

**REPORT OF THE
IOWA SUPREME COURT
FAMILY LAW CASE PROCESSING
REFORM TASK FORCE**

May 2016

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IOWA SUPREME COURT FAMILY LAW CASE PROCESSING REFORM TASK FORCE

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Iowa Supreme Court
Iowa Judicial Branch Building
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Re: **Report of the Iowa Supreme Court Family Law Case Processing Reform Task Force**

Dear Chief Justice Cady and Justices:

The Iowa Supreme Court Family Law Case Processing Reform Task Force (Task Force) is pleased to present the following report and recommendations concerning family law case processing in Iowa. In your charge, you requested that the Task Force: 1) Identify strengths and weaknesses of the present processes for resolving dissolution of marriage and child custody cases in both original proceedings and modifications; 2) Examine innovative procedures and programs used in other jurisdictions, including spousal support guidelines, and from these procedures and programs, identify those that hold the most promise for Iowa litigants and the public at large; and 3) Propose just, efficient, and consistent procedures for people across the state.

To accomplish these tasks, the Executive Committee assembled an outstanding team of Iowa family law experts. Inclusivity and geographical balance were considered. Task Force members include judges, law professors, lawyers, mediators, and judicial branch employees. The Task Force also sought guidance from experts in family law case processing across the nation and internationally. Direct assistance was provided by William J. Howe III, Esq., past chair of a similar court reform study in the state of Oregon, with support from The Iowa State Bar Association, the Association of Family and Conciliation Courts and the Institute for Advancement of the American Legal System. The Task Force is grateful for their assistance.

After a year of study, the Task Force has concluded that there are short-term and long-term steps the court should consider to address the needs of Iowans involved in family law matters. The short-term recommendations are intended to address the need for greater uniformity and streamlined processes in family law cases. Longer-term recommendations primarily focus on access to justice and are those that require additional study and public input.

The Task Force is grateful to be part of the first full evaluation of the family law court system in Iowa. While there is much to be done, the court's willingness to embark on this project bodes well for Iowa families and for the judicial branch. The recommendations outlined in this report provide fertile ground for improving the lives of Iowans, particularly the children in Iowa. Acting upon these recommendations will increase efficiency in the judicial branch's

operation and promote public confidence in the judiciary. The Task Force hopes such important work will continue.

Respectfully Submitted,

Justice Thomas D. Waterman, Chair
Lora L. McCollom, Co-Chair
Matthew J. Brandes, Co-Chair/Reporter

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I. INTRODUCTION AND OVERVIEW

A. Formation of the Task Force

In October 2014, The Iowa State Bar Association (ISBA) requested that the Iowa Supreme Court create a task force to review family law case processing in the Iowa courts. The ISBA request, which originated with a resolution passed by the Family & Juvenile Law Section, contemplated that such a task force would focus on process changes that could be made without involving noncourt constituencies, much like the Civil Justice Reform Task Force for non-domestic cases. *See* Appendix F. The supreme court agreed to the request and created the Iowa Supreme Court Family Law Case Processing Reform Task Force (Task Force). The court appointed Justice Thomas Waterman as chair of the Task Force. After notifying the ISBA, the supreme court appointed an Executive Committee consisting of Justice Waterman; David Boyd, State Court Administrator; Lora McCollom, chair of the ISBA Family & Juvenile Law Section; and Matthew Brandes, a member of the ISBA Board of Governors. The Executive Committee decided to limit the initial membership of the Task Force to judges, court system employees, law professors, lawyers, and mediators. The Executive Committee began by identifying and recruiting members to the Task Force Steering Committee in November 2014, based upon each member's family law expertise, past contributions to family law improvement, and professional experience in the Iowa court system.

The supreme court officially established the Iowa Family Law Case Processing Reform Task Force and confirmed appointment of the Steering Committee on January 14, 2015. *See* Appendix H. The Steering Committee recruited twenty-eight additional Task Force members. *See* Appendix I. The Task Force reflects Iowa's gender and geographic diversity.

B. Supreme Court Charge

The court's charging order directed the Task Force to: 1) Identify strengths and weaknesses of the present processes for resolving dissolution of marriage and child custody cases in both original proceedings and modifications; 2) Examine innovative procedures and programs used in other jurisdictions, including spousal support guidelines, and from these procedures and programs, identify those that hold the most promise for Iowa litigants and the public at large; and 3) Propose case processing recommendations for just, efficient, and consistent procedures for citizens across the state. The order required the Task Force to submit a final report by May 31, 2016.

C. Support of the Association of Family and Conciliation Courts

The Steering Committee began developing plans for the Task Force and sought guidance in its charge to examine innovative procedures and programs across the country. The Executive Committee contacted the Association of Family and Conciliation Courts (AFCC), an interdisciplinary, international body of family law professionals including judges, court administrators, lawyers, mediators, mental health professionals, and social workers, that is dedicated to the improvement of family law case processing worldwide. The AFCC's 52nd Annual Conference took place May 27–30, 2015, in New Orleans. Executive Committee members attended the conference.

With the help of AFCC Executive Committee Director Peter Salem, Lora McCollom and Matt Brandes arranged for Task Force members to meet privately with family law court reform experts during the conference. The experts included William J. Howe III of Oregon, who led a successful court reform effort for Oregon; Andrew Schepard, Senior Associate Dean for Academic Affairs and Max Schmertz Distinguished Professor of Law at Hofstra University; Natalie Knowlton, Director of the Honoring Families Initiative of the Institute for the Advancement of the American Legal System; and retired Colorado Court of Appeals Chief Judge Janice Davidson of the Institute for the Advancement of the American Legal System's Honoring Families Initiative. During meetings with these and other experts, the Task Force members learned that the field of family law case processing is undergoing a sea change across the nation and around the world. The biggest changes include the burgeoning number of people attempting to resolve family law matters privately and the number of parties arriving in court with settlements or for trials but without lawyers or the benefit of legal advice. Following the meetings with court-reform experts, the Executive Committee asked William Howe to serve as an advisor to the Task Force. William Howe agreed and attended the Task Force plenary meetings.

D. Framework of Recommendations

The Task Force, with guidance from Chief Justice Mark Cady and William Howe, framed the Task Force's recommendations into two groups: 2016 administrative term recommendations and long-term recommendations. During the work group discussions, many access to court issues, some of which may fall outside of the judicial branch's purview, came into focus. To reflect these discussions, this report also includes a section devoted to areas for future study. Accordingly, the recommendations are organized in the following three categories:

1. **2016 administrative term.** Sufficiently researched process improvements that the work group believes merit immediate consideration and action by the Iowa Supreme Court.
2. **Long-term recommendations.** Potential process improvements that the work group believes can be completed in the next two to three years, but which require additional research before specific recommendations are made. These recommendations are likely to require greater public input because they represent a significant departure from existing judicial branch policies or practices or may require a financial investment by the legislative or judicial branches.
3. **Further study recommendations.** Process improvements that may hold great potential to increase the accessibility of our court system. The Task Force has concluded that these recommendations are appropriate for further study and implementation but perhaps should not take priority over any of the 2016 administrative term or long-term recommendations.

E. Task Force Activities

The Steering Committee began regular meetings in December 2014. In spring 2015, the Steering Committee developed a project plan and timeline. The Steering Committee divided the Task Force into five substantive work groups of eight to ten members each: Access to Courts, Alternative Dispute Resolution (ADR), Case Processing, Spousal Support Guidelines, and Standards for Court-Appointed Professionals (Standards). The Executive Committee assigned responsibility to each work group as follows:

1. The Access to Courts Work Group was asked to develop recommendations to meet the needs of self-represented litigants and to increase public access to legal information on family law matters, the courts, and court procedures;
2. The ADR Work Group was asked to develop recommendations to increase public access to high quality family law mediation as an adjunct to the judicial system;
3. The Case Processing Work Group was asked to develop recommendations for best court practices and increased uniformity in processing time and procedures for family law cases across the state;
4. The Spousal Support Guidelines Work Group was asked to develop recommendations regarding the use of alimony guidelines in Iowa; and

5. The Standards Work Group was asked to develop recommendations to improve the quality of family law education and increase uniformity in standards for appointment and use of court-appointed professionals.

See Appendix J.

The work groups began meeting in spring 2015. The first plenary meeting of the Task Force occurred on June 18, 2015. At this daylong meeting, the Task Force heard from William Howe concerning the work of the Oregon Task Force on Family Law, the accomplishments in other U.S. jurisdictions, and the status of family law court reform internationally. The Task Force then divided into the five work groups to continue preparation for their preliminary reports.

Task Force work groups met in summer 2015 with the goal of submitting preliminary work group reports by the end of August. The Steering Committee reviewed the work group draft reports in September 2015. The work groups submitted updated reports in October 2015, and the Steering Committee reviewed these reports in November. Work group meetings and drafting work continued in December, with reports submitted on December 30, 2015. The work groups circulated their reports to the Task Force. A second plenary meeting was held in Des Moines in January 2016. The work groups then finalized their separate reports, which the Executive Committee and the Steering Committee incorporated into this Task Force report. The following are the recommendations of the Task Force.

II. FAMILY LAW CASE PROCESSING IN IOWA COURTS

A. Family Law in Iowa's Courts Today

In 2015, Iowa district courts processed over 28,000 domestic relations cases. The breakdown of the types of domestic relations cases, both by number filed and number disposed, are reflected in the chart below.

Domestic Relations	Filed/reopened	Disposed
Dissolution of marriage with children	7,327	7,358
Dissolution of marriage without children	5,669	5,647
Dissolution modifications with children	805	921
Dissolution modifications without children	27	32
Paternity actions	4,343	4,365
Administrative child support matters	3,939	3,878
Civil domestic abuse	5,972	5,830
Total	28,082	28,031

As the filing and disposition numbers show, thousands of Iowans experience a domestic relations court case of some type in the course of a typical year, and this number does not include the nonparty family members affected by the process.

B. Strengths and Weaknesses

The Task Force identified the following three major weaknesses in family law case processing in Iowa: long delays; a lack of uniformity among judicial districts; and inconsistent use of mediation practices. The Task Force identified the following strengths: competent and committed judicial branch employees; an impartial, competent, and fair judiciary¹; a first in the nation, state of the art electronic filing and document management system (EDMS); and the promotion of court forms for pro se litigants.

Case processing and case management present challenges in many counties, as older and smaller courthouses lack the space and the personnel to manage the number of family law cases filed each year. In some districts, resource limitations often result in delays of more than a year for litigants who need the court's assistance to resolve their disputes.

¹ According to the U.S. Chamber of Commerce and its Institute for Legal Reform, the Iowa court system consistently performs in the top ten among the court systems of all fifty states. In 2015, the Iowa court system ranked fourth overall and received a top five ranking in six of the ten ranking elements, including judge impartiality (third), judge competence (fifth), and judge fairness (fourth). The U.S. Chamber of Commerce, Institute for Legal Reform, "State Lawsuit Climate Report" (2015).

While all districts adhere to the statutory law of divorce and custody, court procedures for obtaining temporary and final divorce and custody orders vary widely across the state's judicial districts. Ready access to information concerning rules of process and procedure is important in family law matters because of the dramatic differences among the districts in these areas. In the Second and Seventh Judicial Districts, for example, courts use limited evidentiary hearings in open court to decide temporary issues. Other districts decide temporary custody disputes on affidavit after in-chambers hearings. In the Fifth and Eighth Judicial Districts, courts often decide temporary custody disputes on affidavit without a hearing of any kind. In addition, some districts limit the form, length, and number of affidavits that each party may submit, and in other districts individual judges may have procedures for temporary hearings that further refine the standard procedure of the district. The judicial districts also vary on required parental and child education, exchange of financial information by court order, the automatic entry of financial injunctions, and requirements for pretrial and trial submissions. No consistent rules or standards exist to help courts determine whether, when, and how children may testify in family law matters. These differences create difficulty for both lawyers and self-represented litigants in finding necessary information for case processing.

Another area of significant difference among the districts is the use of mediation and the rules governing it. Although, in 1996, the Iowa Legislature authorized the district courts to order mediation in all domestic relations cases, with exceptions, not all judicial officers or lawyers believed in the need for mediation or its efficacy.² While acceptance of mediation in family law matters has grown over time, the judicial branch has struggled to advance the establishment of a statewide dispute resolution program in family law cases as authorized in the original legislation. Until recently, the only established programs for court-annexed family law mediation existed in the Fifth and Sixth Judicial Districts. By contrast, the Seventh Judicial District has long used judicial settlement conferences to resolve family law cases.

Despite these differences in process across the state, the judicial branch overall continues to provide Iowans with a high quality of justice, and Iowa's judicial independence is second to none. Judicial branch employees work hard, and many dedicate their lives to providing quality service to those who use Iowa's court system. The judicial branch continues to make necessary investments in technology and has now fully implemented EDMS throughout all 99 counties. The judicial branch website contains information and forms that have been developed to assist all court users, both professional and public. Additionally, the website provides information on the courts, court rules, and procedures in all eight judicial districts, and online forms for self-represented litigants in dissolution of marriage cases and in child support modifications. The judicial branch is committed to periodic review of the website in an effort to ensure it remains up

² See 1996 Iowa Acts ch. 1195, § 2.

to date and easily accessible and navigable for all users. The supreme court has developed and made pro se family law forms available, ranging from dissolution of marriage to child support modification, and will continue to develop additional forms, including forms for custody cases.

Moreover, the judicial branch has expanded access to justice for the public through professional regulation and the development of court rules. The supreme court has adopted an aspirational rule of fifty hours of pro bono service annually by members of the bar and an annual recognition program to recognize lawyers who meet the goal. The same rule suggests lawyers should provide voluntary financial support to legal assistance programs.³ The supreme court has also enacted rules expanding the persons eligible to provide pro bono legal service under the supervision of approved legal aid organizations to include law students, recent law graduates, corporate lawyers, and emeritus lawyers.⁴ Finally, the supreme court has adopted Iowa Rule of Professional Conduct 32:1.2(c) to authorize limited scope representation by lawyers and Iowa Rules of Civil Procedure 404, 423, and 442 to facilitate its use. The fact remains, however, that all these measures have proved insufficient to meet the growing need for advice and legal services in family law cases.

C. Current Trends and Issues

Other jurisdictions have addressed similar challenges within their family law systems. Solutions include simplified online forms, self-help centers, and summary judicial proceedings, which have become a routine part of family law processing in many parts of the world. In Oregon, for example, a task force proposed a Comprehensive Family Conflict Management System designed to help families before, during, and after a conflict. Maricopa County, Arizona, uses standard online forms for all family law matters in which users populate forms similar to those used in Turbo Tax or Iowa Docs. Some states use summary court proceedings, similar to Iowa's small claim proceedings, for uncontested divorces, while other jurisdictions use a triage-type of filing system in which the clerk's office screens new cases and then sends them to the appropriate processing track depending on the type of case (dissolution with children, dissolution without children, unmarried parents, modification of existing order, etc.). Various models of private dispute resolution are used around the country. These models include, but are not limited to, mediation centers, private mediation, arbitration, and unbundled legal services. At the end of the day, these developing trends reveal consistent themes:

1. Users of our court system want—and need—faster and less-expensive alternatives to resolve their family law disputes; and

³ See Iowa R. of Prof'l Conduct 32:6.1.

⁴ See Iowa R. of Prof'l Regulation 31.15; *id.* 31.16; *id.* 31.19.

2. Courts need to have information readily available and easily accessible for their users, especially for self-represented litigants.

The Task Force believes that many of these concepts warrant further study and could help Iowans more efficiently navigate the requirements to obtain a decree or final order.

Anecdotal evidence suggests that the number of self-represented litigants is increasing in Iowa, although the judicial branch does not collect specific data on this issue. However, other jurisdictions report a large number of self-represented litigants in family law cases.⁵

⁵ The number of litigants proceeding through the court system without representation varies by jurisdiction. In many courts, however, this number is substantial—especially in family cases. *See, e.g., MD ACCESS TO JUSTICE COMM’S, INTERIM REPORT AND RECOMMENDATIONS* 1 n. 1 (2009) (“In Fiscal Year 2007, 68% of domestic cases included at least one self-represented litigant at the time the answer was filed. Forty percent (40%) of the cases included two or more self-represented litigants, meaning usually that both parents were without counsel. In 72% of domestic trials, at least one person is participating in the trial without a lawyer.”), *available at* <http://w.ww.courts.state.md.us/mdatjc/pdfs/interimreport111009.pdf>; *CA TASK FORCE ON SELF-REPRESENTED LITIGANTS, FINAL REPORT ON IMPLEMENTATION OF THE JUDICIAL COUNCIL STATEWIDE ACTION PLAN FOR SERVING SELF-REPRESENTED LITIGANTS* 2–3 (2014) (referencing self-representation statistics from various states), *available at* http://www.courts.ca.gov/partners/documents/EA-SRLTaskForce_FinalReport.pdf. Based on anecdotal reports of Task Force members, the Task Force believes Iowa data, when available, will be similar. The judicial branch has not gathered this data and the Task Force does not know what changes in ICIS or EDMS would need to occur for it to do so at this time.

III. RECOMMENDATIONS

The Task Force has developed both short-term and long-term recommendations for the supreme court to consider. In addition, it is the Task Force's considered judgment that three primary goals should guide the effort to reform domestic case processing in Iowa's courts:

1. Greater simplicity, transparency, and uniformity in domestic case processing.
2. Expanded access to family law information and resources.
3. Increased quality alternatives to traditional litigation to resolve family law disputes.

By developing appropriate responses to further these goals, the Iowa Judicial Branch will better serve the public, more effectively use resources, and foster public confidence in the courts. Based on its five work group reports, the Task Force respectfully offers the following recommendations to the Iowa Supreme Court for its consideration in the 2016 Administrative Term.

A. 2016 ADMINISTRATIVE TERM RECOMMENDATIONS

The Task Force requests the court to consider acting upon the following recommendations during its 2016 administrative term.

- 1. Informal Family Law Trial.** Amend the Iowa Rules of Civil Procedure to provide an optional, informal, and expedited track for processing family law cases based on the model now used in Deschutes County, Oregon. (Deschutes County Circuit Court Rules 7.045(4) and 8.015 (2015)).

Work group: Case Processing, pp. 14–16; Access to Courts, pp. 54–57.

Rationale: The court has excelled at providing greater access to justice for self-represented parties by promulgating forms for use in family law cases. However, the forms do not make self-represented parties more capable of presenting their cases at trial than they were in the absence of such forms. Self-represented parties in family law cases often do not have the information or ability to successfully navigate the legal process, even in cases where the factual and legal issues are fairly limited, simple, and straightforward. As a result, when such cases come to trial, judges often must receive evidence and allow trial to proceed with relaxed

rules of evidence and procedure as a matter of necessity. While a rule allowing parties to opt into a more informal trial process may not be significantly different from current practices, it would create greater transparency, better uniformity, and clearer expectations for parties. The judges on the Task Force report spending a tremendous amount of time on self-represented family law cases, which may not involve particularly difficult legal or factual issues, but which consume a significant portion of the daily family law docket. Trials in such cases are scheduled in the normal course, which requires parties to wait for trial on the same timeline as other more difficult or complex cases, and which creates delays in hearing other cases on the docket. With an expedited family law track, courts could address easy-to-resolve cases in a short informal trial instead of taking up valuable trial slots further in the future and forcing parties with more complicated issues to wait longer for resolution. While the rule may primarily benefit unrepresented parties, the process could be equally available as an option in limited, simple, and straightforward cases in which lawyers are involved.

- 2. Adopt Standards for Lawyers Representing Children in Custody Cases.** Adopt a modified version of the ABA Standards for Lawyers Representing Children in Custody Cases as an Iowa Court Rule and direct child representatives to follow the standards when they are consistent with Iowa law. (*See* Draft Rule at Appendix E, pp. 6–28).

Work group: Standards, pp. 1–2.

Rationale: The adoption of standards will help dispel confusion and uncertainty about the child representative’s role in contrast to the guardian ad litem—for children, their parents, parents’ lawyers, judges, and even children’s representatives. In particular, the role of guardian ad litem has become muddled because various judges and judicial districts hold differing expectations. Clarity about the child representative’s responsibilities helps everyone know what to expect, which makes the court system more transparent.

These proposed standards preserve the child representative’s role as that of a lawyer who can file motions to protect the child or obtain needed resources for a family, present evidence, and examine witnesses, but who does not become a witness by taking the stand or filing a report. The standards also clarify that a lawyer may not serve as both a guardian ad litem and a child’s attorney in the same case.

3. Uniform Mediation Requirements. Establish a statewide mediation program for family law cases with opportunities for mediation and settlement conferences.

- a. Implement a uniform requirement for mediation in advance of temporary order hearings and final trials in family law cases, with a waiver option for cases involving domestic violence or other good cause.
- b. Develop a uniform standard case processing order for family law cases, including time lines for mandatory pretrial mediation, based on the forms proposed by the ADR and Case Processing Work Groups.
- c. Develop a uniform order regarding temporary hearings, including mandatory mediation for all temporary order disputes (and timelines for same) based on the form orders proposed by the Case Processing and ADR Work Groups.
- d. Investigate and establish a mechanism for ongoing management of the mediation program as an institutional function of the judicial branch, to perform the following functions:
 1. Maintain a statewide roster of mediators;
 2. Address complaints and oversee compliance with mediator standards of conduct; and
 3. Maintain data on the mediation program, including its use by self-represented litigants.

Work group: ADR, Access to Courts, and Case Processing, pp. 2–7 (ADR); pp. 43–45 (Access to Courts); pp. 9, 11, 17–30 (Case Processing).

Rationale: In 2000, upon the recommendation of the Iowa Supreme Court’s Mediation Study Group, the Iowa Legislature revisited the mediation section of chapter 598, section 598.7A, which was established and amended by the 76th General Assembly (1995–1996).⁶ The amended version of 598.7A, which the legislature enacted in 2000, maintained authority for court-ordered mediation in

⁶ See 95 Iowa Acts ch. 183, § 1 (establishing Iowa Code section 598.7A); 96 Iowa Acts ch. 1195, § 2 (amending Iowa Code section 598.7A); 2000 Iowa Acts ch. 1159 (amending mediation provisions of Iowa Code section 598.7A).

all domestic relations proceedings and added language emphasizing the importance of mediation in domestic relations actions:

It is the intent of the general assembly that parties to family law actions maintain responsibility for their decision making, improve their communications concerning their children, and commit themselves to the decisions they reach. The best interests of children are normally served through maintenance of maximum contact with both parents, with a minimum of parental conflict

Because research demonstrates that parental conflict may result in emotional and psychological damage to parties and their children, the general assembly finds that mediation should be utilized to the greatest extent possible in the resolution of domestic relations disputes in this state.⁷

The legislation directed the supreme court to “establish a dispute resolution program in family law cases,” establish rules and standards for the program, and prescribe qualifications for court-appointed mediators.⁸ This legislation dovetailed with pilot family law mediation programs previously started in the mid-1990s in the Second, Fifth, and Sixth Judicial Districts. In 2005, section 598.7A was repealed⁹ and reenacted,¹⁰ without amendment to the language, as Iowa Code section 598.7 “Mediation.”

Since the recommendation of the Supreme Court’s Mediation Study Group and the amendment to 598.7A in 2000, court-ordered mediation programs have developed throughout Iowa on a district-wide basis. This piecemeal approach to family law mediation has resulted in rules that vary among the judicial districts from strict mandatory mediation in every family law case, to no mediation, to mediation only when ordered by a specific judge.

While the foundational principle of mediation remains party self-determination, current thinking reflects a continuum of approaches to the process including transformative (non-directive) mediation, facilitative (more directive) mediation, and evaluative (most directive) mediation. All models presume that the

⁷ 2000 Iowa Acts ch. 1159, § 1.

⁸ 2000 Iowa Acts ch. 1159, § 2.

⁹ 2005 Acts ch. 69, § 58 (repealing Iowa Code section 598.7A).

¹⁰ 2005 Iowa Acts ch. 69, § 31 (enacting Iowa Code section 598.7).

participants are fully informed and knowledgeable regarding their legal rights and responsibilities. The growth in family law self-representation challenges this assumption. The Sixth Judicial District program focuses on the transformational approach, whereas the Fifth Judicial District program generally employs a facilitative approach. Iowa mediators use all three forms of mediation.

Iowans deserve consistent, fair, and uniform processes and procedures throughout the state. The Task Force believes a fully developed, statewide family law mediation program will meet the needs of Iowans by providing less adversarial options and more consistent processes for resolving family law matters. Please see section B.2 below for further recommendations.

- 4. Uniform Temporary Custody Hearings.** Establish a uniform, statewide requirement to conduct temporary custody hearings in the presence of the parties as a general rule of procedure.

Work group: Case Processing, pp. 1–5.

Rationale: A hearing on temporary matters of newly-filed divorce or 600B custody cases is often the first (and sometimes only) direct contact a person may have with the judicial system. Further, with the statutorily-required 90-day mandatory waiting period between the beginning of the case and entry of the dissolution decree, the Iowa Code almost necessitates a temporary order. *See* Iowa Code § 598.19 (2015). Courts address virtually every issue that will impact the parties and the parties' children in the temporary matters hearing, including but not limited to child custody and visitation, child and spousal support, attorney fees, suit money (for investigation or expert witnesses), and court costs. *See id.* § 598.10. Temporary hearings may also address property issues such as which party will receive exclusive possession of a previously shared home and which party is responsible for various family expenses during the case's pendency. Courts often make the decisions most important to family law litigants at the temporary hearing, particularly when case processing times in some districts exceed twelve months. Establishing a statewide practice of conducting temporary hearings in person will foster public confidence in our judicial branch by promoting transparency.

5. Spousal Support Guidelines. Determine whether to create spousal support guidelines.

Work Group: Spousal Support, pp. 30–31.

Rationale: There remains a degree of skepticism about spousal support guidelines and no consensus exists within the Task Force regarding recommendation of adoption of guidelines. The skepticism arises from a lack of economic studies providing usable data to support a scientific basis for the establishment of guidelines. The principal concerns, therefore, revolve around whether the numbers provided by any formulaic approach could have a logical basis absent actual standard of living data and whether guidelines could assure fairness. None of the spousal support guidelines adopted to date by other states use cost-of-living data as the basis for the formula. A secondary discomfort with recommending adoption of spousal support guidelines is that over time the guidelines may become fixed and parties will hesitate to deviate from them, thereby contributing to a decline in critical thinking and analysis by lawyers and judges.

Despite these shortcomings, much support exists among family law practitioners and the bench for the adoption of spousal support guidelines based principally on the notion that guidelines would provide predictability and consistency to spousal support awards, thereby reducing litigation in this highly contentious area. The speed and pervasiveness by which the bar seized upon the thirty-one percent income differential referred to in *In re Marriage of Gust*, 858 N.W.2d 402 (Iowa 2015) and by the Iowa Court of Appeals in later cases reflect practitioners' support for guidelines.

6. Continuing Education. Continue education programs:

- a. For judges and courthouse personnel on the use of unbundled legal services; and
- b. For judges, clerks, and court administrators regarding interaction with self-represented litigants.

Work Group: Access to Courts, pp. 10–12.

Rationale: These recommendations will reduce barriers for self-represented litigants, a crucial system need. The Task Force recommends development of a master plan for continuing education that addresses the needs of self-represented litigants including but not limited to content, target audience, and efficacy evaluation.

- 7. Centralize Local Rule Information.** Gather and maintain regularly updated information on family law local rules and procedures in the eight judicial districts in the same location and format on the judicial branch website.

Work group: Access to Courts, pp. 7–10, 61–67.

Rationale: Different districts have different local rules pertaining to family law matters. In addition, the districts present their local rules in different formats. As a result, it can be difficult for self-represented litigants and lawyers to find the local rule information they may need for family law matters.

- 8. Review Rules to Identify Barriers to Using Unbundled Legal Services.** The Iowa Rules of Civil Procedure and the Iowa Code of Professional Responsibility should be reviewed to identify changes that encourage and facilitate the use of unbundled legal services in family law matters.

Work group: Access to Courts, pp. 16–19, 45–47.

Rationale: Although unbundled legal services are permitted, self-represented litigants are not widely aware of the option, nor does the legal profession widely promote such services. Given the complexity of family law and the trend toward self-representation, the use of unbundled legal services may support better results in family law cases for Iowa families. Additionally, for litigants who cannot afford representation for the entire family law case, unbundled legal services may allow representation during the most complex part of the case. Careful review of the formal governing rules, i.e., the Iowa Rules of Civil Procedure and the Iowa Code of Professional Responsibility, and removing barriers or perceived barriers to unbundled services would support access to the courts by wider use of unbundled services for providing legal services.

- 9. Continue Task Force Work.** It is clear from the work of the Task Force that much time, energy, and expertise should be focused on family law matters in Iowa beyond the submission of and the court’s consideration of this report.

OPTION A: Reappoint the Task Force and formally amend the appointment order to extend Task Force duration for two years. Include an additional charge to investigate grants from charitable foundations and other organizations to fund the study of family law court reforms or pilot projects.

Work group: Access to Courts, p. 59–60.

Rationale: The enormity of the full reform project and the importance of “getting it right” necessitates this recommendation. The Task Force and its work groups have made incredible strides in a single year to position the judicial branch to undertake further review and development of the family law system. The Task Force has laid the foundation for specific additional improvements, but the court needs greater input from public constituencies not currently represented on the Task Force. A reappointment of the Task Force will allow further study of specific recommendations. The Task Force also believes it can assist the judicial branch in identifying and pursuing funding opportunities for pilot programs and studies to improve family law case processing.

OPTION B: Create a Supreme Court Family Law Case Processing Advisory Committee to regularly review domestic case processing and advise the supreme court of needed improvements and changes. Such a committee would operate in a manner similar to the current Child Support Guidelines Review Committee.

Rationale: As an alternative, a standing committee could be constituted to serve the court as a resource.

B. LONG-TERM RECOMMENDATIONS

The Task Force requests that the court consider the following case processing recommendations at this time, recognizing that they require further research and wider input from court users and the public.

1. Children in the Middle. Develop uniform standards for the Children in the Middle class.

Work group: Case Processing, p. 6.

Rationale: Uniform guidelines for parent education programs will help ensure consistency and program quality. Although Iowa Code section 598.15(5) contains general guidelines, each judicial district certifies approved course providers and has the discretion to include specific curriculum requirements. Course offerings therefore vary across the state. Uniform standards are needed to outline curriculum requirements and to specify the skills, education, and background required for instructors. It is worth considering whether a centralized statewide registry of approved programs should be managed by state court administration rather than district by district. For parent education programs to offer the maximum benefit to divorcing parents, they must meet program quality requirements and be regularly evaluated. Further, more investigation is needed into whether an online course should be an option for parents.

2. Spousal Support Guidelines Committee. If the court decides to proceed with development of spousal support guidelines, it should appoint a separate committee to create and periodically review the guidelines using the model of the Child Support Guidelines Review Committee. The court should direct the committee to consider the report of the Spousal Support Work Group as an aid to developing guidelines.

Work group: Spousal Support, pp. 22–23, 30–31.

Rationale: If the court decides to adopt spousal support guidelines, it is important to review the guidelines periodically. The Child Support Guidelines Review Committee can serve as a model for how to monitor and adjust the spousal support guidelines as necessary.

- 3. Family Law Forms.** Formally establish a family law forms committee to make the forms and instructions more user friendly and to create additional forms as needed. The judicial branch should consider using software that will allow users to populate forms.

Work group: Access to Courts, pp. 7–10, 14–16, 61–67.

Rationale: Unrepresented individuals must use the established court-approved forms. The existing forms and instructions are excellent but can be overwhelming to self-represented litigants. Revamping the existing forms, creating additional forms, and simplifying the instructions would allow better self-representation. Some jurisdictions, including Adams County in Wisconsin, utilize an advanced software format that permits users to answer questions to determine which forms are needed and to fill out the forms.¹¹

- 4. Child Testimony Guidelines.** Adopt statewide guidelines for district court judges to follow when a request is made for a minor child of the parties to provide testimony in a family law matter. (See Draft Rule from Standards Work Group pp. 34–40.)

Work group: Standards, pp. 2–3.

Rationale: The Iowa Code requires the court to consider the child’s wishes as one factor in any custody determination, taking into consideration the child’s age and maturity. Often the most reliable way for the court to know a child’s wishes is to hear from the child directly. If the court determines that the child should testify, the court should ensure that the child’s testimony is handled with extraordinary thoughtfulness and care. Children can provide valuable insights and credible information to help the court make fully informed decisions if they are provided a nonthreatening environment. Guidelines regarding how and when children’s testimony should be received will help ensure that proceedings are conducted in the manner least harmful to the children. Guidelines do not create a presumption or default rule either in favor of or against allowing a child’s testimony; rather, they will promote consistency and best practices across Iowa.

¹¹ See Wisconsin Court System: Self Representation, <https://myforms.wicourts.gov>.

- 5. Parenting Coordinators.** Promulgate a court rule for the appointment and use of parenting coordinators, including standards of practice.

Work group: Standards, pp. 3–4, 41–45.

Rationale: The supreme court should consider implementing a parenting coordination process that would help many high conflict, post-decree families. Parenting coordinators can quickly address issues for post-decree families, versus extended and continuous litigation. Cases with assigned parenting coordinators have fewer contempt of court hearings and modifications, thus lifting a heavy burden off of the court. Costs are significantly reduced because of less lawyer and court involvement. Children are served better with rapid results by professionals trained in mediation, child development, and conflict resolution. At this time, parenting coordinators in Iowa may only be appointed by agreement of the parties.

- 6. Child and Family Reporter.** Adopt standards for a new role of Child and Family Reporter as a court rule.

Work group: Standards, pp. 2, 29–33.

Rationale: The role of Child and Family Reporter (CFR) would give the court an important new tool to make fully informed custody decisions. By adopting Standards for Lawyers Representing Children in Custody Cases that would state that neither a child’s attorney nor a guardian ad litem should testify or file a report, the need for the CFR role emerges. A CFR would gather and report factual information to assist the court in making custody, visitation, or other decisions related to the welfare of a child. A CFR would provide a comprehensive family history, which would offer a context for understanding the issues in dispute, which in turn would improve custody, parenting time, and other outcomes for children. Standards would help provide accountability and boundaries for CFRs and promote uniformity and consistency in investigations.

7. Identify Community Partners to Study ADR Centers and Self-help Centers. Identify potential community partners to study models of community dispute resolution centers and self-help centers for family law cases. (E.g., Nebraska model/Omaha Model/Clark County Model).

Work group: ADR and Access to Courts, pp. 10–11 (ADR); pp. 49–50, 61–73 (Access to Courts).

Rationale: Currently, districts that have district-wide mandatory mediation have a separate entity, such as an ADR center or community non-profit, that oversees the program and mediator training. This is true of the Fourth, Fifth, and Sixth Judicial Districts. Expanding and promoting self-help and ADR centers, as well as identifying and bolstering the judiciary's relationships with community partners, will serve to both promote the use of ADR statewide as well as to ensure that family law parties receive qualified and competent ADR services.

Self-represented litigants often feel overwhelmed by the process and that they may not have access to printers and scanners. Physical self-help centers can centralize available personnel and physical resources. Clark County Nevada has a physical self help center available to all family law litigants. Some jurisdictions, such as Utah, designate web sites with links and information as “self help centers” and provide virtual self-help centers offering telephone, e-mail, and text assistance.¹²

Because self-help centers require substantial resources, these endeavors lend themselves to partnering with other entities. Partnering with libraries, ADR service centers, or other entities could provide cost-efficient means of utilizing existing resources for physical self-help centers. For example, Nevada, and Nebraska have partnered with Legal Aid with successful results.

¹² See Utah Courts, <http://www.utcourts.gov/>.

- 8. Study Educational Options for Children.** Study education options for children of divorcing parents, including age-appropriate presentations regarding court processes, timelines, and other relevant matters, and making them available statewide. Also study educational options for children of unmarried parents.

Work group: Standards, pp. 26–27.

Rationale: Although divorce is one of the most traumatic events in a child’s life, most children experiencing divorce do not have access to resources to help them through it. Children have little access to accurate information to face this life-changing event. For many years, the court has required divorcing parents to attend a class that focuses on keeping children out of the middle of parents’ disputes. However, Linn and Johnson are the only two counties that have a similar class for children. The court should study what educational options can be made available to children in the other counties of the state. Classes would help children feel less alone, clarify misperceptions and misinformation that children have about divorce, help children talk about family changes, and give children tools to successfully handle common divorce scenarios.

- 9. Miscellaneous.** Evaluate the need for, and ability of, the judicial branch to perform the following functions:

- a. Investigate steps and costs to develop a method of capturing data on the number of marriage dissolution and paternity cases involving self-represented litigants; and
- b. Investigate the need for, and cost of, providing multi-media information regarding family law matters and proceedings in courthouses for people with family law matters.

Work group: Access to Courts, pp. 7–10, 12–14.

Rationale:

- a. The Access to Courts Work Group was unable to identify an existing, reliable statistical source of information about the number of self-represented litigants in Iowa family law cases. Accumulation of data from the judicial branch, including both numeric and geographic data, would provide accurate information upon

which to evaluate the extent of the challenge and provide the best possible framework for developing appropriate responses.

b. Exploration of existing resources disclosed substantial process information and support exist, but are difficult to find, particularly for self-represented individuals. Anecdotal information provided by clerks of court and the judiciary made it clear they are frequently approached at the court house by self-represented individuals seeking guidance, which they report puts them in an ethical dilemma. Providing expanded point of use information at the court house, including signage with a chart of the family law case processing stages, and print media information with the same chart and the location of other resources, could improve the transparency of processes and provide relief to the clerks of court and judiciary when approached by self-represented individuals. The charts could be similar to the charts provided in the Rules of Appellate Procedure and could be uniquely designed for each site location to accommodate local rules and practices.

C. FURTHER STUDY RECOMMENDATIONS

The Task Force has identified the following as areas for further study and brings these suggestions and issues to the attention of the court and the public. The court may wish to have these areas examined in the future, although the Task Force does not request immediate consideration.

- 1. Expanded Court Access.** Investigate expansion in time and means of conducting hearings (weekend, evening court sessions, video conferencing, etc.).

Work group: ADR and Access to Courts, pp. 7–8 (ADR); p. 39–41 (Access to Courts).

Rationale: There is widespread consensus that mediation is beneficial to children and families. It is the consensus of the ADR Work Group that Iowans deserve processes and procedures that are consistent, fair, and uniform throughout the state. Where the parties are willing, removing some of the process impediments created by hearing times, places, and methods could allow more efficient access to the courts and could reduce overall costs. Mediation should be accessible to all parties regardless of their county or income. The aforementioned actions would provide additional means to provide equal access to mediation, thereby preventing mandatory mediation from creating an undue burden for parties unable to travel to a mediator.

- 2. One Family-One Judge.** Investigate the feasibility of adopting a statewide uniform practice for individual case assignment of family law cases.

Work group: Case Processing, pp. 9–12.

Rationale: Three judicial districts in Iowa currently do some form of individual case assignment in which a single judge is assigned for the duration of a family law case. This allows the judge to become familiar with the case and provides continuity for the parties. Even among these districts, the point in the proceedings when a judge is assigned varies. There is a general consensus that the practice of assigning one judge to a family law case leads to better outcomes and should be done throughout the state.

- 3. Multiple Case Processing Tracks.** Streamline case processing by developing multiple case processing tracks (e.g., small estate/no child option; Iowa Business Specialty Court referral for complicated issues, discovery matters, or full case handling in cases with family businesses of a certain size or complexity, etc.).

Work group: Access to Courts, pp. 54–57.

Rationale: The cost of processing a family law case has skyrocketed in the last decade, in part because of mandated processes and procedures that are appropriate for some, but not all, cases. The length of time required to process a case has also increased, despite the intent to have cases more streamlined. Districts already provide special assignments for complex civil and criminal cases. The business court is available for some complex business cases, while an expedited civil action procedure is available for some less complex non-family law cases. Providing multiple family law case processing tracks could increase efficiency. A simplified process and procedure for less complex cases would allow Iowans a process that supports faster and more cost-efficient access to the courts.

- 4. Child Custody Evaluation Standards.** Develop standards for child custody evaluations and create a statewide format for evaluators' reports.

Work group: Standards, p. 5.

Rationale: Adopting statewide standards could ensure uniformity, predictability, professionalism, and quality in child custody evaluations. The court should seek input from professionals in the mental health field to create these standards.

- 5. Private ADR.** Support development of additional opportunities for private ADR in family law matters, including but not limited to arbitration, collaborative divorce, and parenting coordinators.

Work group: ADR and Access to Courts, pp. 13–16 (ADR); pp. 54–57 (Access to Courts).

Rationale: There is a growing demand in family law matters to resolve issues more efficiently and more cooperatively. The traditional litigation process is not always the most appropriate dispute resolution process for family law issues. Parties desire a way of resolving their case out of the court system, which they see as fostering animosity and competitiveness and as a source for unnecessarily straining family financial resources. This would expand opportunities for parties and reflect national trends in family law. It also represents an opportunity for voluntary outsourcing of family law dispute resolution, which could alleviate pressures on the court docket. Where ADR is used, particularly in dissolution of marriage matters where court action is legislatively mandated, it must integrate with the litigation process to be a truly effective alternative. Court support and supervision in development of those ADR opportunities could assure effective interaction among processes and assurance of quality safeguards for court annexed programs like mandatory mediation.

- 6. Family Law Tab.** Investigate the necessary steps and costs to provide a single Family Law Tab on the judicial branch website with links to information on the following topics:

- a. The local rules and procedures for each judicial district related to Family law matters;
- b. Resources for self-represented litigants including forms, case processing, and mediation information; and

- c. Child support guideline calculations and resources with which self-represented litigants can prepare the child support calculation.

Work group: Access to Courts, pp. 14–16, 27–29.

Rationale: Many excellent family law resources exist in Iowa but can be challenging to locate, particularly for self-represented individuals. A significant portion of the general public is used to on-line information gathering. Modification of the existing web site to facilitate locating available information could improve the transparency of both the process in family law cases and the available supports to effectively navigate that process.

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