

# A New Out-of-Court Process for Divorce and Separation

by Natalie Anne Knowlton and Melinda Taylor

*Hello Readers: Having worked with many excellent attorneys, judges, and law-related professionals throughout my career, I decided to periodically deviate from the traditional monthly President's Message. I have invited a few of those colleagues to share some of their experiences and views concerning the legal profession and about topics of import and meaning to them and me. A truly unique, interdisciplinary, and out-of-court model for separating and divorcing families has opened at the University of Denver. This month's article discusses this exciting new development and reveals the potential for positive impact this program has for Colorado families and beyond.*

—W. Terry Ruckriegle

On February 6–7, 2014, family law practitioners and experts from across the state will convene in Denver for the Family Law Basic Skills program presented by the Colorado Bar Association (CBA) Family Law Section and Metro Volunteer Lawyers.<sup>1</sup> Colorado boasts an impressive family law bar (matched by an equally impressive bench). As these elite members of the legal profession come together to discuss the fundamentals of family law, this general introduction to the University of Denver's (DU) new interdisciplinary and out-of-court model program for separating and divorcing families is very timely.

## A New Partnership Between Courts and Community

On September 3, 2013, the first-of-its-kind interdisciplinary Resource Center for Separating and Divorcing Families (Resource Center) opened on the DU campus.<sup>2</sup> The Resource Center, which introduces families to a less adversarial process for reorganizing their lives, is a model developed by the Honoring Families Initiative (HFI) at the Institute for the Advancement of the American Legal System (IAALS).<sup>3</sup> The Resource Center represents a partnership among IAALS, DU, and Colorado courts, and is part of IAALS's efforts to identify constructive and positive changes in the processes of divorce and separation, and in corresponding parental responsibility matters.

After nearly six months in operation, the IAALS model is thriving. IAALS and DU's Resource Center thank CBA President Terry Ruckriegle for giving us the opportunity to generally introduce the Colorado legal community to this promising innovation.

## Rethinking the Process for Divorce and Separation

HFI is dedicated to ensuring greater accessibility, efficiency, and fairness in separation, divorce, and parental responsibility matters. HFI's work is centered on a core belief that providing services for divorcing and separating families is a court and community responsibility. After all, the welfare of the community and its children is impacted by family reorganization, stability, and cohesion. Accordingly, HFI's work focuses both on in-court and out-of-court processes for divorcing and separating families.

Regarding the in-court focus, HFI is beginning a comprehensive process of gathering data and information on court processes that will have the greatest impact on access, efficiency, and fairness. This will help courts identify ways of providing a judicial response that mitigates conflict, promotes constructive communication, and places the needs of families at the forefront of the reorganization process.

Out-of-court alternatives have been HFI's primary focus since early 2012. The work in this area recognizes that courts provide certain vital services to families going through separation and divorce that no other institution can: fact finding, protection, and enforcement. For some families, these services, and the due process protections afforded by the adversarial process, are essential; for others, the adversarial process generates unnecessary conflict and exacerbates animosity. Decades of research shows that children do not fare well in high-conflict divorces, which comes as no surprise to those who work in this area.<sup>4</sup> The higher the level of parental acrimony, the more likely children are to experience emotional,



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psychological, and behavioral problems, which can persist long after the court battle is over.<sup>5</sup>

Courts across the country have responded to this reality by increasing litigant access to non-adversarial, problem-solving services, such as early neutral evaluation, mediation, and parent education, as well as by providing non-judicial assistance in the form of family court facilitators. A similar trend toward problem solving in family cases has occurred in other countries, where some unique and innovative programs have been developed for families transitioning through divorce or separation. For example, in British Columbia, Family Justice Centres provide mediation, counseling, and referral services for families experiencing divorce and separation. In Australia, publicly funded but privately operated Family Relationship Centres are in place across the country, offering families access to dispute resolution and education. Since their inception in 2006, these Centres have reduced family court filings by 32%, and fewer matters in court now involve disputes over children.<sup>6</sup> Furthermore, client satisfaction is at 95% and evidence from the first five years of operation suggests that agreements being reached at the Centres tend to hold up in the medium term.<sup>7</sup>

## Experimenting With Solutions

Building on existing processes, HFI developed a model that envisioned an out-of-court environment in which married and unmarried couples with children could benefit from a range of interdisciplinary services. Some of these services are:

- legal education and dispute resolution, such as mediation, early neutral evaluation, and education about the legal process, including help with completing necessary forms
- therapeutic services, such as individual counseling and group support for both parents and children, adult training on effective communication, assistance with parenting plan development, and mental health testing
- financial services, including education, assessment, planning, and mediation.

The interdisciplinary model was designed so that families could enter the out-of-court program before or even shortly after filing a petition for dissolution of marriage with the court. The suite of services each family receives would be tailored to their needs and the circumstances of their reorganization. Families who reached agreement on their issues could have their agreement reviewed and approved by a local judge, and filed with the appropriate court. This partnership with the courts is central to the HFI model, and enables families to reorganize without having to enter a courtroom.

As initially envisioned, collaboration with an institution of higher education is not a necessary feature of the out-of-court model; however, because of IAALS's unique relationship with DU's community, it became a key component of the Resource Center. The services offered through the out-of-court model implicate attorneys, social workers, financial planners, and mental health professionals, and establishing the Resource Center on DU's campus facilitated experiential learning for future practitioners in these disciplines.<sup>8</sup>

## Implementing a First-of-its-Kind Program

Strategic and business plans provided general direction for implementation; however, the model raised new challenges when it

came to implementing a first-of-its-kind program. The Resource Center's staff and team of advisors approached these challenges by adhering to certain foundational principles. Following is a brief discussion of each of the principles.

### *Leveraging Existing Knowledge and Expertise*

Instrumental to the process was out-of-the-box and innovative thinking on behalf of the HFI advisory committee,<sup>9</sup> the DU deans constituting the Resource Center's Executive Committee, an interdisciplinary steering committee of on-campus and off-campus experts,<sup>10</sup> as well as consultants who are nationally recognized experts in their disciplines.<sup>11</sup> This expertise helped distill years of research and experience in establishing academic clinics, so that implementation did not have to begin from scratch.

### *Developing and Sustaining Interdisciplinary Partnerships in a Diverse Community*

A key factor in implementation was fostering and securing the necessary partnerships to fully realize the Resource Center. Apart from the partner schools and key stakeholders at DU, the implementation team benefited incredibly from the help and support of the local courts, the Colorado State Court Administrator's Office, the CBA, and the Denver-area mental health community. The broader community also was incredibly supportive of the Resource Center, providing donations, education, and expertise.

### *Keeping Mission, Vision, and Goals in Sight*

Implementing a project of this size, with so many moving parts, continuously required taking a step back to look at the big picture. Keeping the project's mission and vision at the forefront—that is, providing services to families to help them achieve successful reorganization outside the traditional court system—helped the implementation team stay out of the weeds and refocus, when needed, on what their goals were and how they were going to achieve them. Without frequent pause to revisit the vision, the team ran the risk of creating just another well-intended program that doesn't quite hit the mark.

### *Approaching Evaluation as a First—Not a Last—Step*

Part and parcel of the HFI model is a plan to measure whether this out-of-court alternative to divorce and separation could better serve the needs of families. Developing an evaluation plan, therefore, was an essential step in implementation, and this involved detailed thinking on behalf of HFI and Resource Center staff about the outcomes that would need to be achieved for the project to be considered a success, and how data on those outcomes could best be measured and captured.

### *Fostering Ongoing and Interdisciplinary Training*

Because DU's model had a learning component for future service providers, the implementation team had to consider how best to prepare and train the Resource Center's graduate student staff. The team decided on a training format that replicated the interdisciplinary environment in which the staff and students would be working in practice, which centered on observation, simulation, and interactive learning. Training is ongoing, and bimonthly interdisciplinary sessions were built into the Resource Center's operating processes.

## Ideas in Action

Years in the making, DU's Resource Center for Separating and Divorcing Families opened its doors to Denver-area families on September 3, 2013. In its current form, it is equipped to handle a variety of families with children, including families with same-sex parents or never-married couples seeking co-parenting assistance. To participate, parents must have children from the relationship, be at the beginning stages of the separation process, and consent to working together. Additionally, while counseling and other therapeutic services are offered through the Resource Center, families with a history of serious substance use, domestic violence, child abuse, extensive mental health issues, or extensive litigation may be referred to other community and/or court services.

The Resource Center's students and professional staff have the requisite knowledge, competency, and skills to provide the education and support that each participating family needs during the reorganization process. To date, the Resource Center has served more than fifty parents and forty children representing broad socioeconomic backgrounds. The Resource Center anticipates serving 100 families in its first year of operation.

In addition to co-parent coaching, parenting plan consultation, individual therapy, couples counseling, financial education and consultation, and legal education, Resource Center staff have provided approximately six mediations. Also, at least one permanent orders hearing has been facilitated, during which Senior Judge Robert Hyatt came to the Resource Center and read the agreement into the record.

During the process, parents are asked why they elected to use the Resource Center. The overwhelming response is that they feel they will be heard and the reorganization will give their children needed support.

## A Commitment to Evaluation

HFI remains committed to a comprehensive three-year evaluation that focuses on measuring outcomes from the parents' perspective and with respect to the children's well-being. As part of its evaluation, HFI also is assessing the interdisciplinary learning environment and the extent to which the Resource Center's graduate students benefit from receiving experiential learning in this manner. HFI's broad goals with the evaluation are threefold:

1. It will help to determine the value of the Resource Center to DU and the local community. (Does the model achieve its stated goals for participating families and students?)
2. It will help to determine whether the model is worthy of replication at other universities or community organizations across the country. (Could the model have a broad, national impact on improving the process of separation and divorce?)

3. The evaluation will provide the data necessary to obtain continued funding. (Can the model, if successful, build enough support to achieve sustainability?)

## Facilitating New Beginnings

IAALS and the Resource Center continue working to realize greater accessibility, efficiency, and fairness for separating and divorcing families. The organizations are exceedingly grateful for the support that the Colorado legal community has shown during the development and implementation of this out-of-court model, and for the expertise that both the bench and the bar have provided to this effort.

## Notes

1. Complete information about the Family Law Basic Skills program on February 6–7 is available at [cle.cobar.org/Seminars/eventinfo/sessionaltcd/FL020614L.aspx#.UsbjyFtDt8F](http://cle.cobar.org/Seminars/eventinfo/sessionaltcd/FL020614L.aspx#.UsbjyFtDt8F).

2. The Resource Center for Separating and Divorcing Families is located on the DU campus, and began accepting clients in September 2013. Additional information on the Resource Center, including participation criteria and intake forms, is available at [www.du.edu/rcsdf](http://www.du.edu/rcsdf).

3. IAALS is a national independent research center dedicated to facilitating continuous improvement and advancing excellence in the American legal system. The mission is to forge innovative and practical solutions to problems in the system, in collaboration with the best minds in the country. Complete information on HFI and other areas of IAALS work is available at [iaals.du.edu](http://iaals.du.edu).

4. See, e.g., Kourlis *et al.*, "IAALS' Honoring Families Initiative: Courts and Communities Helping Families in Transition Arising from Separation or Divorce," 51 *Family Ct. Rev.* 345, 351 (2013).

5. *Id.*

6. Gerner, "Family Relationship Centres: Delivering Family Law Reforms Since 2006" 3, 7 (Executive Summary, May 31, 2013), [www.frsa.org.au/storage/information-pdfs/FRCs%20delivery%20family%20law%20reforms%20since%202006.pdf](http://www.frsa.org.au/storage/information-pdfs/FRCs%20delivery%20family%20law%20reforms%20since%202006.pdf).

7. *Id.* at 8–9.

8. DU does not have a dedicated school of financial planning, so HFI and the Resource Center partnered with local-area financial planners.

9. A complete list of HFI's national, interdisciplinary advisory committee is available at [iaals.du.edu/initiatives/honoring-families-initiative/advisory-committee](http://iaals.du.edu/initiatives/honoring-families-initiative/advisory-committee).

10. A complete list of the Resource Center's steering committee is available at [www.du.edu/rcsdf/advcommittee.html](http://www.du.edu/rcsdf/advcommittee.html).

11. Professors Marsha Kline Pruett, PhD, and Andrew Schepard served as consultants to the project, and their assistance and expertise were invaluable in the development, implementation, and evaluation of the Resource Center. Dr. Pruett is the Maconda Brown O'Connor Professor at Smith College School for Social Work, and Andrew Schepard is the Max Schmertz Distinguished Professor of Law and Director of the Center for Children, Families, and the Law at Hofstra University's Maurice A. Deane School of Law. ■