

Improving Efficiency and Service in Family Courts

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Early in my tenure as the Supervising Family Law Judge, the Court Operations Manager asked whether anything could be done about the growing inventory of old, unadjudicated family law files. Little did we know when we first discussed the problem that in less than a year, we would stumble upon a way to help self-represented litigants finalize their divorces and paternity actions. In the process, we would enlist and train volunteer attorneys and mediators, dispose of some 1000 aging files, and set up a management system which would prevent future backlogs. We accomplished this through a combination of trial-and-error, dumb luck, and a willingness to solve problems as they arose. What started off as a modest proposal gained momentum and scope with the assistance of a hardworking, enthusiastic team comprised of a judge, court administration, family law facilitator, as well as a cross-section of family law lawyers and mediators. The results yielded improved efficiencies for the court, better services for the litigants, and a high level of satisfaction for all participants.

1. Identify Cases and Set Hearings

The Court Operations Manager began by running a computer query for all active family law cases over two years old with no future dates. This produced 1000 cases. She pulled each one from the shelf and checked for judgments, multiple filings and contact information.

We agreed that a manageable first step was to set the cases for a status conference. We reserved two afternoons per month for hearings and set 75 cases per

calendar. The Family Law facilitator agreed to attend the court hearings and offer forms and assistance. A notice of hearing was sent on each case, advising the parties that their case was still pending, that they were not yet divorced, and that they needed to come to court on the designated date to discuss their case with the judge. The notice gave the names and telephone numbers of two court clerks, so that recipients could call a knowledgeable court representative to reschedule the hearing or ask questions. It also gave the contact information for the Legal Self-Help Center. [Appendix-1 – Notice of Status Conference]

Almost immediately, the phones started ringing. Counsel of record were embarrassed that judgments had never been entered on ancient cases – could they have time to contact opposing counsel, locate their clients, retrieve files from storage? Yes. Surprised parties called requesting dismissals – we reconciled years ago; we never meant to go through with this; we forgot all about this. So ordered. A few reported more permanent resolutions, expressed variously from, “She passed on last winter. I think of her every day” to “The bastard finally went to his great reward.” Case closed. The most common calls, though, were from panicked, self-represented litigants who were shocked to find out they were not divorced. “But we filed that petition years ago!” they complained, not knowing that further action was required.

2. The Court Hearing

The early calendars were varied and unpredictable. Participating in each hearing from the court side were the supervising judge, courtroom clerk, and two attorneys employed by the court – the family law facilitator and the family law examiner.

We had little idea how many lawyers or litigants would show up for their status conference, much less what problems they would present, or how we might approach a solution. So we lurched and we halted and we hemmed and we hawed, with the goal of resolving the case if we could at the time of the hearing; or, if that were not feasible, by moving it forward in some fashion. If litigants, for example, were unprepared to resolve their property disputes but hadn't lived together for years, we might bifurcate the property issues but dissolve the marriage. When a resolution was not possible on the day of the hearing, the parties left with a task to perform and a return date for compliance. The calendars took about 90 minutes to call. At the end of each one, we had a big stack of judgments and dismissals to show for our work.

One smart thing the court team did was to meet after each calendar to discuss what went right, what went wrong, and how we might approach the issue better in the future. The debriefing session helped each of us to understand what the process was like from other viewpoints. I learned how terrified and intimidated the parties feel when they come to court. As a result, I took steps to put the litigants at ease. For example, I started each session by greeting the litigants. I stood in front of them, rather than at the bench, and introduced myself. I made a point of smiling, thanked them for coming, and I explained what they could expect to happen in court that day.

Many other useful ideas were generated at these meetings. Among those we implemented were: availability of a Spanish interpreter; courtroom access to a computer with on-line family law forms and support programs; a check-in procedure with the clerk at the beginning of the calendar so time was not used calling the no-shows; preparation of

judgments by the family law examiner (rather than by the parties) in certain types of cases.

In terms of numbers, about 1/3 of the cases went off calendar before the hearing because of judgments, dismissals, or continuances. On the day of the hearing, approximately 1/3 to 1/2 of the cases were no-shows. Of those appearing, perhaps half had at least one lawyer on the case. The remaining matters involved self-represented litigants.

A. Not Giving Up on No-Shows

The no-shows fell into three broad categories. The first, and easiest, category consisted of skinny old files where the summons had not been served within three years. These matters were dismissed pursuant to Code of Civil Procedure Section 583.210.¹ The second category consisted of returned notices of hearing – “Unable to deliver. No longer at this address.” We searched for current contact information using the State Bar membership rolls for lawyers and an Internet-based search service (Accurint.com) for parties. If we located current addresses for at least one party, we re-noticed the hearings. The third category of no-shows involved parties with Hispanic names. Figuring at least some of the parties may not have understood the English notice, we translated the notices and sent this group new ones in Spanish.

The court’s efforts to contact the no-shows resulted in significantly more parties receiving actual notice of the hearing as well as more parties participating in them.

B. Compliance Dates for Lawyers

¹ It bears noting that Code of Civil Procedure Section 583.161 prohibits a court from dismissing a family law petition if an order for child support has been issued and the order has not been terminated by the court or by operation of law.

The lawyer cases were, predictably, the easiest for the court to process. Many lawyers came to court with a judgment, dismissal, or a promise to secure one or the other in the near future. Compliance dates were given for all cases needing final documentation. The lawyers were given the time they needed to finalize their cases – the court’s goal, after all, was to close files, not to torment lawyers. Some matters were set for settlement conference, where they later settled. A few cases resolved in the courtroom on the day of the status conference. Those agreements were placed on the record, and the parties were given a future date to track the submission of the judgment.

It bears mentioning that not a single case went to trial.

C. The Scared, Worried Self-Represented Litigant

The cases with self-represented litigants presented the greatest challenges for the court as well as the greatest opportunity and success. Procedurally, these cases were all over the map. Some parties had never served the summons. Many were eligible for a default judgment. Some were engaged in ongoing mediation or collaborative efforts. Others had lost touch with their spouse years before and were stunned to discover they were still married. Some litigants had actually signed marital settlement agreements but had never submitted a judgment. A few parties had gone to the Self-Help Center before coming to court and presented judgments for signature.

The status conference calendar was all rather lively and confusing, especially for someone new to the Family Law assignment. My big break came one afternoon when a sympathetic attorney, waiting for her case to be called, offered to assist a particularly helpless litigant with paperwork. Another attorney raised her hand with a similar offer. These two lawyers helped five appreciative litigants walk out of court that day with their

judgments.² One husband, overcome with gratitude, announced on the record that he was off to buy a lottery ticket, and if he won, he'd share the proceeds with the nice lawyer.

The two volunteer lawyers offered to come back for the next calendar and promised to recruit a few friends to assist as well. Thus, the idea of a Pro Per Calendar was born – matching self-represented litigants needing help with volunteer lawyers offering it.

3. Implementing Case Management

As the Court efficiently disposed of cases month after month, the age of the cases dropped from 8-10 years old to barely two. It became evident that, without some fundamental change, the court would continue to accrue old cases. With aging cases came avoidable difficulties for the parties and the court. It was time to form a committee and face the root of the problem.

A Blue Ribbon Committee was assembled, comprised of the Supervising Family Law Judge, Court Executive Officer, Court Operations Manager, Family Law Facilitator, and a diverse group of smart lawyers, including litigators, mediators, a civil attorney familiar with case management, and the Executive Director of the non-profit legal services agency.³

Unlike the civil bar, the family law bar is not intimate with and enthusiastic about the concept of case management. The lawyers objected to the court's imposing time limits on the parties, believing that the parties should be able to choose the pace of their

² Alexandria Quam and Rachel Castrejon were the first two brave and generous lawyers to volunteer their services.

³ The members of the innovative and hardworking Blue Ribbon Committee were as follows: Kim Turner, Court Executive Officer; Cheri Brannon, Court Operations Manager; Judith Beck, Family Law Facilitator; Kristine Cirby, Executive Director, Family and Children's Law Center; Eileen Barker, mediator; Rachel Castrejon, litigator; Rodney Johnson, collaborative lawyer; Sharon Mah, litigator; Matthew White, civil attorney and mediator; Lynn Duryee, Supervising Family Law Judge.

dissolution proceeding. They worried that parties would feel pressured to follow through on their divorce filing if case management were imposed upon them. They described the “emotional arc” that parties experience in the dissolution process, and worried that time limits would force people to finalize their cases before the litigants were emotionally prepared for it.

On the other hand, the Court’s experience with setting old cases for hearing revealed that most parties wanted to finalize their filings, but felt overwhelmed: They didn’t know how to do it themselves and didn’t have the money to pay someone to do it for them. Allowing these cases to languish did not contribute to a satisfactory resolution. And, while there are admittedly differences between civil and family law cases, the court had experienced great success in improved efficiencies and outcomes by using case management in civil matters.

The Blue Ribbon Committee ultimately recommended case management for all family law cases involving at least one self-represented party. A local rule was drafted and adopted. [Appendix-2: Local Rule Implementing Case Management]. The rule provided that, upon the filing of a dissolution, parties would be given compliance dates for the service of the summons, filing of an answer or default, and service of the declaration of disclosure. The parties would also be required to attend a Case Management Conference 180 days after filing. The dates for compliance and case management would be set at the time of filing, and the petitioner would be given a cover sheet with the requirements for each court date [Appendix-3: Notice of Case Management].

Additionally, the Blue Ribbon Committee found that simplified information needed to be given to self-represented litigants before the Case Management Conference occurred. The Committee prepared a “Petitioner’s Roadmap to Success” and a “Respondent’s Roadmap to Success.” These roadmaps were written in plain English and broke down the dissolution process into bite-size pieces of information. Roadmaps are color-coded and are given to the parties at filing. [Appendix-4: Petitioner’s Roadmap to Success; Appendix-5: Respondent’s Roadmap to Success]. Additionally, the Committee developed a resource sheet for parties, giving information on the Self-Help Center, Lawyer Referral Service, Family and Children’s Law Center, Family Law Facilitator, and Internet assistance. [Appendix 6 – Resources]

The Rule implementing case management took into account that some parties are working outside of court to resolve their case in a non-adversarial fashion by utilizing mediation or collaborative law. These parties are permitted under the rules to sign a stipulation continuing the status conference for a period of up to 120 days. No fee is collected for the filing of the continuance. [Appendix 7 – Stipulation to Continue Case Management Conference].

A. Team Building at the AOC Conference on Case Management

As the Blue Ribbon Committee was working out the wrinkles in the then-proposed rule implementing case management, our court was invited to send a team to an AOC conference entitled “Developing Effective Practices in Family Caseflow Management.” We signed up the entire committee. The conference could not have come at a better time for us. It was inspiring, informative, and practical. We learned many

useful practices that we'd not thought of,⁴ enjoyed the opportunity to discuss our court's problems in an educational setting away from "home," and gained encouragement that our proposals were in keeping with statewide best practices.

The AOC Conference was, ultimately, a valuable team-building experience for us. Committee members returned inspired to make the changes and spread the word about the benefits of case management.

4. Enlisting Assistance

The court needed volunteer lawyers and mediators to make its new case management system work. In compliance with the new Rule, the court would be setting Case Management Conferences twice a month, at the same time that the court was disposing of its old family law cases. At these hearings, volunteer attorneys and mediators needed to be available in the courtroom to help resolve cases, answer questions and assist with document completion.

With the cooperation of the Family Law Section of the Marin County Bar Association, the court sent out a group e-mail offering free training for volunteer mediators and lawyers. The family law judge conducted the training of the mediators. The judge also promoted and participated in the training of the lawyers. Sign-up sheets were available at the trainings. The court asked for two lawyers and one mediator per 90-minute session. Lawyers were generous in their offers of assistance: 30 lawyers completed the training, and the court filled its first six months of sign-up sheets at the completion of the training.

⁴ We learned, for example, how important it is for a court to secure long-term buy-in for any changes it makes in its operation. Following the conference, the committee added the in-coming family law judge as a new member. We also learned how important it is to gather information, such as statistics and satisfaction surveys, to support the use of court resources. This was also implemented by the court.

The family law judge continued to work closely with the volunteers, greeting them before court started and meeting with them afterwards to thank them for their efforts and to solicit ideas for improvements. The court also acknowledged the lawyers by sending thank you letters, issuing certificates of appreciation, and hosting a reception in their honor.

5. But Does It Work?

The amazing thing about case management is: it works. Our court has only had it in effect for one year, but already we have seen a noticeable increase in judgments. We have found that giving litigants compliance dates helps them take the needed actions to advance their cases. Very few parties show up at the early hearings for filing of proof of service, response or default, declarations of disclosure simply because most of them have complied with the filing deadlines. At the case management conference, where parties are told they will receive help from the court, many litigants come to court with their completed judgment packet, having already visited the Self-Help Center, a lawyer, paralegal, mediator, or other legal service provider.

6. Satisfaction Index

From the court's viewpoint, the "Pro Per Calendar," as it is now designated, has been a satisfying, successful, and worthwhile undertaking. Not only did the court eliminate its backlog, it implemented an easy, do-able solution to prevent the problem from recurring. We have had a number of courts come to observe our operations, and we feel a sense of pride for having put a good program in place. Several newspapers have written favorable articles about the program, and one litigant – we could just hug her! – wrote a beaming letter to the editor praising the court's services. Finally, we have

enjoyed and appreciated the partnerships formed with court employees and with members of the bar.

From the litigants' viewpoint, the Pro Per Calendar has been a resounding success. In surveys returned to the court, litigants have consistently rated the services received as "excellent." [Appendix-8: Participant Evaluation] Representative comments from these surveys include the following:

- "I think this is a fabulous service."
- "Helpful, professional process."
- "Excellent help. An exceptional day in court!"
- "Very impressed by court experience today and the assistance given."
- "Thank you so much for your help. I was about to give up on finalizing the divorce. This is an excellent service!!"
- "I was nervous about being here but I felt put at ease by the whole process. The judge and everyone were very helpful."
- "Well the judge was a great person, and my lawyer helped a lot, plus the translator, so I have very good experience with all this people them make a great job."
- "This is so helpful. It's very generous and everyone is so nice. It makes us feel less in conflict to have cooperative help and saves us time and money and getting contentious, which would clog the system. It increases efficiency for everyone involved. A great idea! Thank you!"

The attorneys and mediators also speak highly of their volunteer experience. They report how rewarding and fun it is to help someone in need of a little guidance, and how

fulfilling it is to be so thoroughly appreciated. They like that the commitment does not last longer than 90 minutes, and that they are able to significantly assist 3 or 4 people in that time. As three experienced family law practitioners explained:

- ❖ “It is wonderful to work collaboratively with the courts and the private bar to develop a system that provides self-represented litigants real assistance to finalize their divorce or paternity cases. Most of these persons do not need to hire lawyers but are overwhelmed by the legal forms and procedures. As an attorney who works with low and moderate income litigants, I feel immensely satisfied that we are helping these people move on with their lives, while giving them a positive look at the court system.”⁵
- ❖ “Volunteer work for the Court balances what we do as professionals in our private practices and brings more than a modicum of satisfaction. There is nothing more gratifying than unknotting a technical question that allows a pro per litigant to get the dissolution done there and then. This contrasts with the complicated legal issues and complicated legal personalities that we have to grapple with day in and day out in our private practices. I would do it every month for the court if it were possible. It keeps me sane!”⁶
- ❖ “The individuals I helped had limited resources. They felt stuck and did not know what to do to move their case forward to a conclusion. They had been in limbo for years. The guidance and assistance that was offered at the Pro Per calendar provided them with the opportunity to resolve their case quickly and cost efficiently. I know that the individuals I helped were left

⁵ Kristine Cirby, Attorney at Law, Executive Director, Family and Children’s Law Center

⁶ Judith H.B. Cohen, Attorney at Law, Family Law Specialist

with a more positive impression of how the legal system operates. It was a gratifying experience.”⁷

7. Conclusion

In less than one year, Marin County eliminated its backlog of unadjudicated family law cases and began a case management program for all family law matters involving at least one self-represented litigant. We accomplished this by forming a court team and enlisting the help of volunteer attorneys and mediators.

The 2005 Trust and Confidence Survey of the California Courts revealed that litigants in family, juvenile and traffic court give California courts the lowest satisfaction ratings. The central complaint about family court is that cases take too long and cost too much.

Marin County’s new program squarely responds to the concerns of the public by reducing the time it takes to resolve family law cases and offering assistance at no cost to the parties.

When neighboring courts have come to visit our operations, they ask, “What advice do you have for us?” Our answer is: Get buy-in from as many participants as possible, and then just do it. You can’t anticipate all the problems that will come up, so expect to solve the problems as they arise. Be willing to make it up as you go along. Because we were working as a team and we consistently received positive feedback from the litigants, we found the process to be both effective for the courts and rewarding for us professionally. It is perhaps the simplest of all solutions to put the people with problems in the same room as the people who can solve the problems. What better place to do that than in a family law court.

⁷ Sharon F. Mah, Attorney at Law, Family Law Specialist