

Constitutionality of the Cook County Parentage Court, Including Proposed Recommendations for its Improvement

Pro Bono Counsel: Martin Sinclair, Liz Austermuehle and Evan Brennan

Chicago Appleseed Staff: Elizabeth Monkus and Malcolm Rich

Pro Bono Counsel, additional research: Baker & McKenzie LLP

In this Memorandum, we analyze the constitutionality of the adjudication of child support issues in the Domestic Relations Division of the State of Illinois Circuit Court of Cook County. Specifically, we have considered the bifurcation of the adjudication of child support, custody, visitation and other rights based upon the marital status of the parents of the child within the context of the equal protection clause of the Fourteenth Amendment to the United States Constitution and the related laws of the state of Illinois.¹

The first step in this process was a preliminary memorandum that was provided to the Parentage Court Committee in June 2012. As noted in that submission, the memorandum was based on preliminary information and intended to be supplemented with additional fact gathering and analysis. Over the course of the last year, we have worked with judges from the Domestic Relations Division, employees of the Domestic Relations Division, attorneys practicing before both the Divorce and Parentage courts, attorneys from the Parentage and Child Support *Pro se* Advice Desk (administered by the Chicago Legal Clinic, Inc.), and attorneys from the Domestic Relations Advice Desk (administered by CARPLS). Additionally, we have conferred with law professors, family services professionals and domestic relations attorneys and judges practicing in other jurisdictions to identify best practices for family law courts.

Our goal in conducting this analysis has been to review the constitutionality, efficiency, and efficacy of the Parentage Court as presently configured. This effort necessarily includes a discussion of the history of this judicial system and considers the improvements made to the Parentage Court, such as the addition of two larger courtrooms and two judges provided during the second half of 2012. However, the purpose of our analysis was not to review the improvements made to the Parentage Court across the decades. There is no doubt that the system today is a significant improvement over its past forms. The purpose of our analysis was to evaluate the Parentage Court using the same approach that a federal court would take if a party were to file a lawsuit alleging a violation of their rights under the equal protection clause, as was the case in *Gomez v. Comerford*, No. 93-C-3268 (N.D. Ill.). Such a judicial evaluation would be concerned only with the current form of the Parentage Court.

¹ This focus of this memoranda is on the judicial systems within the Domestic Relations Division that adjudicate (1) issues of parentage and child support for nonmarital children and (2) the dissolution of marriage, rights regarding related marital property, and relevant issues regarding children of that marriage. Based upon the usage observed during our work process, we will refer to these courts as (a) Parentage and (b) Domestic Relations or Divorce Courts, respectively.



This memorandum is divided into two parts. Part I starts with a brief history of the Parentage Court and the legal challenge raised in *Gomez*. Second, it reviews the applicable federal and state law. Part II starts with a discussion of the methodology used to gather information regarding the Parentage Court. We then discuss the current conditions of the Parentage Court based on our interviews and surveys with about 80 individuals. We conclude Part II with a discussion of how other states handle child support matters, offer recommendations for improvements that the Parentage Court Committee may wish to consider, and conclude with a legal analysis based upon our constitutional analysis and research into the current administration of justice in the Parentage Court.

For purposes of this report, the two systems with the Domestic Relations Division are referred to as “Divorce Court” for cases involving children born to married parents and “Parentage Court” for cases involving children whose parents have not been married to each other. Both courts are seated within the Domestic Relations Division.

I. History of the Parentage Court, the Legal Challenge, and Review of Applicable Federal and State Law

History of the Parentage Court and the Prior Legal Challenge to the Structure of the Parentage Court

History of the Circuit Court Child Support Enforcement System

Prior to 1993, cases involving divorce and most other family law matters were heard in the Domestic Relations Division of the county department, whereas family law matters arising under the Illinois Parentage Act of 1984 (the “Parentage Act”), 750 Ill. Comp. Stat. 45/1 et seq. (2012), were heard in the municipal department. In practice, this meant that cases involving children born to married parents were heard in the Domestic Relations Division of the county department² and cases involving nonmarital children were heard in the municipal department.³

Historically, a significant disparity in court facilities existed between the Domestic Relations Division of the county department and the municipal department. The disparities were across the board, from child-care facilities, waiting room facilities, public transportation access to the courthouses, and access to court-related services.⁴ A class

² These cases were heard primarily at the Daley Center or at 1340 S. Michigan Ave. See *Gomez v. Comerford*, No. 93C 3268, 1995 U.S. Dist. LEXIS 393, at *3 (N.D. Ill. Jan. 12, 1995).

³ These cases were mostly heard at 32 W. Randolph, with some heard in outlying courtrooms of police stations. *Id.*

⁴ The *Gomez* court acknowledged that the “harmful stigma” that may result from segregation of children of unmarried and married parents into separate facilities would be enough to sustain a claim without the need to address the conditions of the two facilities. *Id.* at *41.



action, *Gomez v. Comerford*, No. 93-C-03628,⁵ was filed in the Northern District of Illinois against the Chief Judge of the Circuit Court, claiming that this arrangement violated the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

Gomez and Circuit Court Changes—Overt Discrimination

In their first amended complaint, the plaintiffs⁶ in *Gomez* alleged the separation of cases between the county and municipal departments constituted overtly discriminatory treatment because the facilities used to adjudicate the interests of nonmarital children were inferior and lacked several social and court-related services available in Domestic Relations Court. 1995 U.S. Dist. LEXIS 393, at *2. In October 1993, while the suit was ongoing, the Chief Judge amended General Order 1.2 and assigned all cases to be heard under the Parentage Act (including those of children born to unmarried parents) to the Domestic Relations Division,⁷ which already heard the cases involving children born to married parents.⁸ 1995 U.S. Dist. LEXIS 393, at *5–8. The district court found that this amended order remedied the alleged overt discrimination and dismissed the first amended complaint. The plaintiffs were granted leave to file a second amended complaint if discrimination continued despite the organizational change.

In January 1994, the plaintiffs filed a second amended complaint alleging the amended general order and the consolidation of the two systems within the Domestic Relations Division had not remedied discrimination in the Circuit Court. The court denied the Chief Judge’s first motion to dismiss, noting that cases involving children of married parents still occurred at a separate location from those of children with unmarried parents. The court held that this fact was sufficient to sustain an allegation of an overt discriminatory practice, and thus denied the motion. In November 1994, the Chief Judge moved again to dismiss the action and filed for summary judgment based upon the argument that there was crossover of married and unmarried parents between the two courthouses, and the separate locations presented equal accommodations. In part because of the crossover, the court found the plaintiffs failed to raise an issue of fact as to the existence of an overtly discriminatory system. However, the court denied both of the Chief Judge’s motions because the plaintiffs established that a great majority of cases still followed the segregated system, which raised an inference that the administration and policy of the Circuit Court was motivated by a discriminatory purpose.⁹

⁵ This memorandum refers primarily to the opinion issued in 1995 in response to the defendant’s failed motion to dismiss, as well as the 1996 opinion which grants the plaintiffs’ motion to dismiss.

⁶ Plaintiff Gomez represented a class of parents who brought suit against the Chief Judge.

⁷ General Order 1.2 specifies the types of actions each Circuit Court department will hear. See Circuit Court of Cook County General Order 1.2(2.1)(c) (assigning actions or proceedings relating to “child support and maintenance” arising under the Parentage Act to the Domestic Relations Division), *available at* http://www.cookcountycourt.org/rules/orders/general_orders.html.

⁸ This change remains in effect today. *Id.*

⁹ The court also recognized that an inference of discriminatory purpose was “buttressed by a long history of official discrimination against illegitimate children,” as well as the Chief Judge’s knowledge of the segregation that occurred in the vast majority of cases. *Gomez*, 1995 U.S. Dist. LEXIS 393, at *38.



Gomez and Circuit Court Changes—Moving Forward

In January 1995, the Chief Judge renewed his motion for summary judgment and submitted a letter to the Cook County Board that proposed remodeling the Daley Center to accommodate the entire Domestic Relation Division (including the courts that primarily served unmarried parents), requested the hiring of more staff, and asserted that he did not intend to administer the system in a discriminatory manner.¹⁰ The district court stayed the *Gomez* litigation temporarily and dismissed the case with leave to reinstate if the Board had not approved the remodeling plan by July 1995. The court's order also required the Chief Judge to submit a supplemental statement of material fact with additional details about the proposed remodeling and the operation of the child support systems. After the Chief Judge failed to adequately provide these material facts, Judge Conlon reinstated the case and denied defendant's motion for summary judgment.

Finally, in January 1996, the plaintiffs filed a voluntary motion to dismiss the suit because of the many changes made to the family law system in Cook County, including treatment of cases that involved children born to unmarried parents. The court granted the plaintiffs' motion to dismiss the action without prejudice on January 25, 1996. *Gomez v. O'Connell*, No. 93-C3268, 1996 U.S. Dist. LEXIS 1285, at *8 (N.D. Ill. Jan. 25, 1996).¹¹

Relevant Jurisprudence

Determining Which Class of Persons are “Similarly Situated”

An equal protection analysis is properly triggered when similarly situated classes of people are treated differently from each other under the color of law.¹² The United States Supreme Court has explained that “[c]lass legislation, discriminating against some and favoring others, is prohibited, but legislation which, in carrying out a public purpose, is limited in its application, if within the sphere of its operation it affects alike all persons similarly situated, is not within the [Fourteenth A]mendment.” *Barbier v. Connolly*, 113 U.S. 27, 32 (1885). Picking up on this language, the Illinois Supreme Court, like many

¹⁰ Judge Donald P. O'Connell became Chief Judge of the Circuit Court, and was substituted as the new defendant. *See* Fed. R. Civ. P. 25(d). The current Chief Judge of the Circuit Court of Cook County is Timothy C. Evans.

¹¹ The court denied the plaintiffs' request to dismiss with leave to reinstate. *Gomez*, 1996 U.S. Dist. LEXIS 1285, at *17.

¹² *But cf. Vill. of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000) (“Our cases have recognized successful equal protection claims brought by a ‘class of one,’ where the plaintiff alleges that she has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment.”); *Del Marcelle v. Brown Cnty. Corp.*, No. 10-3426, 2012 U.S. App. LEXIS 9900, at *5 (7th Cir. May 17, 2012) (en banc) (recognizing “class of one” equal protection claims where the plaintiff can “show that he was the victim of discrimination intentionally visited on him by state actors who knew or should have known that they had no justification, based on their public duties, for singling him out” (emphasis omitted)).



others,¹³ first employs a “threshold requirement for . . . equal protection claim[s]—demonstrating that [the plaintiff] and the group he compares himself to are similarly situated.” *People v. Whitfield*, 228 Ill.2d 502, 512 (2007). The United States Court of Appeals for the Seventh Circuit has likewise engaged in a similar threshold inquiry. See *Chavez v. Ill. State Police*, 251 F.3d 612, 636–37 (7th Cir. 2001) (outlining how plaintiffs were required to show their membership in a protected class, that they are otherwise similarly situated to members of an unprotected class, and that they were treated differently from members of the unprotected class).

The “similarly situated” threshold inquiry requires a review of the prior litigation in *Gomez* because the many motions to dismiss presented in that case never addressed directly the issue of whether unmarried parents seeking judicial resolution in Parentage Court are similarly situated to married parents seeking judicial resolution in Domestic Relations Court. In their pleadings, the plaintiffs in the *Gomez* litigation claimed expressly “that the children of married parents enjoy numerous advantages over the children of unmarried parents.” *Gomez v. Comerford*, 833 F. Supp. 702, 704 (N.D. Ill. 1993) (Conlon, J.). This comparative formulation of class members appears to have been unchallenged by defendants and presumed by the court. See *Gomez v. O’Connell*, 1996 U.S. Dist. LEXIS 1285 (N.D. Ill. Jan. 25, 1996) (Conlon, J.); *Gomez v. Comerford*, 1995 U.S. Dist. LEXIS 393 (N.D. Ill. Jan. 12, 1995) (Conlon, J.). The most direct analysis of the issue by the district court was in its 1995 memorandum opinion, in which Judge Conlon decided that the policy of directing unmarried parents into the Parentage Court and married parents into the Domestic Relations Court was not an overtly discriminatory policy based on the quasi-suspect classification of illegitimacy. *Id.* at *32–35 (“The plaintiffs submit no evidence that gives a ‘face’ to the chief judge’s informal policies. Instead, the plaintiffs point only to the effect of the chief judge’s administration of facially neutral policies. Accordingly, the court concludes that the plaintiffs raise no issue of fact as to the existence of an overtly discriminatory policy.” (internal citations omitted)). For the purposes of this memorandum’s evaluation of the current Parentage and Domestic Relations Courts, we consider the threshold issue under more recent case law.

In determining whether two groups can be said to be similarly situated, courts “must look at all relevant factors, the number of which depends on the context of the case.” *Radue v. Kimberly-Clark Corp.*, 219 F.3d 612, 617 (7th Cir. 2000). It is therefore important to avoid a tautological analysis, as the two groups cannot be defined solely by the trait identified by the legislature, whatever statutes are at issue. See Joseph Tussman & Jacobus tenBroek, *The Equal Protection of the Laws*, 37 Cal. L. Rev. 341, 344–47 (1949) (warning courts to avoid conclusions that a law is constitutional if it “applies equally to all to whom it

¹³ See, e.g., *United States v. Armstrong*, 517 U.S. 456, 465 (1996) (“To establish a discriminatory effect in a race case [alleging selective prosecution], the claimant must show that similarly situated individuals of a different race were not prosecuted.”); *Women Prisoners of D.C. Dep’t of Corr. v. District of Columbia*, 93 F.3d 910, 924 (D.C. Cir. 1996) (“The threshold inquiry in evaluating an equal protection claim is, therefore, ‘to determine whether a person is similarly situated to those persons who allegedly received favorable treatment.’” (quoting *United States v. Whiton*, 48 F.3d 356, 358 (8th Cir. 1995))); *Varnum v. Brien*, 763 N.W.2d 862, 882 (Iowa 2009) (looking to the “similarly situated” requirement and using it as “a narrow threshold test” for the purposes of interpreting the Iowa constitution’s equal protection clause); *State v. Angel C.*, 715 A.2d 652, 670 (Conn. 1998) (“[T]he defendants must show, as a threshold matter, that [the statute] either on its face or as applied, treats similarly situated individuals differently.”).



applies”). Courts have usually accomplished this goal by looking at whether each group is “similarly situated in all pertinent respects.” *Chavez*, 251 F.3d at 637. That is, “the equal protection guarantee requires that laws treat all those who are similarly situated *with respect to the purposes of the law* alike. . . . The purposes of the law must be referenced in order to meaningfully evaluate whether the law equally protects all people similarly situated with respect to those purposes.” *Varnum*, 763 N.W.2d at 883 (citation omitted); *see also* Tussman & tenBroek, 37 Cal. L. Rev. at 347 (noting how it is “impossible to pass judgment on the reasonableness of a [legislative] classification without taking into consideration, or identifying, the purpose of the law”).

Applying the “similarly situated” analysis to the married and unmarried parents in either Domestic Relations or Parentage Court, it is necessary to review why each separate court system was constructed so that we may identify the purpose of the applicable law. At common law, the ecclesiastical courts could grant a divorce, but this was more like a judicial separation than a divorce, with parties free to live apart but unable to remarry. *See* 1 William Blackstone, *Commentaries* *433 (describing how marriage and divorce were “left entirely to the ecclesiastical law” and were “the province of the spiritual courts; which act *pro salute animae*”). Divorce proceedings today can entail issues at both law and equity, and usually reach many more issues than simply dissolution of the marriage. *See, e.g., Cont’l Cas. Co. v. Commonwealth Edison Co.*, 286 Ill. App. 3d 572, 576–82 (1st Dist. 1997). Illinois divorce courts have far-reaching powers: from ordering child support, visitation rights, and custody determinations (relevant to our research) to annulment, spousal maintenance, alimony, the orderly disposition of property, and issuing orders of protection.

The functions and issues confronting Domestic Relations Court are much more expansive than the relatively narrower issues that the Parentage Court regularly confronts. Further, there likely are many divorce proceedings in Illinois that do not deal with any child-related issues. As a consequence of this structural and purpose-related difference, it is unlikely that a court would agree with a plaintiff’s assertion that married and unmarried parents are “similarly situated” groups. However, a court may favor a comparison based upon the status of the children at issue.

When the perspective is shifted to consider the impact of this bifurcated process on the needs of the children at issue, the outcome differs. For relief such as child support, many children will need it immediately—not months or years from the date their (usually non-married) parent petitions for relief.¹⁴ In this respect, it should also be recognized that actions for child support or to establish paternity are often brought *on behalf of the children themselves*—not just for the benefit of litigious parents. *See, e.g., In re G.M.*, 2012 IL App (2d) 110370, ¶¶ 20–24. At bottom, judicial decisions over child support, regardless of whether they are made by a Domestic Relations or Parentage Court, are appropriately considered as an adjudication in the interest of the child. In this manner, the adjudication should be conducted in a reasonably equal manner in order to fulfill “Illinois['] recogni[tion

¹⁴ *Cf. In re D.L.*, 191 Ill.2d 1, 13 (2000) (noting “the problems of delay that can occur within . . . the child welfare system. . . . [T]hat it is not in [a child’s] best interests for his status to remain in limbo for an extended period of time. . . . [And] direct[ing] the courts below to consider, in an expedited manner, cases involving children like D.L., so that the minors whose futures are at stake in these proceedings can obtain a prompt, just, and final resolution of their status”).

of] the right of *every* child to the physical, mental, emotional and monetary support of his or her parents.” *Illinois Parentage Act of 1984*, 750 ILCS 45/1.1 (emphasis added).

This principle of equal rights, fundamentally, the core purpose of the Parentage Court.¹⁵ This is so because the Illinois Parentage Act of 1984, which controls these disputes and grants jurisdiction to the Circuit Courts, *id.* at 45/9(a), was specifically enacted “[t]o alleviate past defects in parentage cases[,] to protect the special interests of the child to have an adequate opportunity to obtain support[, and to] remedy[] past denials of equal protection rights existing under the old Paternity Act.” *Klawitter v. Crawford*, 185 Ill. App. 3d 778, 783 (1st Dist. 1989). However, if each child is entitled to certain rights of support, it is necessary for those rights to be adjudicated in a comparable manner and efficiency regardless of where they are adjudicated. Unequal systems to oversee and administer those rights cannot be said to fulfill the purpose of the Illinois law—much less the Fourteenth Amendment.¹⁶ Thus, for equal protection purposes, the proper comparison between similarly situated persons is to contrast the judicial processes available to marital children (Domestic Relations Court) with those available to nonmarital children (Parentage Court).

Proving the Existence of a Classification Based on “Illegitimacy”

Having established that the best framing of the equal protection analysis would be a comparison of the children whose parents proceed in the Domestic Relations Court (typically marital children) to the children of parents who proceed in Parentage Court (typically nonmarital children), we consider next the applicable level of judicial scrutiny to be applied by a court of review. The applied level of judicial scrutiny plays a crucial role in the outcome of the judicial evaluation. This classification is important because intermediate scrutiny applies to laws distinguishing between marital and nonmarital children, whereas laws that do not simply must withstand rationality review.¹⁷ See *Clark v. Jeter*, 486 U.S. 456, 461 (1988); *Pickett v. Brown*, 462 U.S. 1, 8 (1983) (“In view of the history of treating illegitimate children less favorably than legitimate ones, we have subjected statutory classifications based on illegitimacy to a heightened level of scrutiny.”). As a unanimous Court in *Clark v. Jeter* explained, “[t]o withstand intermediate scrutiny, a statutory classification must be substantially related to an important governmental objective.” 486 U.S. at 461. In support of applying heightened scrutiny to such laws, one scholar has noted that “[i]ntermediate scrutiny is justified because of the unfairness of penalizing children

¹⁵ This conclusion is supported by the history of the Cook County Parentage Court and its preceding iteration of the “Paternity Court” in the Municipal Court of Chicago, as was necessitated by the Courts Act, (Ill. Rev. Stat. 1957, ch. 37, par. 345 (sec. 2)) and the Illinois Paternity Act of 1957 (Ill. Rev. Stat. 1981, ch. 40, pars. 1351 through 1368).

¹⁶ The circuit courts are allowed to funnel some Parentage Act disputes to the Divorce Court pursuant to 750 ILCS 45/9(a), which allows for the circuit courts to “join any action under th[e Parentage Act] with any other civil action where applicable” and apply the law’s “provisions . . . if parentage is at issue.”

¹⁷ The Supreme Court applies differing levels of scrutiny depending on the type of discrimination. *Strict* scrutiny is applied to discrimination based upon race or national origin. A law is upheld under strict scrutiny if it is proved necessary to achieve a compelling government interest. *Intermediate* scrutiny is generally used for discrimination based on gender or against nonmarital children. Last, there is a *rational basis test*, which is the minimum level of scrutiny for all laws challenged under equal protection. Erwin Chemerinsky, *Constitutional Law: Principles & Policies* § 9.1, at 645 (2d ed. 2002).



because their parents were not married.” Erwin Chemerinsky, *Constitutional Law* 804 (2d ed. 2005); see also *Clark*, 486 U.S. at 461 (“[W]e have invalidated classifications that burden illegitimate children for the sake of punishing the illicit relations of their parents, because ‘visiting this condemnation on the head of an infant is illogical and unjust.’” (quoting *Weber v. Aetna Casualty & Surety Co.*, 406 U.S. 164, 175 (1972))).

Overall, the United States Supreme Court’s decisions in this area establish three principles: (1) laws that benefit marital children, but exclude all nonmarital children, are most likely to be found unconstitutional; (2) laws that benefit some nonmarital children, but deny benefits to other nonmarital children, must be evaluated on a case-by-case basis under intermediate scrutiny to determine whether they are constitutional; and (3) “laws that create statutes of limitations for the time period for evaluating paternity must provide enough time for those with an interest in the child to present his or her rights and must be substantially related to the state’s interest in preventing false claims.” Erwin Chemerinsky, *Constitutional Law: Principles & Policies* § 9.6, at 749 (2d ed. 2002).

The first principle applies to either overt or purposefully segregative classifications against nonmarital children. See Ronald D. Rotunda & John E. Nowak, *Treatise on Constitutional Law* § 18.4, at 361 (4th ed. 2008) (“[T]he law may contain no classification, or a neutral classification, and be applied evenhandedly. Nevertheless, the law may be challenged as in reality constituting a device designed to impose different burdens on different classes of persons. If this claim can be proven the law will be reviewed as if it established such a classification on its face.”). With regard to the second principle, the point is that distinctions amongst nonmarital children will be subjected to intermediate scrutiny and, in the past, have usually dealt with inheritance or Social Security survivors’ benefits. See *Jimenez v. Weinberger*, 417 U.S. 628 (1974). The third principle stems from decisions dealing with different limitations periods for paternity between marital and nonmarital children. See, e.g., *Mills*, 456 U.S. at 97 (concluding that “Texas must provide illegitimate children with a bona fide opportunity to obtain paternal support[, but this] does not mean . . . that it must adopt procedures for illegitimate children that are coterminous with those accorded legitimate children”).

Because it has been decided that the laws establishing the two court systems do not overtly discriminate between marital and nonmarital children, see *Gomez v. Comerford*, 1995 U.S. Dist. LEXIS 393, at *32–35, it must be established whether they are discriminatorily applied before they can be said to fit within the first principle.

Neutrally Applicable Policies and Practices

The district court in *Gomez* concluded that because the separate court systems are established by “facially neutral” policies in the Circuit Court, courts must distinguish between whether “the . . . evidence of segregation suffices only to establish that the facially neutral policies and practices of the Circuit Court have a discriminatory *effect* or are being *administered* in a discriminatory fashion.” *Gomez v. Comerford*, 1995 U.S. Dist. LEXIS 393, at *34–35 (citing *Yick Wo v. Hopkins*, 118 U.S. 356, 373–74 (1886)). Essentially, a disproportionate impact (even upon a suspect class) is insufficient to invalidate a facially neutral policy or practice. See *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 267 (1977); *Washington v. Davis*, 426 U.S. 229, 240 (1976). Yet this same policy or practice *can* be invalidated if it can be shown that the practice was put into place based on



a discriminatory purpose—that is, with the intent to invidiously discriminate. *See Arlington Heights*, 429 U.S. at 267 (noting that a facially neutral ordinance would be unconstitutional if there were proof that exemptions were granted on a racially discriminatory basis); *Davis*, 426 U.S. at 241.

The 1995 decision in *Gomez* picked up on this reasoning and concluded that, given the history of discrimination against nonmarital children in Illinois (at least since the Bastardy Act of 1845),¹⁸ there was an issue of fact over whether the separate systems were originally put into place because of a discriminatory purpose. 1995 U.S. Dist. LEXIS 393, at *38 (“This fundamental segregation raises an inference of a discriminatory purpose, but it is not dispositive. The inference is buttressed by a long history of official discrimination against illegitimate children, both in Illinois and elsewhere.”). The distinction between the facts as they were in 1995 and today is the relocation of the Parentage Court to the Concourse Level of the Daley Center and the ongoing improvements to that space. In 1995, the *Gomez* court relied on the fact that the Parentage Court was located at “32 W. Randolph instead of the Daley Center.” *Id.* at *38–39. As this address and ostensible facility-related difference no longer exists, it is unclear how important a future court might look to this changed circumstance as (dis-)proving a discriminatory purpose.

This is ultimately an intensely factual issue. It is difficult to predict what facts might prove or disprove a discriminatory purpose given that the current Parentage Court facility is an improvement over the Randolph location. And even the Randolph facility was substantially better than the “Paternity Courts” found at various police stations across the city. *See id.* at *3. These past situations were undeniably worse than the current facility at the Daley Center, but incremental improvements designed to remedy past deficiencies do not diminish the rights of nonmarital children’s to equal protection of the law. *Cf. Pickett*, 462 U.S. at 13 (overturning “a 2-year limitations period” because it was “only a small improvement in degree over the 1-year period at issue in *Mills*” and, consequently “[i]t, too, amount[ed] to a restriction effectively extinguishing the support rights of illegitimate children that [could not] be justified”).

In this way, it is possible that the decision to move the Parentage Court into the limited space of the Concourse Level of the Daley Center might buttress the factual inquiry if the move was made with awareness that it would disparately impact nonmarital children. *Cf. Chemerinsky, Constitutional Law: Principles & Policies* § 9.3, at 690 (“In other words, if a law is [facially] neutral, a challenger must show a discriminatory purpose and a discriminatory effect.”). This argument draws upon the persisting effects of Illinois establishing a separate and relatively underfunded system.

¹⁸ *See, e.g., Trimble v. Gordon*, 430 U.S. 762, 773–74 (1977) (striking down an Illinois statute allowing nonmarital children to inherit by intestate succession only from their mothers, whereas marital children could inherit via intestate succession from either parent); *see also* Ernst Freund, *Illegitimacy Laws of the United States* 29 (1919) (“The most striking feature of bastardy legislation is its stationary character, indicative of a lack of thought or movement . . . or perhaps to a certain extent[,] of an extreme conservatism of sentiment. In Massachusetts, until the new act of 1913, the leading features of the law of 1785 were retained; Georgia’s law is still substantially that of 1793; the law of New York, contained in the Code of Criminal Procedure of 1881, is substantially a copy of the law found in the Revised Statutes of 1828; in Ohio there has been no radical change since 1824; in Florida, since 1828; in Iowa, since 1840; in *Illinois*, since 1845; in Alabama and Kentucky, since 1852.” (emphasis added)).

Adherence to Separate Systems and Discriminatory Purpose

Although the factual circumstances have changed since the 1995 *Gomez* decision, the court there reviewed a line of argument that may undermine the presumption of constitutionality of the currently separate systems. Specifically, Judge Conlon noted that “where the adverse consequences of a law upon an identifiable group are almost certain to occur, ‘a strong inference that the adverse effects were desired can reasonably be drawn.’” 1995 U.S. Dist. LEXIS 393, at *37 (quoting *Personnel Adm’r of Mass. v. Feeney*, 442 U.S. 256, 279 n.25 (1979)). This “reaffirmation” of the disproportionately discriminatory effects may prompt a future court to take a “second look” at the Parentage Court despite its location in the Daley Center and recent improvements. This is done because even though there are facially neutral policies in place, it may be possible to prove that the separate systems would not have been adopted without a motivation to discriminate against nonmarital children. *Cf. Hunter v. Underwood*, 471 U.S. 222, 228 (1985) (invalidating an Alabama statute disenfranchising anyone convicted for a crime of moral turpitude because racial discrimination was shown to be a motivating factor at the time of the law’s enactment).

With the full benefit of hindsight from the prior litigation in *Gomez* and the separate locations of the Parentage and Domestic Relations Courts, the policy of moving and maintaining a separate Parentage Court in a significantly smaller space on the Concourse Level would tend to weaken any argument that the administrators who established this separate system did not know there would be a disproportionate impact upon nonmarital children. In other contexts, it has been suggested that such a reaffirmation of a disproportionate impact might very well give rise to a presumption of discriminatory purpose. For example, in his concurrence in *United States v. Then*, Judge Calabresi noted how “[i]f Congress, for example, though it was made aware of both the dramatically disparate impact among minority groups of enhanced crack penalties and of the limited evidence supporting such enhanced penalties, were nevertheless to [reaffirm the disparate treatment,] subsequent equal protection challenges based on claims of discriminatory purpose might well lie.” 56 F.3d 464, 468 (2d Cir. 1995) (Calabresi, J., concurring). Other judges have concluded similarly. *See, e.g., United States v. Reddrick*, 90 F.3d 1276, 1284 (7th Cir. 1996) (Cudahy, J., concurring) (commenting on how “new information might undermine the rationality of [an] extraordinary . . . disparity”).

This rationale was also touched on by the United States Supreme Court in *Columbus Board of Education v. Penick*, which involved officials on several boards of education in Ohio who responded to racial integration by perpetuating de facto dual school systems. 443 U.S. 449 (1979). Inferring causal links between the past and present practices that were disproportionately impacting racial minorities, the Court noted how “[a]dherence to a particular policy or practice ‘with full knowledge of the predictable effects of such adherence upon racial imbalance in a school system is one factor among many others which may be considered by a court in determining whether an inference of segregative intent should be drawn.’” *Id.* at 465 (quoting *Penick v. Columbus Bd. of Educ.*, 429 F. Supp. 229, 255 (S.D. Ohio 1977)).¹⁹ For our purposes, it was foreseeable (especially given the history)

¹⁹ It is possible that this “racial imbalance” rationale could also extend to the Parentage Court given the disparate racial impact it has ostensibly created. Although the Cook County Court may argue that



that the currently separate systems at the Daley Center (one with limited space on the Concourse Level and the other on multiple floors with ample courtroom space) would have a disproportionately negative impact upon nonmarital children, and this could create an inference of discriminatory purpose.²⁰

Anticipated Rebuttal to Discriminatory Purpose

If a plaintiff could produce sufficient evidence in line with the analysis above, “the burden shifts to the government to prove that it would have taken the same action without the discriminatory motivation.” Chemerinsky, *Constitutional Law: Principles & Policies* § 9.3, at 689; see also *Arlington Heights*, 429 U.S. at 270–71 n.21 (noting how the burden can shift to the government to prove that “the same decision would have resulted even had the impermissible purpose not been considered”). In this effort, the Parentage Court may be defended as a separate system that is not discriminatory based upon any animus against nonmarital children, but because most parents (of nonmarital children) in Parentage Court appear *pro se*. An additional argument might be made with regard to administrative convenience—that the Parentage Court’s staff and facilities are designed for the specific needs of the Title IV-D program, which constitute most of the disputes heard in Parentage Court.²¹

These arguments provide a reasonable defense. For one thing, court systems have an acknowledged history of creating separate adjudicatory tracks for *pro se* plaintiffs (as is the case with many small claims courts across the country) and the statistics of Parentage Court may correlate with parents who cannot afford counsel. Much the same could be said toward shifting certain cases to subunits of the same court division based on those subunits’ areas of specialization (as is the case with the commercial subunit of the Cook County law division). But correlation does not mean causation.

One traditional “way of proving discriminatory purpose is through the history surrounding the government’s action.” Chemerinsky, *Constitutional Law: Principles & Policies* § 9.3, at 688. In this respect, it is inarguable that the current Parentage Court can trace its origin not to a concern for *pro se* petitioners. Unfortunately, the history of the current bifurcated process may be traced back to the Paternity Courts at police stations, the Paternity Act of 1957, and before that to the Illinois Bastardy Act of the 1800s. Indeed, the ancestral Illinois laws and policies for the Parentage Court were much more clearly discriminatory in their establishment of essentially the same framework used today. See

(cont’d from previous page)

Arlington Heights and *Davis* should prevent a reviewing court from applying strict scrutiny, a “strong inference” of segregative intent could be made if policies known to create racial imbalances in each separate court system were adopted. *Then*, 56 F.3d at 468 (Calabresi, J., concurring)

²⁰ See also Laurence H. Tribe, *American Constitutional Law* § 16-19, at 1499 (2d ed. 1988) (“Although disparate racial impact and foreseeable consequences do not, without more, establish a constitutional violation, they are nevertheless fertile ground for drawing inferences of segregative intent.”).

²¹ Title IV-D is the program providing parentage and child support establishment, and child support enforcement services. It was established under the U.S. Social Security Act in 1975. In Illinois, the Title D program is administered by the Illinois Department of Healthcare and Family Services, Division of Child Support Services.



People ex rel. Lloyd v. Starks, 22 Ill. App. 2d 1, 2 (1st Dist. 1959) (“The Courts Act sets out the scope of the jurisdiction of the Municipal Court of Chicago which it treats under six classes of cases, the sixth class including ‘(d) all bastardy cases.’” (internal citation omitted)).

While these preceding statutes were repealed, the provisions of the Municipal Court Act defining jurisdiction remain effective. In addition, the history of the Bastardy Act indicates that the focus of courts never was directed towards the status of the mother or custodial parent, but the nonmarital status of the child at the time of his birth. *See People ex rel. Wilmers v. Volksdorf*, 112 Ill. 292, 295 (1884) (“[The Bastardy Act] authorizes the institution of the prosecution when an unmarried woman has been *delivered* of a child, in which case *it is not necessary that she be unmarried when she makes the complaint.*” (latter emphasis added)).

Aside from the Parentage Court’s deep historical roots, there are many cases where the litigants in Parentage Court are actually represented by counsel and no rules or policies exist to bear out any special incentive to create a system only for *pro se* litigants.²² With respect to whether Parentage Court was designed for Title IV-D, with the idea of having specialized logistical and additional staffing needs, Judge Conlon effectively refuted this rebuttal by highlighting “several apparent inconsistencies” with the dual systems:

Parentage Act cases that are *not* part of the [Expedited Child Support System] must still be heard by judges in 32 W. Randolph, while Title IV-D dissolution of marriage cases are heard in the Daley Center instead of 32 W. Randolph, even though all other Title IV-D cases are heard at 32 W. Randolph. These may be “departures from the normal procedural sequence” that are relevant to establishing the existence of a discriminatory purpose.

Gomez v. Comerford, 1995 U.S. Dist. LEXIS 393, at *39–40 (quoting *Arlington Heights*, 429 U.S. at 267).

²² According to an attorney who regularly practices in both Parentage Court and Divorce Court.



II. Methodology, Viewpoints from Stakeholders in the Cook County Child Support System, Discussion of Best Practices, Proposals for Cook County Based on Best Practices Research, Proposed Recommendations for Further Improvements, and Concluding Legal Analysis

Methodology

Our work is based upon feedback from practitioners and court personnel. We received information from about 80 family law professionals. Eighteen private attorneys, Assistant States Attorneys and Legal Aid attorneys, Hearing Officers, and other Court staff members participated in three group interview discussions for the project. Twelve judges, clerks, family service professionals and private attorneys were interviewed individually. An additional 36 attorneys with experience in the Domestic Relations Division (selected from call sheets provided by the Clerk of the Court) completed an electronic survey about their experiences in the Division. Three law professors and over a dozen practitioners and court staff in domestic relations courts in other states were also consulted for the report. An Appleseed staff attorney, assisted by an intern and an attorney fellow, conducted limited court-watching in the Divorce Court and the Parentage Court.

Viewpoints from Stakeholders in the Cook County Child Support System

Overall Viewpoints

The local professionals (attorneys, judges, hearing officers and court staff) agreed that the 2012 changes to the Parentage Court facilities have had a positive impact on conditions. Most praised the additional courtrooms and judges. However, many characterized the facilities as “not much improved” with regard to crowding, wait times and feelings of safety in the Parentage Court. Every group we interviewed expressed concerns that the rights of *pro se* litigants were not adequately protected, particularly in the Parentage Court, and interviewees more closely connected with the court (judges, hearing officers, clerks) expressed concerns about sufficient resources when discussing whether the system is adequate for the volume of *pro se* litigants.

Viewpoints from Group Interviews with Practitioners

Attorneys (private practitioners, State’s Attorneys, and legal aid attorneys) were asked questions about their experiences practicing in the parentage and Divorce Courts and were asked to evaluate the recent changes to the Parentage Court. Attorneys were encouraged to offer suggestions for improvement, as well as identify what was working well.

Practitioners agreed that the Parentage Court courtrooms are quite small, even after the improvements made in late 2012. Several practitioners noted that the small size of the courtrooms is especially problematic because, due to their size, the courtrooms are sometimes not open to the public. Practitioners explained that this meant friends and family could not attend the hearing for support; that practitioners could not observe a judge in preparation for appearing before that judge; and that, most of the time, a court reporter could not fit into the court room. Most practitioners agreed that the waiting area remains overcrowded. Practitioners also expressed a wish for more private areas to consult with clients. Some practitioners expressed a view that the atmosphere of the Parentage Court



was not comparable to a “real” court—particularly when compared to the Domestic Relations Court.

Participants in the group interview we conducted with Help Desk staff often noted that the Parentage Court could be improved, particularly with regard to customer service issues, but stressed that a merger of the Domestic Relations and Parentage Courts would likely present insurmountable problems. They thought there were too many systemic differences between the court systems to effectively combine them, and to do so would be detrimental to litigants, practitioners, and judges. These differences include caseload, large numbers of *pro se* litigants, and special needs of litigants. Many practitioners we surveyed agreed.

Some respondents to the Help Desk group interview also expressed concerns regarding the possibility of moving the help desks to a location outside of the security gates, noting that it would greatly decrease their efficacy if litigants were required to pass in and out of security each time they wished to consult with the help desk.

Participants in our conversation with Assistant State’s Attorneys expressed similar concerns about the size of the courtrooms in Parentage Court, noting that the courtrooms were small, the hallways were smaller than in Domestic Relations Court, and that often the courtrooms in Parentage Court were not open to the public due to security concerns. Some prosecutors noted that the 2012 improvements helped ameliorate the space issues, but that the space was still too small. In particular, the hallways leading to the rooms used by Hearing Officers were considered to be a possible fire hazard.

Viewpoints from Interviews with Court Personnel

The Hearing Officers reported generally that the physical conditions of the Parentage Court are satisfactory. Hearing Officers stated that the current location is a significant improvement over the previous location at 32 W. Randolph, and noted that the facilities themselves are much cleaner and appear more judicial in appearance. Hearing officers also stated that the recent improvements significantly helped reduce congestion in the waiting area.

All court personnel (Hearing Officers, clerks and judges) had strong feelings about the need for coordinated services in the Parentage Court. We were given a look at the Hearing Officers’ bench book of social service resources and heard from most interviewees that litigants need better access to nonjudicial intervention and services, such as family counseling and job services. Court personnel uniformly praised the help desks, but also considered them insufficient for the need. Judges expressed concerns about an increase in *pro se* litigants across the Division as a whole and discussed the difficulties of adequately assisting *pro se* litigants without crossing the line into advocacy. As a simple practical matter, judges need someone to draft accurate and appropriate orders at the close of hearings, which can be difficult when neither party is represented by an attorney.

Viewpoints from Court-Watching

Court-watching was more easily accomplished in the Divorce Court on the upper floors of the Daley Center because the courtrooms are larger courtrooms and can more readily accommodate visitors. Calls in the Divorce Court are generally posted on the doors, so it is easier to identify which rooms are in use on a given day.



Court-watchers reported difficulty finding the Parentage Court courtrooms because of a lack of signage. When court-watchers were able to access the Parentage Court courtrooms, there was no room for the observers in the rooms.

Our court-watchers are not lawyers. They provide to this Memorandum the viewpoints that a party to a child support proceeding, their friends and relatives, and members of the general public would have. That said, all court-watchers remarked how crowded the Parentage Court felt compared to the Divorce Court. They also noted that the Parentage Court felt less open, less judicial and less accessible/public than the Divorce Court because many of the courtrooms are behind the reception desk, rather than along open hallways as they are on the upper floors of the Daley Center.

Court-watchers also noted that as observers they had difficulty understanding what was occurring. Indeed, some practitioners told us that their clients will ask them to explain what had happened in the courtroom and hearing room. These individuals have lawyers to explain the process to them. *Pro se* litigants are not so fortunate. Practitioners often recommended that more attention be paid by judges and hearing officers to explaining the process to litigants—particularly to *pro se* litigants.

Viewpoints from Academics and Other Non-lawyers Involved in the Child Support Process

We spoke with law professors about innovations in domestic relations courts as well as the current practices in clinical education. We also interviewed staff at a Chicago agency that provides court-ordered family counseling and therapy-supervised visitation.

Interviewees talked about barriers to services inadvertently caused by the Parentage Court process. Such barriers arise when it is not clear to litigants how to comply with court orders for therapy or when court orders are not given to the service providers.

States employ a variety of court structures for handling domestic relations, child support and parentage issues in their jurisdictions.²³ Most jurisdictions have a dedicated domestic relations division in their courts, but Cook County is unique in further dividing cases into divisions based upon the prior marital status of the parents. Regardless of whether this system is vestigial or still appropriate for allocating judicial resources, it appears to be among a tiny minority of jurisdictions that separate cases in this manner.²⁴

²³ Barbara A. Babb, *Special Issue: Unified Family Court: Reevaluating Where We Stand: A Comprehensive Survey of America's Family Justice Systems*, 46 Fam. Ct. Rev. 230, 231 (2008) (38 states have “statewide family courts, family courts in selected areas of the state, or pilot or planned family courts, representing seventy-five percent of states.”)

²⁴ Our research did not uncover another jurisdiction which divides its child support and custody cases into separate divisions based upon whether or not the child was born to married parents. New Jersey courts have a judicial unit in the family courts for “non-dissolution paternity and/or support”. According to the state judiciary website, the unit hears “cases which involve issues of paternity [,] child support and/or alimony payments, and/or custody and parenting time issues between persons who are not married or those persons who are married but have not filed for divorce yet.”



Viewpoints Regarding the Length and Process of Adjudication

Domestic Relations Courts

Investigators for this report attempted to gain an understanding of the differences in time required for adjudication in the Divorce Court and Parentage Courts. Only limited objective data was available. However, through a combination of Parentage Court call sheets, information from Parentage Court clerks, information from the archives of the Coordinated Advice and Referral Program for Legal Services (“CARPLS”)(which staffs a child support help desk serving litigants in Divorce Court), and anecdotal data from our interviews and surveys, we have drawn the following conclusions regarding the time required for adjudication.

Practitioners in the Domestic Relations courtrooms generally reported that they are satisfied with the time required for adjudication. According to data received from the CARPLS archives, there were 1,807 divorce cases filed in a representative month, and 1,345 of those were in the First District (the Daley Center). Of those in the First District, 32.4% of the cases were filed by *pro se* petitioners.

Practitioners noted that the Domestic Relations judges were very responsive when faced with scheduling emergency hearings, and that status and hearing dates generally moved faster than they do in Parentage Court. In addition, they noted that the cases were, for the most part, retained by one judge, allowing the judge to develop familiarity with the matter. Finally, practitioners praised the court coordinators who manage the Domestic Relations Court caseflow.

Parentage Court

Practitioners reported that they believe that the time for adjudication in Parentage Court is generally longer than in Domestic Relations Court. While we were unable to obtain data on the Parentage Court process that corresponded to that received from CARPLS regarding the Domestic Relations Court, practitioners reported that the case loads and the number of *pro se* litigants in Parentage Court were much higher than in Domestic Relations Court. Practitioners point to both these facts as reasons that scheduling generally moves more slowly in Parentage Court than it does in Domestic Relations Court.

Chicago Appleseed reviewed a representative schedule for status and hearing dates in Parentage Court. In general, a status date was available between 45 days to six or seven weeks. A hearing date was available between five to eight weeks and four months. Call sheets for Parentage Court judges demonstrated that on average, judges in Parentage Court hear more than twenty cases per day, and some judges hear more than 40 cases per day.

Most practitioners agreed that after the addition of two new judges in late 2012, wait times were slightly improved. Practitioners estimated that scheduling dates generally took three to four times as long as they did in Domestic Relations Court before the new judges were added, whereas currently scheduling dates only take twice as long. Electronic survey respondents found that there was at least a slight improvement in wait times for



status dates due to the addition of the judges: 8.8% of the respondents said that there was a significant improvement; 27.5% of respondents said that there was a slight improvement; 55.9% said that there was not much of an improvement; and 8.8% said there was no improvement. Electronic survey respondents were generally more pleased with the effect that the recent addition of courtrooms had on wait times during court sessions: 20.6% of respondents said there were significant improvements; 32.4% of respondents said there were slight improvements; 29.4% of respondents said there was not much improvement; and 17.6% of respondents said there was no improvement.

In general, most practitioners reported that they believe that due to the high volume of cases and the high percentage of *pro se* litigants in Parentage Court, the time for adjudication was slower than in Domestic Relations Court. Practitioners also agree, however, that the addition of new judges improved the pace at which things were scheduled, even if the improvement was only slight.

Hearing Room Adjudication

Several groups of respondents expressed concerns about the efficacy of the role played by the Hearing Officers. Practitioners stated that the limited jurisdiction of the Hearing Officers created a duplicative forum that, on balance, did not provide a positive return on the investment of time and resources. While we understand that there are clear statutory reasons and policy benefits that lead to the current system, practitioners expressed some frustration with what was perceived to be an artificial distinction between the resolution of issues of parentage, child support and medical support in the hearing forum and visitation and custody rights in the full judicial forum. Further, practitioners recounted having to duplicate arguments during the course of their representation: first presenting the issues before a Hearing Officer in an attempt to craft an agreement between the parents on questions of paternity or child support; and again before a judge when an initial agreement was reached out of concern regarding visitation demands.

In addition, because Parentage Court judges sometimes modify or reject the recommendation of the Hearing Officers, many practitioners view the use of Hearing Officers as a needless expense of time, and concerns were expressed that this also allows litigants a “second bite at the apple.” Specifically, one practitioner noted that during one of his cases the opposing party and counsel were able to observe his argument during their meeting with a Hearing Officer and then revise their approach before the Parentage Court judge, yielding a different outcome. Moreover, practitioners recounted experiences of entering a hearing with a brokered agreement between the parents, only to have one party recant their agreement after a discussion with the hearing officer. Several States Attorneys noted that there are no Hearing Officers at the suburban courthouses.

We raised these concerns with Hearing Officers we interviewed. Hearing Officers, in response, stressed that their primary concern is to consider the needs of the child by evaluating in full the parents’ situation. With this in mind, they evaluate even pre-arranged agreements to ensure that the parties were informed of their options and realistically can satisfy the terms to which they have agreed. As a part of this process, they provide information on job training programs and related community resources to the parents. Regarding the larger systemic issues, however, Hearing Officer respondents stated that parties before them can be confused about their role and that they have to exercise



ongoing care to ensure that litigants do not think that they are judges, and know that their proposed resolutions are non-binding recommendations.

Assistant State's Attorneys, as well as private practitioners, court personnel and family services personnel, all noted there are significant burdens on most Parentage Court litigants associated with repeated visits to court and with hearings that take longer than anticipated. Lower income litigants often do not have paid time off from work or regular work schedules and child care is typically a greater burden for lower income families.

Many interviewees suggested that the time devoted to the hearing room adjudication would be better spent in a true mediation. We reviewed the Hearing Officer bench book that compiles resources for parents, such as job training and family counseling service, and believe that many aspects of the hearing room adjudication process could be adapted to a specialty court model which would address many concerns raised about the Parentage Court in general. We discuss this approach later in this Memorandum.

Parentage and Domestic Relations Help Desks

There are two help desks that provide services to the domestic relations courts. One help desk, located on the concourse level and primarily serving clients in Parentage Court, is run by the Chicago Legal Clinic ("CLC"). This help desk is typically staffed by two attorneys, and our respondents reported to us that the CLC help desk primarily works with *pro se* litigants to draft substantive pleadings, such as modifications to visitation schedules and petitions to establish paternity. The help desk also refers litigants to the Department of Health and Family Services to obtain documents for administrative cases in Parentage Court.

The help desk located on the 30th floor of the Daley Center primarily serves litigants with cases in Divorce Court, is run by CARPLS. Services are available on a first-come-first-serve basis for litigants with income up to 200% of poverty level. The CARPLS help desk is typically staffed by two or three attorneys, who spend most of their time drafting pleadings and consulting with clients.

On the whole, practitioners viewed positively the efforts of the help desks. But there were concerns that the help desks simply cannot assist the volume of *pro se* litigants appearing before the courts, and practitioners also indicated that many litigants seemed unaware of the Help Desks and the services available to them. In addition, when considering the overall role of help desk attorneys in the Parentage Court adjudicatory process, some stakeholders expressed confusion as to the appropriate level of substantive involvement for help desk attorneys—even as they expressed their view that the help desks play an important role. For example, is it appropriate for help desk attorneys to draft complete legal motions on behalf of a party, but then have the party file the motion *pro se*? The perception of counsel appearing opposite the *pro se* party was that the litigant may not understand the argument set out in the motion, and that it may be more effective for the help desk attorneys to enter an appearance and argue the motion on behalf of the party.

Court personnel, practitioners and the help desk attorneys opposed relocating the help desks from their location near the courtrooms whose litigants they serve. All agreed that it would be a disservice to litigants to place the help desks further away from the



courtrooms, particularly if one would be required to go through security again after visiting the help desk.

Viewpoints Regarding Physical Facilities

Viewpoints Regarding Divorce Court

The Divorce Court is located on several floors of the Daley Center. There are 28 judges in 27 courtrooms, located on floors 15, 16, 19, 20, 21, 28, and 30. Litigants generally wait in the pews of the courtroom to which their case is assigned before their case is called. In general, practitioners and court employees stated that they found the physical conditions to be satisfactory and well-suited for the Divorce Court. No one cited any concerns about safety in the Divorce Court.

The biggest complaint concerning the Divorce Court came from the attorneys reporting that it was not easy to move from one courtroom to another, with two-thirds of them citing the wait for elevators, the placement of the Divorce Court across more than one elevator bank and the inability to use the stairways between the upper floors of the courthouse. Some practitioners praised the availability of private client consultation space, but most survey respondents describe the available private space as merely “fair”, “inadequate” or “unacceptable”.

Viewpoints Regarding Parentage Court

The Parentage Court is located on the Concourse Level of the Daley Center, near the Traffic Court.²⁵ The space can be accessed either from the street level entrance of the Daley Center or the pedway. Security for the Parentage Court is separate from security for the upper floors of the Daley Center and the levels are not served by the same elevators. A large reception area is available for litigants and their families because most courtrooms and hearing rooms cannot accommodate more than a few people.

At present the entrance to the Parentage Court is not marked. Rather, the sign says “Traffic Court” and there is nothing directing people toward the reception area, which also lacks signs.

At present, there are no private spaces for consultation in the Parentage Court, unlike the Divorce Court which offers jury rooms or attorneys’ rooms in most courtrooms, as well as spacious hallways with benches that are often empty. Attorneys in Parentage Court report that they cannot talk privately with their clients prior to hearings, nor can they attempt to work out an agreement with opposing parties without private space to talk outside the courtroom. Parentage Court practitioners and some court personnel feel strongly that attorneys and parties need private space to confer outside of the courtrooms in order to work out agreements or merely explain to their clients what happened in court.

²⁵ Many respondents referred to the Concourse Level as the “Basement”, alluding to the fact that the Parentage Court facilities are below street level.



Practitioners also suggest that litigants be provided carrels with self-help materials and access to online assistance.

Most interviewees and survey respondents noted that the Parentage Court feels safer after the addition of the larger courtrooms in 2012. Litigants in the Division are often volatile, and many practitioners and court staff expressed the belief that some litigants are deliberately provocative in court. Courtrooms with only one entrance and exit do not allow for a separate entrance or exit for the judge and this contribute to a feeling of insecurity for many practitioners, judges, and other users of the Parentage Court system.

Several attorneys who practice in the Parentage Court expressed frustration with litigants “getting lost” between the hearing rooms and the courtrooms, particularly if they were required to wait in the large reception area between hearings. Court personnel tended not to agree that this is an issue, but practitioners insisted that it was. Hearing rooms typically hold the parties for about five cases at a time, with clerks fetching the new parties as the Hearing Officers move through the call.

Overall, the sense from respondents is that recent improvements in the Parentage Court facilities are a significant improvement over its prior iterations, but the facilities are still considered to be poorly designed for their purpose.

Viewpoints Regarding the Consolidation of Facilities, Even if the Court Calls are not Combined

Separate from the issue of administrative consolidation is the question of physical consolidation. A common complaint about practicing in the Domestic Relations Division, whether in the “upstairs” Divorce Courts of the “downstairs” Parentage Courts, was the difficulty in moving between the courtrooms, which are dispersed across floors, elevator banks, and—with regard to the Parentage Courts—different security checkpoints. Many practitioners expressed frustration with moving between courtrooms, particularly having to wait for elevators because the stairs are not available, even if you are going up or down only one or two floors. This frustration was even more significant for attorneys with cases in both the Parentage Court and the Divorce Court. The two halves of the Domestic Relations Division are not served by the same bank of elevators and have separate security entrances, requiring persons to pass through security simply to move from Divorce Court to Parentage Court.

Among our respondents, although there was significant dismay at the rumor that the help desks would be moved from their present locations near the courtrooms to a centralized location with other help desks, there was no strong opposition to a physical consolidation of the domestic relations division.

Although many respondents question whether it is necessary to combine all cases on a single domestic relation docket, many also strongly criticized the spreading the Divorce Courtrooms out over several floors, in addition to disliking the placement of the Parentage Courtrooms so far from the rest of the domestic relations division. Attorneys with clients in both parts of the Division stand to benefit significantly from physically consolidating the division.



Furthermore, physically consolidating the division—even without combining the dockets—will greatly improve efficiency within the division. Court employees, as well as attorneys, noted that wait times for interpreters are very high, for instance. These times can be reduced by moving the courtrooms closer together.

Placing all child support courtrooms and help desks adjacent to each other on the upper floors of the Daley Center will provide more equal facilities to all litigants regardless of marital status.

Discussion of Best Practices—The Specialty Court Approach

To explore the child support practices outside of Illinois, we researched and interviewed child support systems in six states selected for their demographic similarity to Illinois. A general overview can be found in Appendix A. In this section we discuss programs that we feel to be most applicable to Cook County, based on our interview and survey research in Cook County.

For example, most respondents believe that the rights of *pro se* litigants are not adequately protected in either the Parentage Court or the Divorce Court. Many highlighted the needs for services outside of the court as part of this problem and all of them mentioned strained resources (such as fewer child representatives) in conjunction with these concerns.

Many court employees and practitioners believe that Parentage Court needs more client representation services, such as through the use of law school clinics and private pro bono attorney time. One judge mentioned that if un-represented parents have assistance in drafting their orders, fewer problems arise later and necessary modifications are easier to make.

The help desk was almost universally praised as an invaluable resource, but court personnel and some attorneys noted that it was insufficient to meet the demand.

The following is a discussion of best practices that should be considered for use in Cook County. For the purposes of this discussion, we have adopted the following definitions of various court models.

The “Case Management Model” creates structures to assist courts and litigants with the management of their cases. It is of particular utility in cases where there are no attorneys because case managers can fulfill the administrative roles often undertaken by attorneys and their firms such as: gathering background documentation, collecting receipts for child support payments, and managing modification or enforcement of existing orders. The Michigan Friend of the Court program, which provides these services, is an example of what we call the case management model.

In a case management model, services provided to litigants are administrative. There is no legal assistance and minimal education with regard to rights, responsibilities or other self-help. The case management model is intended to ease burdens on the courts



through improving documentation, monitoring compliance, and ensuring that cases return to the judge only when necessary.

The “Community Courts Model” overlaps the case management model in that it is designed to assist courts and litigants in keeping cases organized and moving smoothly. As in the case management model, paraprofessionals manage routine administrative tasks associated with cases on behalf of the court and the litigants. However, the community courts model is more holistic and expansive than simple management of existing child support cases. It focuses on coordinating services for families, including collecting information about other court cases (domestic violence or juvenile cases, for instance) that the parties are involved with.

The community courts model assists dispute resolution through deployment of community resources and services, like job services, family counseling, child care alternatives, legal aid and other social services in order to free court resources to focus on uniquely judicial issues. Services are provided both to the court, in the form of case management, and to the litigants, in the form of social services.

The “Case Facilitation Model” is the most comprehensive model and is designed to assist the court primarily by assisting litigants. Case facilitators are attorneys employed by the courts and their offices provide both basic case management services and comprehensive legal assistance services with settlement assistance.

Case management services in a facilitation model include direct assistance to the court through in-court help calendaring, explaining procedural rules to litigants and calculating support payment as well as making minor adjustments to custody and visitation schedules and drafting orders. Services to litigants include education about rights and responsibilities, as well as legal aid workshops and self-help services. In addition to assisting *pro se* litigant with drafting documents, facilitator attorneys may facilitate settlements and agreed orders.

	Administrative Support to Courts & Litigants	Coordination of Services for Litigants	Direct Legal Assistance to Litigants	Facilitation of Settlement & Agreed Orders	Direct Education of Litigants
Case Management Model	Yes	No	No	Yes	Yes (minimal)
Community Courts Model	Yes	Yes	No	Yes	No
Case Facilitation Model	Yes	No	No	Yes	Yes (expansive)

The Community Court Model

Policy innovations in family courts commonly reflect the desire of court administrators to preserve the rights of parents, while maintaining judicial efficiency. Most family court innovation, as well, is responding to an increase in *pro se* litigants, increasingly complicated family structures, and the recognition that litigants often have social services needs that are driving their legal conflicts—problems facing the Parentage Court in Cook County.

In family courts, the community courts “case management” model focuses on dispute resolution through deployment of community resources and services in order to free court resources to focus on uniquely judicial issues. Community Courts foster more stable relationships between citizens and the justice system through restorative justice, and a focus on the individual litigant’s needs.

Dispute resolution in family courts often requires intervention of additional agencies, such as nonjudicial child support enforcement agencies, or provision of social services, such as parenting education, supervised visitation, and domestic violence agencies. Community courts bridge the gap between courts and these services, increasing compliance with court orders and educating litigants about their rights and responsibilities. Community courts are, in essence, a specialty court with adequately trained judges who have resources to assist a defined population access specialized services and additional personnel trained to assist both litigants and judges in using those resources. Alternately, court facilitator and case management programs are designed to assist litigants without attorneys and to ease burdens on courts when dealing with high volumes of *pro se* litigants.

Case management models have a less holistic approach than community courts, focusing more on administrative assistance and less on case facilitation. Although many pro bono and legal assistance programs focus on the representation needs of *pro se* parties, there is evidence that assistance in case management, coordination of services, and consolidation of issues would ease the burden of *pro se* litigation on the court system.²⁶ Case management is essentially an administrative role, which could be handled by paraprofessionals, easing the burden on judges and their staff, as well as on existing legal services and attorneys in cases where the opposing party is unrepresented.

We focused our Community Courts research on California and Michigan, both of which have programs in the community courts model providing integrated services to persons needing family court intervention. These programs assist both the litigants and the courts in order to improve efficiency during court calls and increase compliance with orders. Through partnerships with law school clinics, legal aid agencies, and pro bono programs, court-employed attorneys provide a variety of services to litigants and the court. Services include litigant education about their rights and responsibilities as well as parental

²⁶ Deborah J. Chase, *Pro Se Justice and Unified Family Courts*, 3 Fam. L.Q. 403 (2003) (summarizing research into volume of *pro se*); Studies consistently show that legal representation is an important variable affecting case outcomes in the area of family law, particularly with regard to shared custody, awards of support and issuance of orders of protection. See Russell Engler, *Connecting Self-Representation to Civil Gideon: What Existing Data Reveal About When Counsel is Most Needed*, 37 Fordham Urb. L.J. 37, 51-55 (2010)

education, both of which improve compliance with orders. Services also include identification of and referral to social services and private community services that assist with job training, family counseling, and housing. Most importantly, community courts provide courthouse-based legal assistance and facilitated settlement of disputes which do not need judicial intervention. We also focused our research on Wisconsin which has instituted unique programs to assist parents.

The Attorney Facilitator Model as Utilized in the State of California

California uses a judicial process to establish child support orders, as opposed to an administrative process. The California Department of Child Support Services is a state-administered, county-run program. There are 58 counties in California, with 51 local child support agencies (“LCSA”) and 4 regional child support agencies. Parents, guardians, and caretakers of minor children can receive services from an LCSA regardless of marital status or income.

In 1996, California passed the Family Law Facilitator Act (“FLFA”),²⁷ intended to address issues with access to justice in the domestic relations courts. Courts California, as in other jurisdictions, have been faced with significant increases in the number of litigants unable to afford representation, but who do not meet income guidelines for traditional legal aid services. The FLFA established county-based mandates for domestic relations court facilitators to ease burdens on the court, promote fair access to justice, and reconnect court services with the communities they serve.²⁸

Mandated services under the FLFA are paid for out of IV-D funds and serve persons in need of parentage determination and child/spousal support orders. Additional services are offered at the option of individual courts and are paid out of county or court budgets. Facilitators must be licensed attorneys with appropriate experience: on average, they have 12 years of experience in the family courts.²⁹ Family law facilitators assist approximately 30,000 parents per month statewide with their child support issues.³⁰

San Diego County (population 3 million)³¹ and Alameda County (population 1.4 million)³² both have expansive FLFA programs, which offer services beyond mandated services and beyond the initial pleading stages. Both counties make use of law students in

²⁷ CAL. FAMILY CODE §10000-10015 (2013)

²⁸ Frances J. Harrison, et al., *Courts Responding to Communities: California’s Family Law Facilitator Program: A New Paradigm for Courts*, 2 J. CTR FOR FAM. CHILDREN & CTS 61, 68 (2000).

²⁹ *Id.* at 65.

³⁰ Christopher N. Wu, *Making Families and Children a High Priority in the Courts: California’s Center for Families, Children & the Courts*, 40 Fam. Ct. Rev. 417, 429 (2002); Melissa Schmidt, *Part Six: Modification and Enforcement of Alimony Awards: The Role of the Family Law Facilitator in Modification of Support Awards*, 20 J. Contemp. Legal Issues 295, 297 (estimating figure at 40,000 per month).

³¹ *Id.* at 68-70.

³² *Id.* at 66-68.



their facilitator offices and San Diego County partners with law schools for work-study, undergraduate schools for clerk interns, and the pro bono attorney community for additional staffing.

The FLFA program in Alameda County has two attorneys and four legal assistants and provided in-court services five days a week in three courthouses. A law student intern program provides additional, supervised, staff. The Alameda program offers a three-prong service model: (1) a phone intake system which also serves as a traditional legal services help line; (2) workshops for paperwork assistance; and (3) in-court assistance to both the court and litigants. Eight workshops are offered each week, with two conducted in Spanish, for up to 15 people in each session. The sessions are organized around topics and geared toward the specific needs of the attendees. Attorneys are in court in the morning and in workshops in the afternoons. In-court services provided by the Alameda FLFA program include settlement facilitation and drafting of agreements, stipulations and orders.

San Diego County's FLFA program employs 7 attorneys, 2 legal assistants and 6 clerks. Three part-time undergraduate interns provide administrative support, while work-study partnerships with local law schools and pro bono partnerships with the legal community provide additional lawyers for the program. A joint Equal Access Partnership grant with local legal aid helps fund services beyond the IV-D mandate. At least one attorney and one clerk is at each of the four courthouses daily. Two workshops per day are held in the courthouses.

The San Diego County model is also a three-pronged service model. Intake procedures separate county-funded mediation cases, prioritizes emergency domestic violence cases and refers cases with complex property division issues to other services. Remaining litigants are either registered for a workshop or referred out to legal aid or private attorneys.

San Diego County has two types of workshops: a form filing workshop and a motions workshop. The filing workshop accommodates 10-15 litigants with a goal of each litigant completing necessary forms for filing, having the filings reviewed by staff, and having the litigant make appropriate copies and file the pleadings by the end of the day. Where the filing workshop is a classroom setting, the motions workshop is more individualized. After intake, staff walk litigants through the forms, educating them about the process. Clients are sent to carrels to complete the motions, which are reviewed by staff attorneys. The goal of the motions workshop is to ensure that *pro se* motions reach the court in a form which permits the judge to rule on the issues.

FLFA programs stress to persons using the services that no attorney-client relationship is created through participation in the program. No privilege attaches and both sides of a case may use the same FLFA office. The representation is quite limited in scope and creates only a limited duty to the client that the information offered be accurate and that the representation be competent as demonstrated through thorough intake, review of file, review of prior orders, accurate education, and careful review of *pro se* filing. FLFA attorneys are prohibited from offering strategic advice or providing legal research for issues beyond the scope of the programs. Although FLFA attorneys in the courtroom are available for drafting settlement agreements or orders for the court, they may not complete client filings in the workshops, only explain and review them.



Beyond ensuring that *pro se* filings meet legal standards, attorneys with the FLFA Office assist the court directly by offering in-court help calendaring, explaining procedural rules and calculating support payments. They also make minor adjustments to custody and visitation schedules and draft orders. Although attorneys with the FLFA Office may facilitate settlements and agreed orders, they do not provide mediation. Mediation requires privacy and advocacy that is not part of the facilitation process.

California's FLFA Offices are estimated to serve nearly 400,000 persons a year. 82% of the clients earn less than \$2,000 per month, while 67% earn less than \$1500 per month.³³

The Friend of the Court Program as Utilized in Michigan

Michigan uses a judicial process in the Family Division of the Circuit Court to establish child support orders, with assistance from the Friend of the Court ("FOC") agency. FOC assists all families (married and unmarried) with issues of custody, parenting time and support (including medical and spousal). At least one FOC office serves each circuit court's Family Division. In 2003, approximately 60% of the more than 800,000 child support cases in the state are paid on time and in the correct amount without any enforcement actions taken by the FOC. All county courts in Michigan that handle divorce cases have an Office of the FOC whose responsibilities include child support enforcement, pre-trial investigations, and other tasks deemed necessary by the court for the effective management of the divorce caseload. FOC offices do not handle paternity determinations. Instead, FOC offices handle all other parenting and support issues.

FOC investigates and makes reports and recommendations to the judge about all issues, including support. FOC may make calculations about child support based on the child support calculations established for Michigan, and referees may conduct hearings and make recommendations regarding child support, but the judge must sign the final order. The Office of Child Support ("OCS") (part of the Department of Human Services) administers child support in cooperation with FOC. The OCS handles management of federal funding for the child support program, locating absent parents, and managing income tax intercepts. Michigan Court Rules permit parties to opt out of the FOC system in their domestic relations matter.

Referees must be a member in good standing of the State Bar of Michigan, but an employee of the FOC is not required to be a member of the State Bar. The referees, like judges, are accountable to the Michigan Judicial Tenure Commission.

FOC also provides ongoing case management in domestic relations cases and is responsible for tasks deemed necessary for effective management of the cases. Case management is handled by a team, which can include various professionals and vary amongst the counties. Case management duties of FOC include providing mediation as another way of settling disagreements over custody and parenting time of children; collecting, recording and send out all support payments ordered by the court; and

³³ Harrison, 2 J. CTR FOR FAM. CHILDREN & CTS 61, 76



enforcement of orders. FOC offices can instigate contempt/enforcement proceedings for support orders and obtain income withholding orders, tax intercepts and/or liens for unpaid support. The size of the offices scales with the counties/courts they serve.

For instance, in Ottawa County, case management is handled by an investigator in the FOC office and the investigator is responsible for all follow-up services such as modifications of support or custody orders and resolving family conflicts following the orders. Additionally, throughout Michigan, parties with FOC support cases can access child support payment and enforcement information by signing up with MiCase.

Community Services Pilot Projects as Utilized in Wisconsin

Wisconsin uses a judicial process to establish child support orders, as opposed to an administrative process. A judge presides over contested cases, and a commissioner presides over uncontested cases. All cases start before the commissioner who is a judicial officer and engages in fact finding prior to entering a final order. Orders entered by the commissioner can be reviewed by judge. Wisconsin does not have a separate administrative process.

Milwaukee is running a pilot program in its child support office which focuses on coordinated services for parents with support cases. The program provides counsel to persons in transitional jobs program, arrears/interest, stipulation to forgiveness; case coordination program. In the program, the obligor has a dedicated coordinator.

The University of Wisconsin at Madison Law School offers assistance to *pro se* litigants through its Family Court Assistance Project.

The Community Courts Case Management Model

The Community Court model was developed in criminal and juvenile courts, but the model is attractive to family courts because community courts create stable relationships between citizens and the justice system through restorative justice, a focus on the individual litigant's needs, and deployment of community resources and services in resolving disputes. The rise in *pro se* family litigation, along with expanding acceptance of nontraditional family structures, creates pressures on domestic courts that are alleviated through a community court approach.

Furthermore, dispute resolution in family courts often requires intervention of additional agencies, such as nonjudicial child support enforcement agencies, or provision of social services, such as parenting education, supervised visitation, and domestic violence agencies. Community courts bridge the gap between courts and these services, increasing compliance with court orders and educating litigants about their cases. When litigants have the assistance they need to understand their cases and comply with rulings, they have a higher respect for the courts and case outcomes are improved.



Proposals for Cook County Based on Best Practices Research: The Court Facilitator Model, The Community Courts Case Management Model, and Data Collection to Assist Decision-Making Regarding the Domestic Relations Division

Applying Court Facilitator Model to the Cook County Parentage Court: Converting the Cook County Hearing Officer Process to a Family Law Facilitator Process

Family law facilitators in California are licensed attorneys and employees of the court. A minimum of five years of admission to the California bar and a minimum of three years practical experience in family law matters is required.³⁴ Facilitators, on average, have 12 years of experience practicing in family law.³⁵ Facilitators are further required to have knowledge of Title IV-D and state child support guidelines, in addition to an understanding of the legal and psychological issues surrounding domestic violence. Preference is given to applicants with experience working with low-income, semi-literate, or self-represented parties and courts are permitted to substitute additional skills requirements appropriate to their communities under the court rules. Facilitators are required to attend annual trainings.

The Facilitator has a fully professional role in the court system, and although their roles differ from county to county in California, Facilitators serve as pro-tem judges in some counties.³⁶

Cook County's Hearing Officers are intended to help parties to reach agreement on matters related to paternity and child support without the need for a full adversarial hearing before a judge. Hearing Officers issue recommended orders on paternity and child support, which are signed by a judge in the Parentage Court. Where parties agree with the Hearing Officer's recommended order, the order is sent to a judge for signature without further hearing. Parties who do not agree to the terms of the Hearing Officer's proposed order, however, are sent to a courtroom for hearing before a judge.

Hearing Officers are not empowered to reach settlement on other issues and cases with issues more complex than parentage and support are heard in the courtrooms. They are trained in mediation techniques and are licensed attorneys. Although Hearing Officers are empowered only to resolve issues of support, they report that the litigants before them rarely need help resolving only child support issues. The Hearing Officers often need to explore the social and personal circumstances of the parents not only to set support payments that can be paid, but also to assist the father in finding and keeping work or helping the parents trade parenting time or other child care for a portion of support.

³⁴ 2013 California Rules of Court, Rule 5.430. Minimum standards for the Office of the Family Law Facilitator.

³⁵ Harrison, 2 J. CTR FOR FAM. CHILDREN & CTS 61, 65.

³⁶ San Luis Obispo and Los Angeles county include "may be required to serve as a pro-tem judge" in the job description of their family law facilitators.



On the flip side are complaints that the Hearing Officer process is duplicative of the court process because even if the Hearing Officers must explore ancillary issues to resolve support issues, they are not fully empowered to resolve shared custody or other disputes.

Converting the Hearing Officer process to a Facilitator process would use the Hearing Officer's skill set appropriately and expand the services available to litigants in the Parentage Court.

Facilitator duties typically include:

- Educating parents on the process of establishing parentage, and of establishing, modifying and enforcing child support orders, including health insurance orders and spousal support orders, arrearages and repayment plans
- Assisting litigants in preparing necessary forms, declarations and motions for establishing or declaring parentage and preparing support orders based upon statutory guidelines
- Assisting litigants in preparing motions and responses for other support issues
- Identifying and coordinate with government, court and community agencies and services, as well as private attorneys and entities, to provide referrals, resources and services to parents and children
- Facilitating settlement in support and parenting time disputes
- Conducting self-help workshops

Additional duties may include

- Assisting self-help litigants in the courtroom (drafting orders, explaining orders, providing referrals to further assistance or providing limited representation on a motion basis)
- Conducting status conferences, case management conferences and reviewing inactive files for final disposition
- Coordinating with the Department of Corrections for case management

The process in Cook County could work in a manner similar to larger California counties which are based in a 3-prong service model of 1) traditional legal services, 2) workshops and 3) courtroom assistance that includes settlement conferences. The goals of the workshops are to assist 10-15 litigants per day to complete paperwork, which is reviewed by staff, then copied and filed same day. Additional goals of both the workshops and traditional legal services are generating *pro se* motions that reach the court in a form which permits judge to rule and educating parties about their rights and responsibilities to improve compliance with court orders. The courtroom assistance is directed toward keeping courtrooms efficient and fair and ranges from ministerial duties (drafting orders) to adjourning with parties conduct settlement conferences.³⁷

³⁷ Harrison 2 J. CTR FOR FAM. CHILDREN & CTS 61, 66-70. Programs in San Mateo and San Diego counties are the models for this proposal. The counties have approximate populations of 1.5 million and 3 million, respectively. Los Angeles county is most comparable to Cook County in size and its program is not substantially different from that offered in San Diego, see Deborah J. Chase, *Pro se Justice And Unified Family Courts*, 37 Fam. L.Q. 403



Converting the Hearing Officer process to a Family Law Facilitator process would require development of parental education workshops, as well as self-help guides for preparation of court documents. Physical space for the Facilitators would include office space, individual conference space, one larger workshop space, and a smaller self-help area for the program. The Facilitator process would expand, but not supplant, help desk services and should be designed as a partnership with existing services. Designing the Facilitator program as a partnership with the existing help desks could preserve their funding while significantly expanding the reach of the programs.

Facilitators will need to be licensed attorneys with a minimum number of years practicing in the family courts. They will be trained in computing support awards and in devising appropriate deviations from the guidelines. Facilitators should have experience with settlement negotiations, but will also receive training in facilitating settlements as a third-party and not an advocate for one side.³⁸ Facilitators will be able to help with establishing parentage, but will not be limited to parentage issues. The program should be available to any unrepresented party with a support issue.

Creation of a Facilitator program would be helped by physical consolidation of the Domestic Relations and Parentage Court facilities because services should be available to any parent needing support, regardless of whether their case is proceeding through the Parentage or Divorce Court. Additionally, Facilitator services designed for the entire division can expand the reach of IV-D services in Cook County by educating a broader base of parents about their availability.

Like the California offices, the Cook County office will be required to keep service statistics. Protocols for collecting and reporting the data will need to be developed. A Facilitator program is intended to provide people with meaningful access to courts by connecting the courts to the communities they serve and avoiding the appearance of justice only for those who can afford attorneys. It is based around assistance and education that prevents problems that arise when someone with “a little knowledge” assists *pro se* parties or when *pro se* parties attempt self-help without sufficient guidance. Finally, it relieves burdens on courts/court staff and prevents the appearance of bias with a judge assists litigants in the courtroom.

Creating a Case Management System for Cook County

In Michigan, the Office of the FOC is empowered to investigate and make recommendations to the court on support, custody and parenting time, similar to Cook County’s Hearing Officer process, but slightly more expansive. The FOC office provides a report of the preliminary investigation, as well as a recommendation concerning support and custody, to the court for each case that is filed with the court. Like Hearing Officers, FOC officers *do not* provide legal assistance to parties seeking to file actions in the family courts.

³⁸ Facilitator programs do not provide true mediation services, although the services they provide are colloquially referred to as mediation. “True” mediation services typically include higher levels of confidentiality than do court-assisted facilitations and mediations include advocates for each party, where Family Law Facilitators are expressly not representing either party’s interests.



It is, therefore, more akin to a case management system. Unlike the facilitator system which assists the court through legal services, a case management system assists the court by doing preliminary investigations and fact-finding, as well as helping parties to come to agreements before seeking a court order for support, custody or parenting time. Michigan's FOC further improves the process by handling collection and enforcement of support payments. Although it does not make initial paternity determinations, FOC assists in all aspects of cases dealing with support, parenting time, visitation, and dispute resolution over the same. Therefore, the FOC system offers a meaningful model for case management over on-going issues in domestic relations division cases.

A case management system for Cook County would employ features of the Michigan FOC program, the Wisconsin pilot projects and the community courts model to improve access to justice and compliance with court orders without increasing legal services and settlement services available to litigants. It would also coordinate services for parents, connecting parents with family counseling, job programs and IV-D services. Finally, it would act as a case coordinator, identifying other open cases affecting the family. It would draw from several models to create a system that works best in Cook County.

The Hearing Officers would continue in their role as a first step in the child support process, investigating the financial situations of the parents, utilizing statutory guidelines, and interviewing the families to establish a support order recommendation. Additionally, the Hearing Officer, in an expanded role, would discuss custody and parenting time arrangements with the parents to identify where there is agreement and where issues remain. The Hearing Officer's entire report, including recommendations and proposed agreed orders, would be part of the case file and presented to the court as early in the process as possible.

The Hearing Officer's benchbook, as well as their stated holistic approach are existing resources that could easily be adapted to this model. The new Hearing Officer role would encompass both initial investigations with support recommendations and matching families to available services, as is done in community and/or specialty courts. Additionally, as case managers, Hearing Officers would also be charged with researching court dockets for other cases involving the families, such as domestic violence or juvenile court proceedings, bringing Cook County closer to the Unified Family Court model which has been piloted in Bridgeview and in DuPage County.³⁹ Ensuring that Divorce and Parentage Court judges have notice of all simultaneous proceedings involving a family would greatly improve the quality of justice.

Finally, under this model, the case management officer would help identify, develop and coordinate partnerships with legal services, legal aid agencies, law schools and social service agencies to expand assistance available to litigants.

³⁹ Amy Kosanovich, *One Family in Two Courts: Coordination For Families In Illinois Juvenile and Domestic Relations Courts*, 37 Loy. U. Chi. L.J. 571 (2006).



Data Collection to Assist Decision-making Regarding the Domestic Relations Division

As noted in the constitutionality analysis of this report, Cook County’s Domestic Relations Division remains at-risk for an equal protection claim with regard to the division of its domestic relations courts. The Division will need to demonstrate with hard numbers and clear evidence how the division impacts litigants with regard to how long it takes their cases to be heard and how long it takes to get support orders entered. The Division will need to show what differences in issues raised in the cases or resources expended to resolve disputes, enter and enforce orders exist between the Parentage and Divorce courts in order to establish the division as legitimate.

To this end, we recommend comprehensive, public docket reporting for the division. The National Center on State Courts prints a comprehensive guide on statistical reporting for courts, noting that “valid, reliable and useful information on the nature, scope, and volume of work before the court” is indispensable and necessary for the assessment of how well courts are fulfilling their function.⁴⁰

The Guide’s section on domestic case reporting includes categories for distinguishing which cases are brought under IV-D and which are not, as well as categories for distinguishing support cases for martial children and those for nonmarital children. A sample caseload summary for a courtroom includes reporting categories for:

- Marriage Dissolution/Divorce
- Custody (divorce)
- Visitation (divorce)
- Support (divorce)
- Paternity
- Custody (non-divorce)
- Visitation (non-divorce)
- Support (non-divorce)
- Civil Protection
- Adoption.

The reporting form collects the number of cases pending at the beginning of the report period, divided into “active” and “nonactive” status. The form further collects numbers of new filings, reopened cases, and reactivated cases. Then the form reports dispositions, noting the number of cases with an entry of judgment and the number reopened, as well as those placed on inactive status. Finally, the form reports the number of cases pending at the close of the reporting period.

A second form collects information about IV-D status, intrastate cases, and domestic violence orders. A third form reports the both trial and non-trial dispositions. For non-trial dispositions, it records: dismissed for want of prosecution, default, settled with court assistance or hearing, settled without court assistance or hearing, transferred, referred to

⁴⁰ P. 9 of the earlier version of the Guide. The 2009 updated Guide does not include the discussion of benefits accruing from docketing statistics reporting. The 2009 edition is available at <http://www.courtstatistics.org/Other-Pages/Publications/Guide-to-Statistical-Reporting.aspx>.



alternative dispute resolution, and dismissed for other reasons. For trial dispositions, it records whether the trial is a jury trial or a bench trial and whether verdict was reached, judgment was reached, or if the case settled after start.

For Cook County's purposes, useful reporting categories would be:

- Marriage Dissolution (no children)
- Marriage Dissolution (children)
- Establishment of Paternity (non-divorce)
- Custody & Visitation (non-divorce)
- Child Support (non-divorce)

For each case category, the reporting form for the period should show the number of pending cases, divided into active and inactive at the beginning of the period and divided into active and inactive at the close of the period. In addition to collecting types of dispositions and whether the cases were IV-D or not, it would be useful for Cook County to know how many cases were resolved at the Hearing Officer stage. For coordination of services and comparison of the divisions, it would help to know the number of represented litigants as well as record when a case involves a child representative.

Docket statistic collection can be done quarterly, half-yearly, or annually and is typically an administrative task for each judge's staff. A case coversheet is helpful to the process,⁴¹ and individual courtroom data is typically compiled by an administrative office of the court, statewide or locally.

It is important to collect and make available the basic information about how cases move through the two courts in the Domestic Relations Division in order to assess the whether the separation of the cases serves a necessary purpose. Case statistics will help the court assess whether resources are appropriately deployed and adequately dispersed between the two courts.

Recommendations to Further Improve the Administration of Justice in Cook County Parentage Court

Based on our discussions with practitioners and other stakeholders, as well as our review of practices in other states' domestic relations courts, we have identified a number of issues that we believe could be addressed with certain changes. To that end, we have come up with a set of recommendations that are designed to improve the court system generally, and the user experience for practitioners and litigants specifically, as well as brunt any charges of unconstitutionality. Although we heard in our meetings and discussions that the court system has improved somewhat, we believe that with some changes it can both reduce the risk of constitutional challenge and provide better service to those who use it.

⁴¹ http://www.courtstatistics.org/Other-Pages/Publications/~/_media/Microsites/Files/CSP/Highlights/csph_vol18_n2.ashx (discussing Pennsylvania's project to implement case cover sheets in their docket statistic collection).



First, we recommend a number of changes to the court's physical facilities and design. These recommendations are intended to ameliorate inconvenience and confusion for both litigants and attorneys and to improve the general experience for all users of the domestic relations court system.

We believe that a significant improvement would be to consolidate the physical court facilities for the parentage and domestic relations courts. Even if Domestic Relations courtroom and the Parentage Court do not combine court calls, the two court systems should have adjacent facilities— helping to provide more equal facilities for both court systems.

A common complaint we heard from practitioners was that having to move from the divorce court courtrooms upstairs to the parentage court courtrooms on the concourse level, and vice versa, presented a significant obstacle. In the current arrangement, one has to use an elevator to get to the lobby, then re-enter through a separate security checkpoint, and then head down to the concourse level in order to get from the divorce court area to the parentage court area. This is inconvenient for the attorneys who practice in Domestic Relations Court and causes confusion for litigants who, unfamiliar with the Daley Center, go to the wrong courtrooms and then have to re-enter a security checkpoint to locate the correct courtrooms. The entire Domestic Relations Division should be placed in an area with contiguous physical space to facilitate movement between courtrooms and to minimize confusion for litigants and inconvenience for practitioners.

Additionally, the signage for the parentage should be improved. The entrance to the parentage court is currently misleading and confusing in that it is labeled "Traffic Court." Better and clearer signage would aide litigants and provide a better overall experience in the Parentage Court.

Practitioners have also expressed concern with the lack of private consultation space in the parentage court. This inhibits the ability of attorneys to confer in private with their clients, and prevents attorneys from engaging in private discussions such as settlement negotiations. Providing private conference rooms in the Parentage Court would allow attorneys to confer privately with clients and other attorneys, and we recommend that such space be provided in order to facilitate settlement discussions and attorney-client discussions. We also heard that litigants do not have a private place to review self-help materials, including online assistance. It was also suggested that these parents could use a private area with computers to download documents and complete forms.

In addition to recommendations relating to the physical facilities and layout of the domestic relations court, we also suggest general policy changes that could result in better outcomes for litigants, practitioners, and the court system generally.

First, in the event that Cook County faces another constitutionality suit, the court will have to demonstrate an evidence-based rationale for the division of cases based upon marital status of the parents. To this end, we recommend implementing a comprehensive case data system that will document the differences between the cases in the Divorce and Parentage Courts that may justify separate systems. Data should include at a minimum: number of days from filing to entry of support order, custody order, and/or visitation order; number of unrepresented litigants; number of cases on each judge's call; number of child

representatives appointed in each division; referrals to help desk attorneys; and number of contempt proceedings.

Second, several stakeholders noted that the Hearing Officer process felt wasteful or redundant, in that the hearing officer process could not resolve many of the issues the litigants were in court to address. To address this concern, we recommend expanding the Hearing Officer job description to include case facilitation and case management services. Additionally, the court should create a mediation services office or convert the Hearing Officer process to a true mediation that can address custody and visitation issues, in addition to establishing paternity and setting support. Moreover, all judges, hearing officers, and mediators should strive to explain the child support process to all parties and to help insure that all parties to agreed orders fully understand the provisions of the agreement.

Finally, the most common concerns expressed by stakeholders had to do with the high volume of *pro se* litigants, the clarity, sufficiency, and propriety of *pro se* proceedings (even when the assistance of the help desk), the inability of the help desk staff to provide in-court assistance if necessary, the insufficiency of the settlement procedures for more involved cases, the lack of mediation services, and litigant confusion over the role of State's Attorneys. Given these concerns, we believe that adopting both a community court model and a case management/coordinated services model would be of great value to the domestic relations court.

The community court model, which has been developed generally in criminal and juvenile courts, is attractive to family courts in part because the rise in *pro se* family litigation and nontraditional family structures can present challenges for the traditional court structure. The community court model combines legal aid services and community education with mediation and settlement services to aid the courts by improving the clarity of *pro se* pleadings and, where appropriate, resolving cases without judicial intervention.

The case management/coordinated services model, meanwhile, recognizes that dispute resolution in family courts often requires intervention of additional agencies, such as nonjudicial child support enforcement agencies, or provision of social services, such as parenting education, supervised visitation, and domestic violence agencies. Compliance with court orders increases when litigants are educated about their rights and responsibilities and have access to services which help them meet their responsibilities.

Therefore, we recommend that the Domestic Relations Division adopt the community courts model for domestic relations courts in Cook County. Furthermore, the court should create a case management office to assist the court in coordinating cases across hearing rooms and courtrooms, as well as assist the court and litigants to access social services necessary for litigants to comply with court orders. As part of this effort, the court should work to identify community partners, such as legal aid agencies and law school clinics, who can develop more comprehensive workshops for *pro se* litigants aimed at ensuring pleadings reach the court in an appropriate form. Finally, the court should endeavor to identify community partners or court resources that can be used to improve compliance with the court's orders.

We believe that each of these recommendations would produce immediate benefits for litigants, practitioners, and the domestic relations division itself. In addition, we believe that these recommendations, if implemented, would have a significant impact on any constitutional analysis of the Cook County domestic relations court.

Summary of Recommendations:

Facilities

- Place the entire Domestic Relations Division within a contiguous physical space to facilitate movement between courtrooms and to share resources. Even if Domestic Relations Court and the Parentage Court do not combine court calls, the two court systems should have adjacent facilities.
- Create better signage for the Parentage Court.
- Provide conference space in the Parentage Court for attorneys to speak privately with their clients.
- Provide carrels for litigants to use self-help resources, including online assistance and downloading documents.

Court Administration

- Adopt a comprehensive case and litigant data tracking program for the entire Domestic Relations Division to provide evidence-based rationales for court management decisions.
- Create a Family Law Facilitator program for domestic relations courts in Cook County.
- Alternately, adopt a case management and community courts model to assist the court in coordinating cases across hearing rooms and courtrooms, as well as assist the court and litigants access social services necessary for litigants to comply with court orders.
- Identify community partners (legal aid agencies, law school clinics) who can develop more comprehensive workshops for *pro se* litigants aimed at ensuring pleadings reach the court in an appropriate form.
- Identify community partners or court resources which can be used to improve compliance with the court's orders.
- Expand the Hearing Officer job description to include case facilitation and case management services.
- Provide mediation services office or convert the Hearing Officer process to a true mediation service that can address custody and visitation issues, in addition to establishing paternity and setting support
- All judges, Hearing Officers, and mediators should strive to explain the child support process to all parties and to help insure that all parties to agreed orders fully understand the provisions of the agreement.

Legal Conclusions

When considering the current form of the Parentage Court in light of the cases and history involving equal protection and discrimination against nonmarital children, it is more likely than not that the system will be found constitutional. However, the physical and procedural disparities between the Domestic Relations and Parentage Courts present a



substantial risk of liability to the Circuit Court of Cook County that should not be ignored. The Parentage Court, despite the genuine efforts by key stakeholders to improve its facilities and operations, continues to operate at a level of efficiency below its sister court. Because the County has decided to adjudicate issues of child support differently based upon the immutable characteristic of a child’s parents’ marital status at the time of her birth, it must ensure that cases are handled equally by the two systems. Professors Rotunda and Nowak summarize this principle as follows:

If a state grants legitimate children a right of support from either their mothers or their fathers, it must grant similar support rights to illegitimates The fact that it will be difficult for the state to create [such] systems . . . will not excuse it from its obligation of treating illegitimates in a fair manner.

Rotunda & Nowak, *Treatise on Constitutional Law* § 18.14, at 688–89. Stated plainly, the Cook County Circuit Court will not be excused from this obligation simply because it is difficult to create a separate court system that treats nonmarital children in a manner similar to marital children. Viewed through the frame of Illinois’s history of treating nonmarital children in a fundamentally unequal manner, the underlying policies of the Parentage Court are likely to be viewed skeptically by a federal court sitting in review.

Applying intermediate scrutiny, a court would ask whether the policies behind having a separate Parentage Court are substantially related to an important governmental interest, and whether there is a reasonable fit between the policies’ means and their ends. *United States v. Williams*, 616 F.3d 685, 692 (7th Cir. 2010) (“To pass constitutional muster under intermediate scrutiny, the government has the burden of demonstrating that its objective is an important one and that its objective is advanced by means substantially related to that objective.”). In this case, it is likely that most courts would recognize the importance of a judicial system designed to handle child-related disputes such as paternity, support, and custody. That is a core reason for both the Parentage Act of 1984 as well as the Parentage Court. *Illinois Parentage Act of 1984*, 750 ILCS 45/1.1 (“Illinois recognizes the right of *every* child to the physical, mental, emotional and monetary support of his or her parents.” (emphasis added)). However, a reviewing court would also examine whether the means—the Parentage Court system—has a substantial relationship to the ends being sought.

At the outset, it is important to note that the primary issue addressed in the *Gomez* litigation—the location of the court—has been resolved in the ensuing years. The Parentage Court has been moved to the Daley Center from the 32 West Randolph facility. The improvements in facilities over time are undeniable (first from the various police stations around Chicago to West Randolph and, just recently, from Randolph to the Concourse Level of the Daley Center). Despite being in the same building, however, the Parentage Court and Divorce Court are still physically and operationally separate. This bifurcation may not be fatal. *See Mills*, 456 U.S. at 97 (holding that the Equal Protection Clause does not require the adoption of “procedures for illegitimate children that are coterminous with those accorded legitimate children”); *see also* Rotunda & Nowak, *Treatise on Constitutional Law* § 18.14, at 688 (concluding that, “[i]f a state grants legitimate children a right of support . . . it must grant *similar* support rights to illegitimates” (emphasis added)). But a reviewing court would query whether this separate legal system and separate facilities are *substantially* related to an important government interest.



The history of discrimination against nonmarital children may promote a reviewing court to conduct a more searching analysis of a dual system where issues of (mostly) nonmarital children and their futures are litigated in a facility that lacks many of the common markers of a legal courtroom, particularly when a ready comparison is available in the same building for cases addressing the rights of marital children. Complaints regarding the deficient avenues of relief for nonmarital children have existed for close to a century. While these concerns have certainly decreased over time, they are still present. As discussed above, on the whole, the state of physical facilities for the Parentage Court are inferior to those of the Domestic Relations courts. Further, the standard perception and observation is that the court docket of the Parentage Court is busier than that of Divorce Court, leading to a delay status and hearing dates. It is undeniable that the *historic* policies and practices of segregating the two court systems were undertaken and perpetuated with the knowledge that disputes affecting nonmarital children would be heard in inferior facilities and with fewer judges. However, it is also undeniable that the current administration has worked and continues to work to bring the Parentage Court closer to parity with the Divorce Court counterpart through more courtrooms, more judges, and prospectively, mediation services or court facilitators.

Nonmarital children have always been afforded *some* separate degree of relief to achieve the important governmental interest of providing them a measure of care, but historically this has not been the *same* degree of relief as marital children. *See Rawlings v. People*, 102 Ill. 475, 478 (1882) (holding that a prosecution under the Illinois Bastardy Act was a civil, not criminal, proceeding, even though it was criminal in form). This historic lack of equal relief presents a challenge for the Circuit Court in defending the bifurcated system. The continuing challenge is to ensure that this separate effort to provide relief is as efficient or effective as the means of relief available to marital children. Indeed, people recognized the problems caused by this sort of separation and unequal treatment almost a century ago, criticizing how cases under the Bastardy Act were, for one reason or another, of a “quasi-criminal character.” Akers, *Social Legislation in Illinois—1917*, 9 Inst. Q. at 73; *see also Rawlings*, 102 Ill. at 477–78 (noting this peculiarity).

Apart from arguing that the policy behind the Parentage Court is an important governmental interest, the Circuit Court may also argue that the object of maintaining the bifurcated process of child-support dispute resolution is not to discriminate against nonmarital children, but to provide an alternative system for *pro se* litigants or for administrative efficiency with Title IV-D cases, as these are most of the cases heard in Parentage Court. It is likely that a court would be skeptical of this defense given the lack of statutory support for this position.

The Cook County Parentage Court is on the brink in terms of its Constitutional legitimacy. Those working within the Parentage Court system praise improvements that have been made within the past year but a substantial number are still critical of the facilities, and the perceived inequities in caseloads and resources. Yet, our respondents in Cook County and in jurisdictions outside Illinois offer recommendations to the Circuit Court that, if implemented, would move the Court away from this brink—toward the point where the government interest argument could prevail in a constitutional challenge. The current Court administration has demonstrated its desire to improve the Parentage Court. We urge the Court to consider and implement additional improvements.



APPENDIX

Best Practices Research from Jurisdictions Outside Illinois

To assist in our review of the adjudication of child support issues within the Domestic Relations Division, Appleseed undertook an analysis of corresponding court systems and processes in six other states: California, Florida, Michigan, New York, Texas, and Wisconsin. Below is a short summary of each state's court system and procedures.

California

California uses a judicial process to establish child support orders, as opposed to an administrative process. The California Department of Child Support Services is a state-administered, county-run program. There are 58 counties in California, with 51 local child support agencies ("LCSA") and 4 regional child support agencies. Parents, guardians, and caretakers of minor children can receive services from an LCSA regardless of marital status or income.

The LCSA attorneys represent the public interest, not parents. Although attorneys are not provided to represent the parents, a Family Law Facilitator is available for free help in reviewing and completing the Answer to the Complaint. Parents may proceed *pro se* with discretion of the judicial officer.

Resources for parents proceeding *pro se* vary by county, however, parents have access to an ombudsperson, family law support attorney, or facilitator. Some counties publish outreach materials and host clinics about useful topics like modifying orders. LCSAs also make referrals to agencies that are able to fund more programs for parents.

California reported that it has experienced success with caseload stratification, that is, organizing their cases into separate groups according to special characteristics that indicate predictable impediments (for example, caseworkers look for substance abuse, parents working for cash only, or possible disabilities that might prevent a parent from working). This system allows caseworkers to identify and address efficiently certain types of cases that might require special attention.

Florida

Florida uses both a judicial process and an administrative procedure to establish child support orders. The Florida Department of Revenue ("DOR") has administered the Child Support Program since 1994. DOR staff provide child support services in all but two Florida counties. The administrative support procedure is a streamlined and simplified method that can be used when paternity has been established and the location of the noncustodial parent is known. In addition, DOR screens out cases from the administrative process if



there is information related to family violence. It cannot be used for cases with an existing child support order. Most cases are handled through the judicial process.

Each of Florida's twenty judicial circuits has a self-help program to assist *pro se* litigants. The services provided vary, but are mostly limited to providing general information as to which forms to file (e.g., modification of support, financial affidavit, etc.). Some circuits also assist with directing *pro se* litigants on how to fill out the forms. However, the staff cannot provide legal advice or refer *pro se* litigants to specific attorneys, but instead refers them to the list of attorneys on the Florida State Courts website (e.g., Legal Aid). Such community legal organizations hold seminars on how to fill out the forms and direct litigants to the self-help programs to obtain the necessary forms. To obtain assistance through the self-help program, both parties must be *pro se* or the case is reassigned through the court. A self-help packet of forms may be available for a fee at some courthouses and all forms are available for download from the Florida State Courts website.

Michigan

Michigan uses a judicial process to establish child support orders, with assistance from the Friend of the Court ("FOC"). The Family Division of the Circuit Court of each county in Michigan handles all domestic relations cases. FOC assists all families (married and unmarried) with issues of custody, parenting time and support (including medical and spousal). At least one FOC office serves each circuit court's Family Division.

Support orders for marital children are handled in the same division as support orders for nonmarital children. FOC investigates and makes reports and recommendations to the judge about all issues, including support. FOC also provides ongoing case management in domestic relations cases. FOC may make calculations about child support based on the child support calculations established for Michigan, and referees may conduct hearings and make recommendations regarding child support, but the judge must sign the final order. The Office of Child Support ("OCS") (part of the Department of Human Services) administers child support in cooperation with FOC. The OCS handles management of federal funding for the child support program, locating absent parents, and managing income tax intercepts.

A case starts when a parent files a complaint for one of the following: divorce, order of child or spousal support, establish paternity, establish custody, or establish paternity time. After the complaint and answer have been filed, a party or FOC may file a motion asking for an order deciding issues like child support and parenting time. Parents have the opportunity to request a hearing in which they will be able to present evidence and testimony in a disputed case. A hearing may be scheduled before a referee or a judge.

The referee can hold hearings and make recommendations to the judge, but the referee's recommendations only will become effective if a judge signs an order containing the recommendation. If a party disagrees with the referee's recommendations, he/she can request a *de novo* hearing before the judge.

Parties who are proceeding *pro se* can contact the OCS at Michigan's Department of Human Services for information and assistance. OCS provides information on how to calculate child



support payments, obtain support orders, locate absent parents, establish paternity, and secure compliance with existing orders. FOC websites offer forms and information to *pro se* litigants and FOC has published a list of numbers for *pro se* litigants to contact for help. There is also a caseworker assigned to each FOC case, so *pro se* parents generally can contact the caseworker with questions.

Mediation is available and is often required if the judge does not order a full custody evaluation. The parties may either go to private mediation or FOC-provided mediation services. Mediators are required to go through 40 hours of initial training to be certified as mediators and 8 hours of additional training every two years. A mediator is not required to be an attorney.

New York

Domestic relations cases in New York are handled in Family Court. Family Court is responsible for juvenile delinquency, custody, visitation, and child support cases. Divorce cases are handled by New York Supreme Court. All custody and support cases in New York are full-fledged hearings conducted in accordance with evidentiary rules, and service procedures are followed. Both parents can present documentary evidence, call witnesses, etc.

New York has no administrative process; it uses only a judicial process. Support Magistrates hear all child support and paternity matters regardless of marital status. This is required by statute. Support Magistrates all are appointed attorneys. They must go through an interview process and an evaluation process after an initial three-year term. If re-appointed, the renewal term is five years.

Generally, no case workers or case coordinators are available to assist parents proceeding *pro se*; however, a Child Support representative typically is assigned in paternity cases. Mediation services are available in Family Court. New York State also has the LIFT—Legal Information for Families Today—program, an online resource for parents for child support information. New York City has a help center for *pro se* litigants for the full range of cases (including child support), as well as “Do It Yourself” programs, which are computer terminals at different locations in different family courts where *pro se* litigants may access information and file petitions, with some guidance from court personnel.

Texas

Texas uses both a judicial and administrative process for child support orders. The entire child support process is overseen by the Office of the Attorney General (“OAG”). The child support courts are standardized across all platforms. Support orders for marital and non-marital children are handled in the same court division. The OAG decides whether a case will go through the judicial or administrative process.

With the exception of cases involving minor-aged parents or family violence and safety concerns, all cases undergo the Child Support Review Process (“CSR”). CSR is a process whereby parties (i.e. custodial and noncustodial parents) work together to establish paternity and determine the terms of child support. If both parties can agree to the terms of



child support, the case will be concluded through an administrative process. When parties are unable to agree to the child support terms, a judge will review the evidence and make a ruling regarding child support.

Most cases go through the judicial process. Parents may request a judicial hearing if their case is initially assigned to administrative review. In addition, both parents have the opportunity to present evidence during a disputed case; in fact, parents are encouraged to give as much information as possible concerning their present life circumstances and what they believe is best for the child.

Administrative hearings are conducted by non-lawyers known as Administrative Hearing Officials. Hearing Officials tend to be promoted to the position after having started as a Child Support Officer. They receive 40 hours of special negotiation training for dispute resolution. Hearing Officials are supervised by attorneys. Although the supervising attorney is not present during the hearing, the supervising attorney must sign off on the case ruling. In addition, a judge or associate judge is also required to sign off on all administrative rulings.

In court, the OAG represents the State of Texas, not the parents or the child. This information is made known to parents by way of court documents mailed out prior to the court date, upon commencement of court, and on the OAG website.

Parents proceeding *pro se* may contact a case worker in Texas for questions with their particular child support case. There are also several resources available to parents to familiarize them with the court proceedings. Before the hearing, the OAG mails a “Know Before You Go” guidebook to the parents to help address common practices and FAQs. A toll-free number also is provided to parents who wish to speak to a Legal Aid or private attorney free of charge. The toll free number dials in to a phone bank staffed by pro bono attorneys. The OAG website also features videos and FAQs to help parents better understand the child support process.

Wisconsin

Wisconsin uses a judicial process to establish child support orders, as opposed to an administrative process. A judge presides over contested cases, and a non-judge presides over uncontested cases. Additionally, in both contested and uncontested cases, an attorney represents the state child support agency.

Resources for *pro se* parents vary by county. Wisconsin does not have a standard statewide self-help system. *Pro se* resources are available from computer kiosks at courthouses in many counties. Court clerks can provide assistance in identifying forms and paperwork that need to be filled out. Court forms also are available for download from the Wisconsin Court System website. In addition, local community legal organizations assist *pro se* parents with directing them to obtain the necessary forms through self-help programs and on how to fill out the forms to file. Parents also may contact caseworkers who have been assigned to work with parents on child support cases.



BIBLIOGRAPHY

Barbara A. Babb, *An Interdisciplinary Approach to Family Law Jurisprudence: Application of an Ecological and Therapeutic Perspective*, 72 Ind. L.J. 775 (1997)

Barbara A. Babb, *Special Issue: Unified Family Court: Reevaluating Where We Stand: A Comprehensive Survey of America's Family Justice Systems*, 46 Fam. Ct. Rev. 230 (2008)

Margaret Martin Barry, *Accessing Justice: Are Pro se Clinics a Reasonable Response to the Lack of Probono Legal Services and Should Law School Clinics Conduct Them?*, 67 Fordham L. Rev. 1879 (1999)

Herbert J. Belgrad, *An Introduction to Unified Family Courts from the American Bar Association's Perspective*, 37 Fam. L.Q. 329 (2003),

Steven K Berenson, *A Family Law Residency Program?: A Modest Proposal in Response to the Burdens Created by Self-Represented Litigants in Family Court*, 33 Rutgers L. J. 105 (2001)

Deborah J. Chase, *Pro Se Justice and Unified Family Courts*, 3 Fam. L.Q. 403 (2003)

Deborah J. Chase, et al, *Courts Responding To Communities: Community Courts and Family Law*, 2 J. Center for Fam. Children & Cts. 37 (2000)

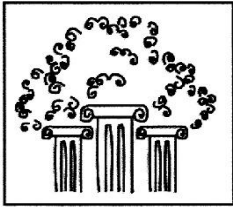
Court Improvement Committee for the Colorado Supreme Court Commission on Families in the Colorado, *Courts Colorado Courts' Recommendations for Family Cases: An Analysis of and Recommendations for Cases Involving Families*, May 2001

Russell Engler, *Connecting Self-Representation to Civil Gideon: What Existing Data Reveal About When Counsel is Most Needed*, 37 Fordham Urb. L.J. 37, 51-55 (2010)

Frances J. Harrison, et al., *Courts Responding to Communities: California's Family Law Facilitator Program: A New Paradigm for Courts*, 2 J. Ctr for Fam. Children & Cts 61 (2000).

Amy Kosanovich, *One Family in Two Courts: Coordination for Families in Illinois Juvenile and Domestic Relations Courts*, 37 Loy. U. Chi. L.J. 571 (2006).





Chicago Appleseed Fund for Justice

An Affiliate of Appleseed

750 N. Lake Shore Drive Fourth Floor Chicago, Illinois 60611
Phone: 312-988-6552 Email: caffj@chicagoappleseed.org

Website: www.chicagoappleseed.org

