorneys prepare the paperwork for their clients.

Family law facilitator/self-help center attorneys or their properly supervised designees can facilitate the settlement negotiations. If agreement is reached, paralegals or legal assistants can assist self-represented litigants with required paperwork.

It is important that an effective family law court shows no bias for or against litigants who choose to exercise their right to judicial adjudication as opposed to choosing to participate in settlement discussions; nor should the court show a preference for one method of dispute resolution over another.

### ***Parameters for Deciding What Efforts Are Reasonable to Settle a Case***

Domestic violence and other issues of power imbalance may not be appropriate for settlement discussions, or if appropriate, will probably require special accommodations such as separate meeting times or separate meeting rooms. California Rules of Court, rule 5.420,<sup>6</sup> requires that protocols be developed to handle domestic violence cases in settlement service programs.

Settlement discussions at status reviews must always be voluntary and should never be used to keep litigants out of court or delay their access to a hearing. Family law courts should not continue with settlement discussions when litigants want or need a hearing to resolve the issues. Hearings can sometimes be more timely and effective than continued negotiation. Settlement discussions should never serve, or be perceived as serving, as a barrier to direct communication with a judicial officer at a hearing.

Stipulated agreements must be well-informed agreements and made only with complete information on which the parties base their decisions. If the parties need more information about finances, property values, or other issues to make an informed decision, they should not be encouraged to make an uninformed decision for the sake of expediency.

### ***Contested Cases: Family Centered Case Resolution***

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<sup>6</sup> See appendix D for CRC 5.420.

Contested cases will necessitate judicial involvement, at hearings or trials, or through family centered case resolution conference at which a family centered case resolution (judicial case management) plan will be ordered.

While qualified nonjudicial staff may be able to provide self-represented litigants in contested cases with some assistance in preparing for hearings and trials, a judicial officer must conduct family centered case resolution conferences. (CRC 5.83 (d)(2).)

A family centered case resolution (judicial case management) plan may include, but is not limited to, the following (FC 2451):

- (1) Early neutral case evaluation.
- (2) Alternative dispute resolution.
- (3) Limitations on discovery, including temporary suspension pending exploration of settlement. There is a rebuttable presumption that an attorney who carries out discovery as provided in a family centered case resolution plan has fulfilled his or her duty of care to the client as to the existence of community property.
- (4) Use of telephone conference calls to ascertain the status of the case, encourage cooperation, and assist counsel in reaching agreement. However, if the court is required to issue an order other than by stipulation, a hearing shall be held.
- (5) If stipulated by the parties, modification or waiver of the requirements of procedural statutes.
- (6) A requirement that any expert witness be selected by the parties jointly or be appointed by the court. However, if at any time the court determines that the issues for which experts are required

**In courts that have implemented caseflow management, judges spend a lower than average amount of time on post-disposition matters.**

*Judicial Workload Study, 2010*

*"This eliminates our need for the purge of old case files, keeps cases from languishing in the system and coming back over and over trying to get it resolved. We take the half day from the self-help center to devote entirely to the case management calendar. Attorney volunteers help at the self-help center. This is a way of helping litigants finish their cases in a way that is effective for the self-help center. We believe that this system cuts down on the overall number of requests for orders that are filed – particularly by pro pers."*

Judicial Officer

cannot be settled under these conditions, the court shall permit each party to employ his or her own expert.

(7) Bifurcation of issues for trial.

### **MANAGING HEARINGS AND TRIALS**

Family law contested substantive matters central to the cases are often litigated at hearings through the use of requests for orders. Complete adjudication of a case through the formal trial process is less frequent. Any effective caseload management system in family law must provide a support infrastructure to both hearing and trial calendars that creates sufficient judicial time for cases to be fully heard. Key to caseload management support for hearings and trials is readiness. Cases need to be prepared so that the information needed for adjudication is complete and ready to go forward when scheduled on the calendar and judicial time is used to litigate contested issues.

#### ***READINESS REVIEWS FOR HEARINGS***

##### **File Review**

Several days prior to the calendar, staff review the files to identify procedural issues and problems for the judicial officer. When key issues are identified through a readiness review, valuable court time can be used more efficiently. (CRC5.83(d)(5).) The issues that need to be identified in a readiness review include:

- Cases in which errors or omissions need to be corrected before the hearing. When a correctible error or omission occurs, staff may notify attorneys or self-represented litigants of the procedural problems so that they can remedy the situation without a wasted court appearance.
- Cases in which the litigants and their attorneys or self-represented litigants have reached full or partial agreement prior to the scheduled hearing. It will save courtroom time if agreed issues and remaining contested issues are clearly defined for the judicial officer.
- Cases that are most likely to require a contested hearing. For example, case files that contain responsive pleadings are more likely to result in appearance by both parties. Assuming that all pleadings and notices are proper, these cases will probably be ready to hear.

- Special issues for the judicial officer. Examples of issues to flag might include jurisdictional matters such as an open dependency case, issues raised by the Uniform Child Custody and Jurisdiction Enforcement Act (UCCJEA,) or venue issues; the existence of a restraining order about to expire by its own terms, or pending criminal matters that require attention to Fifth Amendment issues.
- Management issues needing attention. Examples of such management issues might include the need for interpreters, other accommodations, or arrangements for telephone appearances.

Once the readiness review has been completed, a cover sheet that summarizes important statistical and procedural information will save judicial time and caseflow management time should the matter be continued.<sup>7</sup>

## **Case Coordination**

One of the main tasks of caseflow management is to coordinate cases, schedules, and information. The readiness review process identifies the need to coordinate issues. Staff should be responsible for organizing these issues for the judicial officer. Examples where case coordination is needed include the following:

### **Coordination of Multiple Cases**

When related cases have been identified, the staff should bring them to the attention of the judicial officer using an information protocol that protects the litigants' due process and confidentiality rights. The judicial officer is required to inform litigants of the other cases under consideration so that litigants can comment. Coordination of cases that are also involved with the juvenile, probate, or criminal courts are the most common. Increasing attention is being given to cases involved in collaborative courts in other case types, such as adult or juvenile drug or mental health courts, domestic violence courts, veterans courts, and dependency drug courts, as these courts often involve family issues in complex high risk/high needs cases.

### **Coordination of Title IVD Child Support**

Coordination between other family law issues and child support is important for both the litigants and the court. If these issues are not well managed, they can impose significant burdens on everyone. Whenever possible, all issues in a Title IVD case should be heard by the same commissioner who time-studies any nonreimbursable tasks.

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<sup>7</sup> See Judicial Council form FL-172

## **Scheduling Coordination**

Generally, requests for orders to establish or modify orders are scheduled by clerks at the time of filing, while continued matters are scheduled by judicial officers in the courtroom. This provides increased judicial control over continuation calendars where the judicial officer has had the opportunity to become somewhat familiar with the case and can determine hearing time requirements. When a new request for order to establish or modify is filed by parties and there is a related open case, the clerk's office identifies the related case and seeks to ensure that both cases are scheduled on the appropriate calendars as designated by the judicial officer.

## **Readiness Reviews for Trials**

### ***Trial Scheduling***

The goal of the family law courts is to avoid having to continue trials once they have commenced. One trial should be completed before another one is commenced on the days and times set for trials in the direct calendar department. This involves significant organization of trial scheduling. Excellent ongoing time estimation by judicial officers and attorneys is important. Good organization is necessary. Staff need to monitor the trial calendars, facilitate ongoing time estimation as the trial proceeds, and maintain communication between the court, attorneys, and self-represented litigants who are waiting to begin their trials.

### ***Pretrial File Review***

Caseflow management staff review files for settlement conferences and trials in basically the same manner they do for hearings (see "Readiness Reviews for Hearings" section above). This review can be done in a regular status review in the less complex cases or as a component of a family centered case resolution plan.

- Contested issues are clearly defined, and any agreed issues have written stipulations.
- It is clear that the case is ready to go to trial, discovery is completed, all required documents are available and exchanged between parties, mediation if required is completed, and there are no errors or omissions.
- It provides the information needed to project the amount of trial time that should be reserved.
- Any special litigant needs are identified so that caseflow management staff can arrange for necessary resources.

- Exhibits are marked and potential stipulation as to admissibility of exhibits has been discussed.
- Mandatory settlement conference statement prepared.

## **Resources Analysis**

### ***BACKGROUND AND METHODOLOGY***

No court in California (or elsewhere) currently uses all of the practices defined in the complete set of topical Family Law Resource Guidelines. Consequently there is no place to look for one comprehensive example of the resource implications of all the practices. One way to develop such an estimate would be to implement all the practices in a pilot court, allow the court to hire the staff and judges it found necessary to carry out the spirit as well as the letter of the recommended procedures and practices, and measure the additional resources required. That approach would take considerable time and resources to carry out and would not necessarily produce results representative of all the state's courts.

The AOC's Center for Families, Children & the Courts (Center) and Greacen Associates, LLC, the consultant chosen to develop the resources estimate, chose a different approach: all the suggested practices are currently being followed — in some form — in some court in California today. By visiting those courts and measuring the time and staffing required to perform the practice, the consultant would be able to develop an estimate of the resources required to implement that particular practice.

To develop a sense of the costs, staff of the Center in consultation with the court participants in the project, identified thirteen courts that have one or more of the Resource Guidelines practices in place. The consultant and one or more Center staff visited each court during the spring of 2010, observed the practices in place there, and gathered data on the resources required to sustain it.

### **Caveats**

This methodology is capable of provides a rough estimate of the resources that would be required to implement the effective practices described herein. There are a number of points at which imprecision affects the process carried out:

- ❖ While researchers timed some functions, they had to rely on estimates of the time required for others. When they observed a practice being carried out, they

also asked the staff whether what we were observing was typical. The staff generally expressed the view that the researchers were observing normal operations (although they were very frequently told that court calendars observed were shorter than usual). However, the researchers' measurements are based on few observations of the practice in the locations they visited, and they have no way to ensure that the events observed were typical.

- ❖ When they observed the same practice in multiple courts, the resources required to carry it out were not consistent from court to court. Researchers used their best professional judgment concerning which value to use in our overall estimating process. Justification for those choices is set forth in the report.
- ❖ The “baseline” data gathered from ten of the thirteen courts on the time required to perform routine court operations shows considerable variation from court to court — for instance, the opening by clerk’s office staff of a new dissolution case. The degree of variation is consistent with that found in other judicial branch workload studies.

Given this background, it appears that the resource estimates set forth in this report will be of value to California trial courts in gauging the likely costs of implementing particular recommended practices. Set forth below are the resource requirements estimates for tasks related to differentiated caseload management.

### **Differentiated Caseload Management**

Courts studied conducted differentiated caseload management as the proactive management of family law cases by the court. They classified cases for processing purposes into different groups based on the characteristics of the cases, parties, and their legal representation; the nature of the issues that are contested; and each case’s overall level of complexity. These courts had instituted a significant departure from the traditional and prevailing approach to family law cases, which relies on the parties to take the initiative to move cases forward at every step of the process.

Depending on the size of the court and how the case management process is structured, resource requirements ranged from one-half to three full-time equivalent (FTE) staff, including the time of staff who sit as judges pro tem (two courts). Two courts did not involve bench officers in their status conferences; among those that did, time requirements ranged from one-half to two and a half days.

Overall, the workload analysis identified three basic resource models for family law caseload management:

- A high-resource model, requiring more than two FTE per week per 1,000 annual marital and paternity filings.
- A midrange resource model, requiring roughly three-quarters to one FTE per week per 1,000 annual marital and paternity filings.
- A low-resource model, requiring only one-quarter FTE per week per 1,000 annual marital and paternity filings.

## ***PROGRAM DESCRIPTIONS***

Researchers observed multiple instances of proactive court management of family law cases.

### **Court Ten**

In a courthouse in Court Ten, the case management process is initiated by the filing of a request for order or by the failure of the petitioner to file a proof of service within 90 days of filing of the petition.

Whenever the parties appear before a judge for a hearing on a request for order, the judge sets a future hearing appropriate to the needs of the case; the case remains on the judge's calendar for a future event of some sort until it is resolved or reaches judgment.

Any case in which a proof of service has not been filed within 90 days of the filing of the petition are noticed for a court appearance in a designated unused courtroom. There is a public counter, a public waiting area that accommodates about a dozen persons, and a working area for up to three clerks. A court clerk calls responding attorneys or self-represented parties to the counter, reviews any documents brought for filing, explains service of process and provides written forms and other materials explaining service, and explains the next steps of the process. If further assistance is needed for self-represented litigants, the clerk makes a referral to the self-help resource center located on the same floor of the courthouse. The case is set for a follow-up appearance. If parties repeatedly fail to appear, court staff set the case on a judge's calendar. Court staff prepare abbreviated minute orders for each appearance.

The Court Ten process also exemplifies differentiated caseflow management: track 1 cases are monitored only until a proof of service has been filed. Cases identified as more complicated are monitored throughout the case until disposition. Follow-up reviews are set following up the filing of a default and default judgment if sufficient time passes after a proof of service has been filed without further action by the petitioner. If a

responsive declaration is filed, a track 2 review is scheduled to determine the next steps the case will require if the parties do not take action on their own initiative.

### **Court Eight**

In Court Eight, cases without attorneys are noticed for a “procedural assistance conference” at 90 and 120 days after the filing of a marital case petition. Notices are generated automatically by the court’s case management information system for all cases without a response, a default, a judgment, or the appearance of an attorney at 90 and 120 days, giving the parties three weeks’ notice of the date of their appearance. Parties are noticed to appear at the self-help center where staff review and receive papers for filing, explain the next steps in the case, and assist the party or parties to complete as much of the case as possible on the date of appearance. These procedural assistance calendars in the self-help center occur on alternate Fridays. Because the parties are not noticed for an appearance in a courtroom, court staff do not prepare minute orders for these events. However, because the proceedings are not considered court hearings, the court does not have the power to take action if only one party appears.

Parties appear at roughly one-third of the noticed conferences. Further conferences are set for no-shows. These cases are calendared for dismissal if they fail repeatedly to appear. Ongoing case monitoring by the court suggests that 50 percent of those noticed but failing to appear completed their cases to judgment.

### **Court Twelve**

In Court Twelve, the court had previously<sup>8</sup> set family law cases for case management conferences (CMCs) 120 days after the date of filing of the petition. Notice of the CMC was generated at the time of filing and given to the petitioner for inclusion with the summons and petition for service upon the respondent.

In cases with attorneys on both sides, the CMC would be vacated upon the filing of a CMC statement prior to the date of the CMC. All other cases were heard by a research attorney sitting as a judge pro tem. The research attorney reviewed all case files prior to the CMC, sending notes to attorneys about deficiencies in filings by e-mail prior to the date of the CMC.

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<sup>8</sup> As noted previously, as a result of a large number of clerk layoffs in August 2009, the Court Twelve program was discontinued between August and October 2009 because of the unavailability of clerk time to generate the notices for parties who did not appear at previous case management conferences.

The research attorney reviews with unrepresented parties papers that need to be filed and refers them to the court's self-help center or family court services as appropriate. First, CMCs would be set on an 8:30 calendar. If the case did not resolve, it would be reset 90 days in the future on a 9:30 calendar, with notice sent to nonappearing parties. If the case did not resolve at the second CMC, it would be reset for a third CMC 90 days in the future. The bulk of cases resolved at the 9:30 calendar because the parties by that date had followed the guidance provided at the first CMC. Cases in which no party appeared at the third CMC would be placed on a three- or five-year dismissal calendar, as appropriate.

#### **Court Four**

In Court Four, cases with two self-represented parties are set for a "case classification hearing" 150 days after the filing of a petition. Notices of a status conference are generated at the time of filing and provided to the petitioner to be served on the respondent with the summons and petition. Self-help center staff review the files of cases without attorneys prior to the hearing date, meet with parties in the assigned courtroom at the time of the hearing before the judge takes the bench, and work with the party(ies) to complete as much of the case as possible that day.

The way that self-help staff assist self-represented litigants in Court Four makes a significant difference in the resources required. A single self-help attorney or paralegal works simultaneously with all of the litigants referred from a courtroom. She talks with the persons present for each case, determines the extent of agreement in the case, and provides the person or persons with blank forms needed. She directs the party(ies) to a table to work on the needed documents. The self-help staff person then checks in with each table to provide additional assistance: if both parties are present she helps them reach agreement on outstanding issues; if only one person is present, she helps complete needed documents. This process enables one staff person to assist the parties in as many as a dozen cases simultaneously. We refer to this process as a "one-on-many" assistance model, in contrast to a "one-on-one" model.

Data from the program show that both parties appear in 19 percent of the cases and one party appears in an additional 37 percent of the cases. In the cases in which one party appears, default judgments are obtained on the date of the status conference in 43 percent of the cases. In the cases in which both parties appear, stipulated judgments are entered in 49 percent of the cases that day. Thus, staff are able to resolve 25 percent of all the noticed cases without attorneys on the date of the status conference

Time spent on cases:

0–15 minutes	55%
16–30 minutes	25%
31–60 minutes	14%
1–2 hours	6%

Average time per case: 21.4 minutes, down from initial figure five years before by 6 minutes (down 22%)

### **Court Five**

In Court Five, all family law cases are set for a “case management conference” (CMC) before a judge. Cases in which only a petition has been filed are noticed for hearing six months after filing. Cases in which a response has been filed are set 30 to 60 days after filing of the response. Cases that the court has set trials for individual special case needs (“special sets”) or cases the court has determined are ready for trial using a local “certificate of readiness” form are set within 30 and 60 days.

Some judges set cases without attorneys on separate calendars and refer the parties to the self-help center when they appear. Cases may also be referred from mixed attorney-represented/self-represented case calendars. Self-help center staff attempt to resolve all cases referred and take them back to the courtroom after their efforts, providing the court with a report of the status of negotiations between the parties so that the judge has the information needed to proceed with the case.

The way in which litigants are assisted in Court Five is different from the process used in Court Four. Litigants are brought to the self-help center where they wait until a staff member is available. The litigants sit with a self-help attorney or paralegal until agreement is reached or documents are prepared. The process is very much a one-on-one interaction with the self-help staff member, in contrast to the one-on-many model used in Court Four.

### **Court One**

In Court One, all cases—represented as well as unrepresented—are set for a “case status conference” (CSC) four months after the filing of a family law petition. The court’s

case management information system identifies cases appropriate for setting. Court staff actually set the hearings and generate mail notices.

Attorneys are able to obtain a continuance. The first continuance request is granted automatically; subsequent requests require a substantive declaration showing that the case is proceeding in a timely fashion. All CSCs are set on Thursday afternoon for the commissioner. The calendar is capped at 65 to 70 cases.

A staff paralegal reviews every case file and prepares an information sheet for the benefit of the commissioner, who also reviews the cases prior to the calendar. This review process takes 2.5 days per week of the paralegal's time. The self-help center closes to walk-in customers on Thursday afternoons so that all staff can be present in the courtroom to support the CSC calendar. Family court services mediators are also available for same-day mediation. Every effort is made to move each case toward resolution on the date set for the CSC. Self-help staff prepare orders after the courtroom hearing.

#### **Court Six**

Court Six employs a full-time family case manager, who sits as a judge pro tem to hear case status conferences. The clerk's office staff set ticklers for significant case events, referred to as "checkpoints," in all newly filed family law matters, whether they involve self-represented litigants or litigants represented by attorneys. The case manager reviews the cases when prompted by a tickler and decides whether to notice a status conference or order to show cause in the case. The notices identify the missing filing and provide that the conference or show cause hearing will be vacated upon filing of the missing document(s). She presides at hearings and issues procedural orders resulting from them. A part-time judicial assistant provides support for the family case manager and helps prepare minute orders and orders vacating hearings. The case manager sets a case on a judge's calendar whenever it is ready for judicial resolution of all or part of the case or if she is unable to get the parties or their attorneys to move the case toward resolution in a timely fashion.

#### **Court Eleven**

In Court Eleven, all cases are set on a case management calendar 125 days after filing. The calendar requires one half-day of judge time to conduct.

### **Court Nine**

In Court Nine the court sets a “case management conference” (CMC) for 180 days in cases with a custody issue. Mediators are available for same-day mediation. Decisions are made regarding custody, whether temporary or long term.. Self-help center and family court services staff attempt to get as much of the case resolved as possible. They are successful in getting total resolution in 75 percent of the cases. The court has very few no-shows for these calendars.

Each of three judges devotes two hours per week to the case management calendar. Clerks spend about three hours per week preparing notices; judicial assistants send notices to parties who do not appear for subsequent hearings. The self-help center sends three staff—two attorneys or paralegals and a clerk—to support the court for these conferences.

### **RESOURCES REQUIRED**

The resources required to support a proactive caseload management approach are set forth below. From our observations, there is no inherent additional cost associated with differentiation of cases for caseload management.

#### **Identifying cases requiring hearings and creating and sending notice to the parties.**

The resources required depend on the process used to generate notices and provide them to parties:

- The most efficient method appears to be generating a notice as an automatic by-product of scheduling a status conference at the time of accepting a petition and delivery of the notice to the petitioner for service on the respondent with the summons and petition. The researchers estimate the time required to complete this process to be about one to two minutes per case—the time needed to schedule a status conference and to deliver an automatically generated and printed notice to the petitioner with a brief explanation of the petitioner’s service obligation. A court’s ability to use this process depends on the capability of its case management information system to create and generate hearing notices automatically.

- Some courts enter all of the data needed to open a new case at the front counter at the time of filing. Other courts enter only the information needed for a case “stub” (party names, case type, date of filing, and receipt of filing fee) and postpone entry of all additional case opening data as a subsequent, back-office function. The latter courts might be required to enter some additional data as part of the “stub” to schedule a hearing and generate a notice at the time of filing.
- Electronic filing of family law petitions changes how this process is performed. The notice of hearing is generated as an electronic document sent automatically to the filer along with the summons and instructions for serving the summons and notice of hearing. Although the process is different, there is no reason why the noticing process cannot continue to be performed in the same fashion—that is, with the petitioner being responsible for serving the notice of hearing with the summons and copy of the petition.
- The next most efficient process entails computer identification of cases appropriate for noticing, automatic calendaring of the hearing, and automatic generation of a notice or notices for mailing to the party(ies). Court One estimates the clerical resources needed for this function, together with preparing and distributing the calendars, handling requests to reset, and pulling the case files for the calendar, at one half-day per calendar.
- The most time-intensive process appears to be hand-setting of tickler events, followed by case-by-case decisionmaking on the setting of a hearing and the contents of the notice, followed by case-by-case generation of notices for stuffing and mailing. Court Six devotes three days per week of clerical staff to this process.
- The active case management function envisioned in the Family Law Resource Guidelines continues through the life of the case, with a subsequent court event scheduled at the close of every hearing. Setting of subsequent events is a routine part of the hearing process. Formal notice need not be given to parties present at the time the next hearing is set; some courts provide a handwritten card setting forth the date and time of the next hearing as a courtesy to the party(ies). Noticing of subsequent hearings to

parties who are not present in the courtroom at the time a new hearing is scheduled entails additional resources. Based on the process used in Court Twelve, the time required could be as long as 7.5 minutes per notice—to generate the notice and a mailing envelope, sign the proof of mail service, and deal with return mail and cases without an address for the respondent. The researchers estimate that this translates to one-half FTE per week for that court.

### **Preparing for status conferences.**

The resources required depend on the process used for preparation.

#### **Courts Ten and Eight**

Based on the researchers' observations, there are some programs with little to no preparation. In the Court Ten program and the Court Eight procedural assistance conference program, court staff review case files when parties appear. In the Court Nine program, there is no preparation for the case management conferences held in the courtroom, with assistance from the self-help center and custody mediators.

#### **Court Twelve**

In the Court Twelve program, the research attorney reviewed files prior to every status conference, providing online notes for attorneys identifying filings required for the case to proceed.

#### **Court Four**

In Court Four, the self-help staff person assigned reviews all case files the day before, making notes of missing documents and next steps required to move the case forward, and inserting copies of blank forms into the file so that they will be available the next morning. This preparation requires one to two hours for a typical calendar of 13 to 15 status conferences.

#### **Court Five**

In Court Five, the bench officer does the preparation. The amount of preparation performed depends on the amount of time the bench officer has available.

#### **Court One**

The most extensive preparation occurs in the Court One program. A paralegal spends 2 and a half days per week preparing information sheets for the bench officer on every

case set for a case status conference (roughly 65–70 cases each week). The bench officer also spends several hours the day before reviewing and classifying the case files for the case status calendar.

### ***Conducting status conferences.***

The programs that observed focused on status conferences for cases involving self-represented litigants. Some of the programs include cases with attorneys. However, the researchers did not collect any data on the cost to a court of conducting status conferences on attorney cases standing by themselves. Additional observations on that process are set out at the close of this discussion.

The resources required to conduct status conferences depend on the process used.

#### **Court Ten**

In the Court Ten process, one full-time staff member conducts all case consultations, and two additional staff members prepare minute orders recording the event. The Courtroom 2A process includes both attorney-represented and self-represented litigant cases. Self-represented litigants are referred to the court's resource center for extended assistance in preparing documents. The court does not separately identify the resource center services delivered as a result of such referrals.

#### **Court Eight**

In Court Eight, a self-help staff member conducts consultations with the self-represented parties who appear and records notes in the case file as appropriate. As in Court Four, assistance is provided as needed at the time of the consultation. No minute orders are prepared.

#### **Court Four**

In Court Four, one self-help staff attorney or paralegal is assigned each day to assist all litigants on the status conference calendar. All persons are assisted at the same time; this is referred to as the one-on-many service model. The staff person spends time with each party or pair of parties—assigning them a task to perform (such as preparing a declaration of disclosure or discussing a parenting plan), referring them to a table at which to perform the task, and checking in with them repeatedly to help resolve issues in dispute and review documents prepared. Staff prepare stipulated judgments when the parties reach agreement. The staff person responsible for the status conferences may call on other staff for assistance in preparing judgments. The bench officer remains on call to enter matters on the record and to resolve matters on which the parties cannot

reach agreement. Each bench officer has one half-day status conference calendar per week.

#### **Court Five**

In Court Five, bench officers have one half-day case management calendar per week. They are supported by their regular courtroom staff and by the entire staff of the self-help center, which closes to walk-in customers for this purpose. The self-help staff provide services through a one-on-one model that can require as long as 45 minutes per case.

#### **Court One**

In Court One, the bench officer spends one half-day per week conducting the case status conferences. She is supported by the entire staff of the self-help office (4 FTEs), a volunteer attorney, and a volunteer mediator. Family court services stand by to provide same-day mediation services if requested; at the time of our visit, those services were rarely requested. A judicial assistant prepares minute orders for all cases heard.

#### **Court Nine**

In Court Nine, each of three direct calendar family judges holds one two-hour case management conference calendar each week, supported by three staff from the self-help center and mediators available for same-day mediation.

#### **Court Six**

In Court Six, very few hearings actually take place. The family case manager appears to be able to obtain compliance with most court orders by speaking with the parties on the telephone prior to the date set for a case management conference. One part-time judicial assistant supports the case manager, primarily to prepare minute orders.

#### **Court Eleven**

In Court Eleven, a judge spends one half-day per week hearing the case management calendar. No staff time is devoted to preparing the calendar or assisting with the calendar.

### ***COMPARATIVE SUMMARY***

Depending on how a case management process is structured, resource requirements range from three full-time staff persons in Court Ten to the equivalent of two full-time persons in Court Six to the equivalent of one full-time person in Courts One and Nine to the equivalent of half a full-time person or less in Courts Four and Twelve. Two of the courts (Eight and Ten) do not involve bench officers in their status conferences; two courts (Six and Twelve) use staff persons (whose time is included in the above estimates) as judges pro tem. The programs in Courts One, Four, Five, and Nine have bench officers sitting one half-day per week, supported by self-help center staff either in the courtroom or in the self-help center. In addition, the Court One program uses one half FTE paralegal to prepare the files for the calendar.

These data take on more meaning when compared with the courts' caseload, as shown in the table below. Annual marital and paternity filings are used as the base for this analysis. Those case types are mentioned specifically in the new family law case management rule. Domestic violence and child support cases are generally tracked using their own processes.

### Case Management Time Detail

<b>Court</b>	<b>Annual Marital &amp; Parentage Filings</b>	<b>Weekly Time Devoted to Noticing</b>	<b>Weekly Time Devoted to Preparation</b>	<b>Weekly Time to Conduct Status Conference or Procedural Assistance</b>	<b>Weekly Time Devoted to SRL Assistance</b>	<b>TOTAL Weekly STAFF</b>	<b>TOTAL Weekly JO</b>	<b>TOTAL Weekly Time</b>
<b>One</b>	2,394	0.5 Days	2.5 days PL		2 days	<b>5 days</b>	<b>0.7 days</b>	5.7 days
<b>Four</b>	24,132	1 day	0.5 days		2.5 days	<b>4 days</b>	<b>2.5 days</b>	6.5 days
<b>Five</b>	6,755	1 day	0 days		4.5 days	<b>5.5 days</b>	<b>1.5 days</b>	7 days
<b>Six</b>	4,360	3 days	5 days		2.5 days	<b>10.5 days</b>	<b>0 days</b>	10.5 days
<b>Eight</b>	13,312	1 day	0 days		2 days	<b>3 days</b>	0 days	3 days
<b>Nine</b>	2,007	0.5 days	0 days		3 days	<b>3.5 days</b>	<b>1.0 days</b>	4.5 days
<b>Ten</b>	19,369	0 days	0 days	15 days	included in status conference	<b>15 days</b>	0	15 days
<b>Eleven</b>	1,254	Not measured	0 days		0 days		<b>0.5 days</b>	0.5 days
<b>Twelve</b>	1,923	0.5 days	.5 days		0 days	<b>1 day</b>	<b>0.5 days RA</b>	1.5 days

Definitions: JO = judicial officer; RA = research attorney; PL = paralegal

### Comparative Resource Requirements Chart

Resource Requirement Levels	Court	Annual Marital & Parentage Filings	Basic Description of Model	TOTAL Weekly Time per 1,000 Filings
<b>LOW</b>	<b>Eight</b>	13,312	SRL cases noticed for procedural assistance conference noticed 90 days to 4 months after filing. Notices automatically generated by CMS for cases w/o a response, default, judgment, or attorney appearance. Parties noticed to appear at SHC where staff review paperwork and assist with next steps. No minute orders prepared.	<b>.23 days</b> <b>.05 FTE</b>
	<b>Four</b>	24,132	Cases with 2 SRLs set for case classification hearing 150 days after filing; notices generated at time of filing. SHC staff review files prior to hearing and provide assistance before hearing using a one-on-many model.	<b>.27 days</b> <b>.05 FTE</b>
	<b>Eleven</b>	1,254	All cases set on case management calendar 125 days after filing.	<b>.40 days</b> <b>.08 FTE</b>
<b>MIDRANGE</b>	<b>Ten</b>	19,369	Notice to appear if no POS in 90 days. Clerk reviews documents, explains next steps, and makes referrals to SHC if needed. Cases set for follow-up appearance; if repeated FTAs, set for judge's calendar. Abbreviated minute orders prepared.	<b>.77 days</b> <b>.15 FTE</b>
	<b>Twelve</b>	1,923	Case management conference set for 120 days after filing; notice generated at time of filing. CMC may be vacated for attorney cases upon filing of CMC statement. Research attorney reviews files prior to CMC and sits as pro tem. Referrals made to FCS or SHC as needed. Cases set for up to two additional CMCs, each 90 days out, if unresolved.	<b>.78 days</b> <b>.16 FTE</b>
	<b>Five</b>	6,755	All cases set for CMC before a judge. Petition only set for 6 months after filing; response set for 30 to 60 days after response filed. SHC staff attempt to resolve all cases before hearing (using a one-on-one model) and report back to court on status of negotiations.	<b>1.04 days</b> <b>.21 FTE</b>
<b>HIGH</b>	<b>Nine</b>	2,007	Cases w/ custody issues set for CMC in 180 days. Mediators available for same-day mediation and SHC staff (attorneys/ paralegals and clerk) provide assistance. Judicial assistants send notices to parties who do not appear for subsequent hearings.	<b>2.24 days</b> <b>.45 FTE</b>
	<b>One</b>	2,394	All cases set for case status conference 120 days after filing. CMS identifies cases and staff generate notices and set hearings. Paralegal reviews files and prepares information sheet for commissioner, who also reviews files prior to calendar. FCS available for same-day mediation. SHC staff prepare orders after hearing.	<b>2.38 days</b> <b>.48 FTE</b>
	<b>Six</b>	4,360	Clerks set ticklers for checkpoints in all cases. Case manager, who sits as pro tem, reviews cases and decides whether to notice status conference or OSC. Status conference or OSC vacated upon filing of any missing documents. Part-time judicial assistant prepares minute orders and orders vacating hearings.	<b>2.41 days</b>

## **ALTERNATIVE RESOURCE MODELS**

The table above identifies three basic case management resource models:

- A high-resource model, requiring over two FTE per week per 1,000 annual marital and paternity filings. Courts One, Six, and Nine fall within this resource range. These three court programs have little in common. Court One devotes very high levels of resources to prehearing preparation and self-help support. Court Six does not use any judicial resources, but uses a full-time case manager. Court Nine uses a high level of self-help staff support in the courtroom.
- A midrange resource model, requiring roughly three-quarters to one FTE per week per 1,000 annual marital and paternity filings. Courts Five, Ten, and Twelve fall within this resource range. The models they employ also have nothing in common. Court Five employs a one-on-one self-help assistance model supporting its courtrooms. Court Ten has a staff-run virtual courtroom; two-thirds of its resources are devoted to creating abbreviated minute orders. Court Twelve used no judicial resources in its program; a research attorney performs most of the work associated with its case management calendar.
- A low-resource model, requiring only one-quarter FTE per week per 1,000 annual marital and paternity filings. Courts Four and Eight are both large courts. Court Four uses a one-on-many self-help assistance model supporting its courtrooms. Court Eight does not use bench officers or prepare minute orders.

### ***Use of the “Weekly Time per Filing” Coefficient***

A court can use the coefficients set forth in the far right column of the table on case management resources to estimate the resources needed to implement a proactive case management process in its own court by following these steps:

1. Choose the case management model to emulate.
2. Compute its annual marital and paternity filings.
3. Multiply its annual marital and paternity filings by the coefficient for the process that it wishes to emulate. The resulting number will be an estimate of the total number of days that it will need each week to implement that process.
4. By studying the breakdown of the resources for the four parts of the process as implemented in the court to be emulated, the amount of clerical time, bench officer time, and self-help staff time can be estimated.

For instance, if a court wishes to use Court One's resource-intensive process and it has 5,000 annual family law filings, it could expect to need 12 days per week of court resources, with 1 day per week of clerical staff devoted to noticing, 5+ days per week of paralegal staff devoted to preparing the calendar, 1.5 judicial days per week preparing for and presiding over case management conferences, and 4+ days per week of self-help staff to provide assistance to litigants.

The data shown above are for large and mid-sized courts. The coefficients will not produce useful estimates for small courts, which will not experience the economies of scale available to larger courts.

### ***PROACTIVE CASE MANAGEMENT OF FAMILY LAW CASES INVOLVING TWO ATTORNEYS***

In Court Two, every family law case always has a future hearing date set. The court has not tried to measure the judicial resources required to maintain this practice.

In Court Nine, one-half day of judge time is spent per week to hear the case management calendar, which includes both represented and unrepresented cases.

Court Ten has undertaken a pilot program of judicial management of family law cases involving two attorneys. As noted above, that court's Courtroom 2A notices cases with and without attorneys to appear for case status hearings. However, whenever a case appears in a courtroom—for instance, for a hearing on an OSC—the judge takes control and makes sure that there is always a future event calendared for the case. The court did not measure the extent of judicial resources required to manage family law cases in this fashion. However, it did determine that no case involved in the judicial case management pilot took longer than one year to reach disposition during the six-month period from February to August 2009.

### **Measuring the Impact of Case Management Programs on Cases Involving Two Attorneys**

Critical questions for courts instituting case management programs for cases with attorneys are:

- How many court appearances result from the scheduling of case status conferences? Many courts vacate case status conferences in two attorney cases in which the parties have filed a case status conference memorandum detailing the issues in the case, the status of each issue, the schedule the parties intend to follow in resolving all outstanding issues, assistance the parties will need from the court, and the date for a next appearance. To count the number of actual court appearances, court staff will have to use a specific hearing result code.
- To what extent are matters that would previously have been handled at hearings on requests for orders and ex parte/emergency motions now handled at case status conferences? To obtain this measure, courts would have to include specific event or hearing result codes for hearings at which the court enters temporary orders.
- To what extent are family law cases being resolved more quickly with proactive case management? This measure can be obtained by tracking

average time to disposition before and after proactive case management is put in place.

- To what extent are family law cases involving self-represented litigants more likely to result in a judgment with proactive case management? Similarly, this measure can be obtained by tracking the number of cases with two self-represented litigants that reach judgment; in this instance, the date of entry of the judgment should be used.

### **Summary**

Differential caseload management is required infrastructure for an effective and efficient family law court. Courts need to have caseload management procedures in place to avoid time-consuming nonjudicial work in the courtroom. Unless these procedures are in place, a court will not be able to cost-effectively provide adequate courtroom time to fully hear contested matters.

Procedural, substantive, and individual differentiation can facilitate caseload management by allowing similar cases to be clustered for similar tasks.

The fundamental components of differential caseload management are:

- Routine status review of family law cases and assessment of their progress toward disposition according to court standards.
- Differentiated case management techniques organize events in ways that leverage staff and judicial time, and solve procedural problems at the earliest possible point in a case.
- Settlement opportunities are offered to litigants at hearings and status conferences.
- Assistance to self-represented litigants with paperwork is available at the time of a hearing or status conference.
- Court intervention which results in unnecessary appearances for litigants and their attorneys, and use of court resources is avoided.
- Readiness reviews are used to ensure that cases are ready to move forward for hearing or trial as scheduled.

- Trials are not continued once commenced. Once a trial has begun, it should be completed before another trial is started.

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## APPENDIX A

### Court Subject Matter Experts

(alphabetical)

1. Hon. Sue Alexander, Commissioner, Alameda
2. Hon. Lorna Alksne, Judge, San Diego
3. Lesley Allen, Director of Family and Children's Services, Sonoma
4. Grace Andres, Manager, Solano
5. Hon. Craig Arthur, Commissioner, Orange
6. Tony Barradas, Court Manager, San Diego
7. Hon. Louise Bayles, Fightmaster, Commissioner, Sonoma
8. Virginia Bird, Assistant Executive Officer, Inyo
9. Melissa Fowler-Bradley, Executive Officer, Shasta
10. Barrett Brown (Ret.), Family Law Facilitator and FCS Director, Humboldt
11. Adam Byer, Research and Planning, Alameda
12. Fran Collins, Manager, Fresno
13. Hon. Gay Conroy, Judge, Ventura
14. Pat Conroy, Family Law Facilitator, Siskiyou
15. Hon. Michael Convey, Judge, Los Angeles
16. Linda Daeley, Family Court Manager, Orange
17. Mary Davis, Chief Deputy Executive Officer, San Bernardino
18. Kathleen Dixon, Manager Self-Help Programs, Los Angeles
19. Hon. Sherrill A. Ellsworth, Presiding Judge, Riverside
20. Jessica Flores, Family Law Facilitator (former), Sonoma
21. Hon. Michael Gassner, Commissioner, San Bernardino
22. Keri Griffith, Court Senior Manager, Ventura
23. Susan Groves, Family Law Facilitator, San Diego
24. Cathy Harmon, Manager of Family and Probate Services, Orange
25. Kim Harmon, Manager, Unified Family Court Services, San Francisco
26. Frances Harrison (Ret.), Family Law Facilitator, San Diego
27. Lorie Hebron, Research and Operations, Sacramento
28. Frances Henderson, Director, Family Court Services, San Benito
29. Kristen Hoadley, Family Trial Court Attorney—Court Manager, San Francisco
30. Ruthanne Allen-Hunt, Family Court Services Director, Alameda
31. Hon. Connie Jimenez, Commissioner, Santa Clara
32. Hon. Joann Johnson, Commissioner, Ventura
33. Hon. Irwin Joseph, Commissioner, Santa Cruz
34. Hon. David Kalemkarian, Judge, Fresno
35. Hon. Frances Kearney, Judge, Placer
36. Carla Khal, Family Law Facilitator, Tulare
37. Hon. Suzanne Kingsbury, Presiding Judge, El Dorado
38. Debbie Lamb (Ret.), Manager, Family and Juvenile Division Sonoma
39. Margaret Little, Court Administrator, Los Angeles
40. Cristina Llop, Legal Consultant, AOC (formerly SF court)
41. Hon. Patricia Lucas, Judge, Santa Clara
42. Suzanne Morlock, Family Law Facilitator (former), Tuolumne

43. Deborah Mullins, Family Law Facilitator, Santa Barbara
44. Andrea Nelson, Assistance Executive Officer, Butte
45. Hon. Yolanda Northridge, Judge, Alameda
46. Hon. Kimberly Nystrom-Geist, Judge, Fresno
47. Michael Powell, Manager, Family Court Services, San Luis Obispo
48. Rebecca Prater (Ret.), Family Law Facilitator, San Diego
49. Carole Raimondi (Ret.), Family Law Facilitator, Alameda
50. Lollie Roberts, Family Law Facilitator, Sacramento
51. Julie Setzer, Court Director, Sacramento
52. Hon. Shawna Schwarz, Judge, Santa Clara
53. Caron Smith, Attorney Case Manager (former), Ventura
54. Debra Spatafore, Family Law Facilitator Paralegal, Los Angeles
55. Hon. Dean Stout, Presiding Judge, Inyo
56. Hon. Thomas Surh (Ret.), Commissioner, Alameda
57. Hon. B. Scott Thomsen, Commissioner, Nevada/Sierra
58. Patty Wallace, Director, Children and Family Operations, Fresno
59. Sarah Waters, Court Program Manager, Ventura
60. Hon. Dale Wells, Judge, Riverside
61. Claire Williams, Court Administrator, San Francisco

## APPENDIX B

### Rule 5.83. Family Centered Case Resolution

#### (a) Purpose

This rule establishes processes and procedures for courts to manage cases from initial filing to final disposition in an effective and timely manner. It is intended to advance the goals of Family Code section 2450(a) and Standards of Judicial Administration, standard 5.30.

#### (b) Definitions

- (1) "Family centered case resolution process" refers to the process employed by the court to ensure that family law cases move through the court process from filing to final disposition in a timely, fair, and effective manner.
- (2) "Disposition" refers to final judgment, dismissal, change of venue, or consolidation of the case into a lead case. Courts may continue a case in, or return a case to, the family centered case resolution process after disposition.
- (3) "Status conference" refers to court events scheduled with the parties and attorneys for the purpose of identifying the current status of the case and determining the next steps required to reach disposition.
- (4) "Family centered case resolution conference" refers to a conference scheduled with parties, attorneys, and a judicial officer to develop and implement a family centered case resolution plan under Family Code section 2451.

#### (c) Family centered case resolution process

- (1) Beginning January 1, 2012, courts must develop a family centered case resolution process which must be fully implemented by January 1, 2013. The family centered case resolution process must identify and assist all dissolution, legal separation, nullity, and parentage cases to progress through the court process toward disposition effectively in a timely manner. The court may identify other family law case types to include in the family centered case resolution process.
- (2) For cases filed on or after January 1, 2013, the court must include as part of the family centered case resolution process a review of all dissolution, legal separation, nullity, and parentage cases within at least 180 days from the date of the initial filing and at a minimum, at least every 180 days thereafter until disposition in order to determine the most appropriate next steps to help ensure an effective, fair, and timely resolution. Unless the court determines that procedural milestones are being met, the review must include at least one of the following: (1) a status conference or (2) a family centered case resolution conference. Nothing in this section prohibits courts from setting more frequent review dates.
- (3) If, after 18 months from the date the petition was filed, both parties have failed to participate in the case resolution process as determined by the court, the court's obligation for further review of the case is relieved until the case qualifies for dismissal under Code of Civil Procedure section 583.210 or 583.310, or until the parties reactivate participation in the case, and the case is not counted toward the goals for disposition set out in (c)(5).
- (4) In deciding whether a case is progressing in an effective and timely manner, the court should consider procedural milestones including the following:
  - (A) A proof of service of summons and petition should be filed within 60 days of case initiation;

(B) If no response has been filed, and the parties have not agreed on an extension of time to respond, a request to enter default should be submitted within 60 days after the date the response was due;

(C) The petitioner's preliminary declaration of disclosure should be served within 60 days of the filing of the petition;

(D) When a default has been entered, a judgment should be submitted within 60 days of the entry of default;

(E) Whether a trial date has been requested or scheduled; and

(F) When the parties have notified the court that they are actively negotiating or mediating their case, a written agreement for judgment is submitted within six months of the date the petition was filed, or a request for trial date is submitted.

(5) For dissolution, legal separation, and nullity cases initially filed on or after January 1, 2014, the goals of any family centered case resolution process should be to finalize dispositions as follows:

(A) At least 20 percent are disposed within 6 months from the date the petition was filed;

(B) At least 75 percent are disposed within 12 months from the date the petition was filed; and

(C) At least 90 percent are disposed within 18 months from the date the petition was filed.

(6) The court may select various procedural milestones at which to assist cases in moving toward disposition in an effective and timely manner. Types of assistance that can be provided include the following:

(A) Notifying the parties and attorneys by mail, telephone, e-mail, or other electronic method of communication of the current status of the case and the next procedural steps required to reach disposition;

(B) Implementing a schedule of status conferences for cases to identify the status of the case and determine the next steps required to progress toward disposition;

(C) Providing assistance to the parties at the time scheduled for hearings on requests for orders to identify the status of the case and determine the next steps required to reach disposition;

(D) Providing financial and property settlement opportunities to the parties and their attorneys with judicial officers or qualified attorney settlement officers;

(E) Scheduling a family centered case resolution conference to develop and implement a family centered case resolution plan under Family Code section 2451.

(7) In deciding that a case requires a family centered case resolution conference, the court should consider, in addition to procedural milestones, factors including the following:

(A) Difficulty in locating and serving the respondent;

(B) Complexity of issues;

(C) Nature and extent of anticipated discovery;

(D) Number and locations of percipient and expert witnesses;

(E) Estimated length of trial;

(F) Statutory priority for issues such as custody and visitation of minor children;

- (G) Extent of property and support issues in controversy;
- (H) Existence of issues of domestic violence, child abuse, or substance abuse;
- (I) Pendency of other actions or proceedings that may affect the case; and
- (J) Any other factor that would affect the time for disposition.

**(d) Family centered case resolution conferences**

- (1) The court may hold an initial family centered case resolution conference to develop a specific case resolution plan. The conference is not intended to be an evidentiary hearing.
- (2) Family centered case resolution conferences must be heard by a judicial officer. On the court's initiative or at the request of the parties, to enhance access to the court, the conference may be held in person, by telephone, by videoconferencing, or by other appropriate means of communication.
- (3) At the conference, counsel for each party and each self-represented litigant must be familiar with the case and must be prepared to discuss the party's positions on the issues.
- (4) With the exception of mandatory child custody mediation and mandatory settlement conferences, before alternative dispute resolution (ADR) is included in a family centered case resolution plan under Family Code section 2451(a)(2), the court must inform the parties that their participation in any court recommended ADR services is voluntary and that ADR services can be part of a plan only if both parties voluntarily opt to use these services. Additionally, the court must:
  - (A) Inform the parties that ADR may not be appropriate in cases involving domestic violence and provide information about separate sessions; and
  - (B) Ensure that all court-connected providers of ADR services that are part of a family centered case resolution plan have been trained in assessing and handling cases that may involve domestic violence.
- (5) Nothing in this rule prohibits an employee of the court from reviewing the file and notifying the parties of any deficiencies in their paperwork before the parties appear in front of a judicial officer at a family centered case resolution conference. This type of assistance can occur by telephone, in person, or in writing, on or before each scheduled family centered case resolution conference. However, this type of procedural assistance is not intended to replace family centered case resolution plan management or to create a barrier to litigants' access to a judicial officer.

**(e) Family centered case resolution plan order**

- (1) Family centered case resolution plans as ordered by the court must comply with Family Code sections 2450(b) and 2451.
- (2) The family centered case resolution plan order should set a schedule for subsequent family centered case resolution conferences and otherwise provide for management of the case.

**(f) Family centered case resolution order without appearance**

If the court determines that appearances at a family centered case resolution conference are not necessary, the court may notify the parties and, if stipulated, issue a family centered case resolution order without an appearance at a conference.

**(g) Family centered case resolution information**

(1) Upon the filing of first papers in dissolution, legal separation, nullity, or parentage actions the court must provide the filing party with the following:

(A) Written information summarizing the process of a case through disposition;

(B) A list of local resources that offer procedural assistance, legal advice or information, settlement opportunities, and domestic violence services;

(C) Instructions for keeping the court informed of the person's current address and phone number, and e-mail address;

(D) Information for self-represented parties about the opportunity to meet with court self-help center staff or a family law facilitator; and

(E) Information for litigants on how to request a status conference, or a family centered case resolution conference earlier than or in addition to, any status conference or family centered case resolution conferences scheduled by the court.

*Rule 5.83 adopted effective January 1, 2012.*

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## APPENDIX C

CALIFORNIA CODES

### FAMILY CODE

#### SECTION 2450-2452

**2450.** (a) The purpose of **family** centered case resolution is to benefit the parties by providing judicial assistance and management to the parties in actions for dissolution of marriage for the purpose of expediting the processing of the case, reducing the expense of litigation, and focusing on early resolution by settlement. **Family** centered case resolution is a tool to allow the courts to better assist families. It does not increase the authority of the court to appoint any third parties to the case.

(b) The court may order a **family** centered case resolution plan as provided in Section 2451. If the court orders **family** centered case resolution, it shall state the **family** centered case resolution plan in writing or on the record.

**2451.** (a) A court-ordered **family** centered case resolution plan must be in conformance with due process requirements and may include, but is not limited to, all of the following:

(1) Early neutral case evaluation.

(2) Alternative dispute resolution consistent with the requirements of subdivision (a) of Section 3181.

(3) Limitations on discovery, including temporary suspension pending exploration of settlement. There is a rebuttable presumption that an attorney who carries out discovery as provided in a **family** centered case resolution plan has fulfilled his or her duty of care to the client as to the existence of community property.

(4) Use of telephone conference calls to ascertain the status of

the case, encourage cooperation, and assist counsel in reaching agreement. However, if the court is required to issue an order other than by stipulation, a hearing shall be held.

(5) If stipulated by the parties, modification or waiver of the requirements of procedural statutes.

(6) A requirement that any expert witness be selected by the parties jointly or be appointed by the court. However, if at any time the court determines that the issues for which experts are required cannot be settled under these conditions, the court shall permit each party to employ his or her own expert.

(7) Bifurcation of issues for trial.

(b) This section does not provide any additional authority to the court to appoint experts beyond that permitted under other provisions of law.

(c) The Judicial Council shall, by January 1, 2012, adopt a statewide rule of court to implement this section.

(d) The changes made to this section by the act adding this subdivision shall become operative on January 1, 2012.

**2452.** The Judicial Council may, by rule, modify the procedures set forth in this chapter.