

THE FAMILY LAW BAR

STEWARDS OF THE SYSTEM,
LEADERS OF CHANGE





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LEADERS OF CHANGE

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HONORING FAMILIES
INITIATIVE

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INSTITUTE *for the* ADVANCEMENT
of the AMERICAN LEGAL SYSTEM



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IAALS, the Institute for the Advancement of the American Legal System, is a national, independent research center at the University of Denver dedicated to facilitating continuous improvement and advancing excellence in the American legal system. We are a “think tank” that goes one step further—we are practical and solution oriented. Our mission is to forge innovative solutions to problems in our system in collaboration with the best minds in the country. By leveraging a unique blend of empirical and legal research, innovative solutions, broad-based collaboration, communications, and ongoing measurement in strategically selected, high-impact areas, IAALS is empowering others with the knowledge, models, and will to advance a more accessible, efficient, and accountable American legal system.

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Honoring Families is an initiative of IAALS dedicated to developing and promulgating evidence-informed processes and options for families involved in divorce, separation, or parental responsibility cases that enable better outcomes for children and that provide greater accessibility, efficiency, and fairness for all parties, including those without counsel.

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EXECUTIVE SUMMARY

In November 2015, the *Honoring Families Initiative* at IAALS, the Institute for the Advancement of the American Legal System at the University of Denver, hosted the Family Bar Summit: Shaping the System for the Families We Serve. The two-day event brought together diverse leaders of the family law bar to identify obstacles to serving children and families in separation and divorce matters, and explore opportunities for meaningful change.

Interactive, engaging conversation highlighted a number of themes and recommendations for reshaping divorce and separation processes to support better outcomes for children and provide greater accessibility, efficiency, and fairness for all parties:

FOR FAMILY LAW ATTORNEYS:

- Recalibrate our understanding of advocacy to emphasize problem solving, teaching, and counseling.
- Amend regulatory and professional ethics rules in order to fully realize the role and responsibilities of the modern family law attorney.
- Establish robust and interdisciplinary continuing legal education programs for family law attorneys and increase client-centric training programs.

FOR FAMILY COURTS & COURT PERSONNEL:

- Acknowledge and celebrate exemplary family court judges.
- Ensure adequate court resources to assist litigants, especially those who are without representation.
- Implement client-centric court practices, including front-loaded status conferences, differentiated case management, and innovative trial procedures.
- Develop specialization and training for family court judges and, where practical, establish dedicated family courts/dockets.
- Maximize available judicial and non-judicial court personnel.
- Gain an increased understanding of post-decree matters through experimentation with streamlined processes and data collection on post-decree filings.

FOR LAW SCHOOLS & LEGAL EDUCATORS:

- Develop specialized and interdisciplinary law school curricula, tailored to the unique skill set of a family law attorney.
- Incorporate clinical and experiential components into the legal education of future family law practitioners.

FOR BROADER COURT-COMMUNITY PARTNERSHIPS:

- Foster court-community partnerships for serving families transitioning through divorce and separation.
- Launch education campaigns to better inform the public on the role of the family court and the options available to divorcing and separating families both within the court system and in the community.



Additionally, the Summit discussion highlighted two fundamental realities for the family law bar. First, the role of the family law attorney is evolving, and if the bar is to effectively respond to the needs of families today and in the future, we must acknowledge these developments. Second, as stewards of the family justice system and leaders of change, family law attorneys have an ongoing responsibility to foster continuous system improvement.

It is the *Honoring Families Initiative's* hope that these two tenets will shape future discussion among and between segments of the family law bar and serve as unifying principles from which all family justice system stakeholders can develop concrete recommendations for systemic improvement.





INTRODUCTION

The Family Bar Summit: Shaping the System for the Families We Serve (Family Bar Summit or Summit) endeavored to engage members of the family law bar as active participants in the larger movement to facilitate change in the system for resolving family conflict. Hosted by the *Honoring Families Initiative*¹ (HFI) at IAALS, the Institute for the Advancement of the American Legal System at the University of Denver, the Summit brought together a cross-section of the family law bar, representative of the family law practice and the broader community, to participate in an honest dialogue about how the system might be realigned to meet the needs of the families it serves.

This report details the deliberations that occurred at the Summit among experienced, diverse members of the national family law bar and themes that emerged from that two-day conversation. Included among the discussion points are specific proposals for family justice system reform, some of which Summit attendees have undertaken personal responsibility to pursue in their respective jurisdictions.

This report is the first step in sparking the movement among the broader family law bar nationwide.

¹ IAALS, the Institute for the Advancement of the American Legal System, is a national, independent research center at the University of Denver dedicated to facilitating continuous improvement and advancing excellence in the American legal system. IAALS has four initiative areas, one of which is the *Honoring Families Initiative* (HFI). HFI identifies and recommends dignified and fair processes for the resolution of divorce, separation, and custody in a manner that is more accessible and more responsive to children, parents, and families. Learn more about IAALS and HFI at <http://iaals.du.edu>.

THE CHANGING FACE OF THE FAMILY JUSTICE SYSTEM & THE CORRESPONDING CHALLENGES²

The 21st Century family justice system looks substantially different from its 20th Century counterpart. Separation and divorce are no longer fault-focused, shame-inducing events; they are now predictable occurrences in the lives of millions of children and parents. These case types represent the largest segment of disputes that come before state family courts around the country.³ As family court dockets become more crowded, judicial officers regularly find themselves pressed for the time necessary to give individualized attention to each family that comes before the court.

The substantial percentage of self-represented litigants in family court cases is intensifying time and resource pressures on the court.⁴ The numbers of parents and spouses who are navigating the civil justice system without legal representation is high and growing in state courts across the country. Many courts experience the reality of increasing family court dockets and growing numbers of self-represented litigants without a concomitant increase in budgetary and/or staff resources.

The environment in which separating and divorcing families seek resolution of their disputes has changed dramatically over the last several decades. Through a more refined understanding of how parental conflict during separation and divorce affects children, we now better appreciate the need for a stable and supportive environment and a safe relationship with both parents after reorganization—considerations which have increased the desirability of non-adversarial processes for resolving family law disputes.⁵ At the same time, the services that family law attorneys provide are evolving, too, and new practice

- 2 Legal and social trends impacting family courts and family law practice are explored in greater detail in a 2013 *Honoring Families Initiative* white paper. REBECCA LOVE KOURLIS ET AL., INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS., IAALS' HONORING FAMILIES INITIATIVE: COURTS AND COMMUNITIES HELPING FAMILIES IN TRANSITION ARISING FROM SEPARATION OR DIVORCE (2013), available at http://iaals.du.edu/sites/default/files/documents/publications/courts_and_communities_helping_families_in_transition_arising_from_separation_or_divorce.pdf.
- 3 See, e.g., RICHARD Y. SCHAUFFLER ET AL., NAT'L CTR. FOR STATE CTS., EXAMINING THE WORK OF STATE COURTS: AN ANALYSIS OF 2010 STATE COURT CASELOADS 13, 17 (2012), available at http://www.courtstatistics.org/other-pages/~media/Microsites/Files/CSP/DATA%20PDF/CSP_DEC.ashx.
- 4 The number of litigants proceeding through the court system without attorney representation varies by jurisdiction. In many courts, however, this number is substantial—especially in family cases. See, e.g., MD. ACCESS TO JUSTICE COMM'N, INTERIM REPORT AND RECOMMENDATIONS 2 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://www.courts.state.md.us/mdatjc/pdfs/interimreport111009.pdf>; JUDICIAL COUNCIL OF CAL., TASK FORCE ON SELF-REPRESENTED LITIGANTS, IMPLEMENTATION TASK FORCE: FINAL REPORT 2-3 (October 2014) (citing self-representation statistics from various states), available at http://www.courts.ca.gov/partners/documents/EA-SRLTaskForce_FinalReport.pdf.
- 5 Mediation, collaborative law, parent education, and like processes are now familiar parts of the family justice system landscape. Unfortunately, these tools are often underfunded and underutilized.



REBALANCE OUR UNDERSTANDING OF REPRESENTATION •
DISCIPLINARY CONTINUING LEGAL EDUCATION PRO

models are emerging that are centered on innovative fee structures and new methods of legal services delivery.⁶

These developments are intertwined and multifaceted, and have very real effects on the family law attorney's ability to serve clients and their children effectively. To explore how national family law practitioners view their current practice in light of these and other system changes, HFI administered a brief, high-level survey prior to the Summit.⁷ Survey findings suggest the current family justice system is not operating to serve litigants in the best possible manner. Almost three-quarters (73%) of divorce attorneys surveyed disagreed with the notion that the current court system of divorce, legal separation, and parenting rights and responsibilities in their jurisdiction adequately meets the needs of the majority of litigants.⁸ Additionally, respondents broadly agreed (88%) that a less-adversarial system would better meet the needs of families than the current litigious system.⁹

Broadly speaking, a strong majority (83%) of surveyed family law attorneys agreed that comprehensive changes in the current in-court system of divorce, separation, and parenting responsibility are necessary.¹⁰ Ninety-five (95) percent of respondents expressed agreement with the idea of supporting comprehensive change to the existing system—even if doing so would require significant adjustments to their current practice.¹¹



6 See *infra* Section III.A.

7 The survey was administered electronically in November 2014 to attorney members of the American Bar Association Family Law Section, Association of Family and Conciliation Courts, International Academy of Collaborative Professionals, and American Academy of Matrimonial Lawyers. In total, 469 individuals responded to the survey, from a total of 36 primary practice states. LOGAN CORNETT, INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS., ON CURRENT ISSUES IN FAMILY LAW: AN INFORMAL SURVEY OF ATTORNEYS (2016), available at http://iaals.du.edu/sites/default/files/documents/publications/on_current_issues_in_family_law_an_informal_survey_of_attorneys.pdf

8 The survey asked respondents to react to the following statement: "I think that the current court system of divorce, legal separation, and parenting rights and responsibilities in my jurisdiction adequately meets the needs of the majority of litigants." *Id.* at 4.

9 The survey asked respondents to react to the following statement: "I think that a less adversarial-type of system would better meet the needs of the parties and their children in most cases." *Id.* at 4-5.

10 The survey asked respondents to react to the following statement: "Whether to provide healthier outcomes for families, to better accommodate the changing face of those served, or to make the process more efficient for courts, I think that comprehensive changes to the current in-court system of divorce, legal separation, and parenting responsibility are necessary." *Id.* at 6-7.

11 The survey asked respondents to react to the following statement: "I support comprehensive change even if it will require significant adjustments to my current practice of divorce, legal separation, and parenting responsibility law." *Id.* at 7.

ENGAGING TODAY'S FAMILY LAW BAR TO DESIGN TOMORROW'S FAMILY JUSTICE SYSTEM

Fortunately, the challenges described here are the subject of comprehensive responses from courts, family law attorneys, and others who are involved in and committed to the family justice system. However, our responses must continue—and on a larger scale—if we are to ensure processes that support better outcomes for children and provide greater accessibility, efficiency, and fairness for all parties. Family law attorneys play a crucial role in driving this evolution.

Given their unique role in the family justice system, family law attorneys are well-positioned to identify and speak to the systemic obstacles to serving clients in a timely, efficient, and affordable manner and facilitating a process that enables better outcomes for children. The family law bar is also best situated to design and implement suggestions and recommendations that address the problems, challenges, and obstacles in the current system.

HFI convened the Family Bar Summit to move the conversation forward on solutions for the family justice system. Summit attendees included prominent thought leaders from diverse professional organizations: the International Academy of Matrimonial Lawyers, the American Academy of Matrimonial Lawyers (AAML), the International Academy of Collaborative Professionals, the American Bar Association (ABA) Section of Family Law, the Association of Family and Conciliation Courts, and other national groups.¹² The statements, recommendations, and perspectives expressed in this report do not represent the positions of these respective organizations or the individual Summit attendees. However, the attendees' diverse affiliations ensured an impressive array of knowledge and experience, which is reflected in the comprehensive, robust discussion recounted here.¹³



Rebecca Love Kourlis
Executive Director
IAALS

“ This is how change happens. It's small groups of committed people who come together with a vision and a common purpose, and go out and start to make things work. That's what you are. ”

12 The Family Bar Summit would not have been possible without the invaluable assistance of the Summit Steering Committee, comprised of the following national experts in family law: Barbara A. Babb; Roberta Batley; Sylvia Goldschmidt; William J. Howe, III; Talia Katz; Joan McWilliams; Forrest S. Mosten; Greg J. Ortiz; Peter Salem; and Andrew Schepard. These individuals worked closely with IAALS, especially HFI Senior Advisor Chief Judge Janice Davidson, to organize and execute the Summit. The Summit owes much of its success to Chief Judge Davidson and her vision.

13 A complete list of Summit attendees is available at the end of this report.

James C. Coyle
Attorney Regulation Counsel
Colorado Supreme Court

“ The family law bar’s in the best position to make these changes, and they have the passion and interest to do so. There’s nothing but opportunity coming out of this conference. ”



The Summit consisted of an interactive two-day discussion, designed around a series of hypothetical scenarios that highlighted opportunities for and obstacles to serving children and families in separation and divorce.¹⁴ The following issues were presented:

- **Triage and differentiated case management;**
- **Litigation management and cost containment issues in potentially contentious separation and divorce cases;**
- **Interdisciplinary practice;**
- **Informal, expedited, and summary domestic relations trials;**
- **Developments and innovations in handling situations involving or implicating domestic violence;**
- **Self-represented litigants;**
- **Innovations in legal services delivery models;**
- **The role of the child(ren) in court and the role of experts and parties’ attorneys vis-à-vis the child(ren);**
- **Standards for judicial review of uncontested divorce agreements; and**
- **Interdisciplinary, community-based dispute resolution processes.**

The scenarios were designed to trigger conversation that would translate the family law bar’s desire for change into concrete suggestions for how to achieve that change.

Group-based brainstorming sessions were interspersed with engaging, full-attendee plenary discussions. Over the course of the two-day Summit, certain key themes emerged with respect to meaningful—and actionable—reforms to the family justice system. The discussion points include the role of the family law attorney, the purview of family court systems, and the roles of judicial and non-judicial court personnel, legal educators, and actors in the broader community.

¹⁴ The full hypotheticals are included as part of a Summit Planning Toolkit that is available online for individuals and/or organizations wishing to replicate the IAALS Family Bar Summit in their jurisdiction. See <http://iaals.du.edu/familybarsummit>

FAMILY LAW ATTORNEYS

Recalibrated Understanding of Advocacy

The ABA Model Rules of Professional Conduct enumerate the broad duties associated with representing clients:

As *advisor*, a lawyer provides a client with an informed understanding of the client's legal rights and obligations and explains their practical implications. As *advocate*, a lawyer zealously asserts the client's position under the rules of the adversary system. As *negotiator*, a lawyer seeks a result advantageous to the client but consistent with requirements of honest dealings with others. As an *evaluator*, a lawyer acts by examining a client's legal affairs and reporting about them to the client or to others.¹⁵

While our current understanding of attorney representation is quite broad, it arguably is not reflective of the specific and evolving role of the family law practitioner.

The issues in family law cases are ongoing and occur between people whose relationship will continue long past the close of the case, as opposed to a frozen snapshot in time involving strangers who may never meet again. The unique elements of these cases present an opportunity for family law attorneys to serve as problem solvers. A strong theme that emerged from the Family Bar Summit is the need to recalibrate the understanding of advocacy to emphasize problem solving, teaching, and counseling, among other functions. The fundamental role of the family law attorney is to help clients and their children transition through the divorce or separation process.

Family law attorneys also help clients manage the underlying emotional issues that are pervasive in family cases. The AAML acknowledges: "Family law disputes occur in a volatile and emotional atmosphere."¹⁶ One Summit attendee suggested a need to "redefine zealous advocacy as representative of the client's interests, rather than their anger." For family law attorneys, understanding the emotional dynamics of cases becomes important for purposes of helping clients focus—or refocus, as the case may be—on their ultimate objectives.

Furthermore, identifying domestic violence in a client's situation and understanding the impact that dynamic has on a client is also an important part of a family law attorney's



15 MODEL RULES OF PROF. CONDUCT Preamble & Scope (2016) (emphasis added), available at http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_preamble_scope.html. The Model Rules no longer impose on attorneys an ethical obligation to represent clients with zealous advocacy; rather, the comment to Rule 1.3 on Diligence now states: "A lawyer should pursue a matter on behalf of a client despite opposition, obstruction or personal inconvenience to the lawyer, and take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. A lawyer must also act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf. A lawyer is not bound, however, to press for every advantage that might be realized for a client." *Id.* at 1.3 cmt.

16 AM. ACAD. OF MATRIMONIAL LAWYERS, BOUNDS OF ADVOCACY: GOALS FOR FAMILY LAWYERS (2000), available at <http://www.aaml.org/library/publications/19/bounds-advocacy/preliminary-statement>.

Shelia Manely
Founder
Justice Café

“As attorneys, we can actually manage and influence the facts of our case. And we have the option to either do that in a positive way, serving as problem solvers and moving the family forward in a holistic way—or we can choose to be part of the problem.”



role. Several Summit attendees suggested that family law attorneys providing full representation should be required to screen clients for domestic violence. Not all attendees agreed with the screening suggestion, but all attendees did agree that family law attorneys need to be aware of and sensitive to the issue of domestic violence.

Another role that a family law attorney must assume in the course of effectively advocating on behalf of a client is that of a teacher. An attorney is obligated to educate clients on the process, the court system, and alternatives available to families within the family justice system. Where appropriate, assisting the client in exploring less-adversarial alternatives to litigation must be part and parcel of a family law attorney's role.

While Summit participants recognized that an attorney's professional obligation is to his/her client—the parent in most cases—there did seem to be consensus that calling attention to client behaviors and goals that may be harmful to the child(ren) is merely an extension of representing the client's best interests. In one Summit participant's words, “advocating for the parent doesn't mean neglecting the child.” This perspective is reminiscent of that contained in the AAML *Bounds of Advocacy: Goals for Family Lawyers*:

Matrimonial lawyers should counsel parties to examine their wishes in light of the needs and interests of the children and the relationship to other family members. In so doing, the matrimonial lawyer is not only advising the client to adhere to applicable substantive law, but is also reminding the client that the family relationship continues.¹⁷

Family law attorneys do not operate in isolation. In order to effectively serve clients, a family law practitioner must work collaboratively with other professionals from mental health (therapists, drug and alcohol counselors, etc.), financial (accountants and financial planners), and related fields of practice.

Finally, there is great opportunity for family law attorneys to redefine their role and value added in terms of preventive legal care, highlighting the legal services that individuals and families can avail themselves of over the course of a familial relationship—as opposed to solely envisioning a family law attorney's services as limited to reactive legal services at the dissolution of a relationship.

Amended Regulatory & Professional Ethics Rules

In order to fully realize the role of the family law attorney, as discussed previously, Summit participants acknowledged that governing professional ethics rules may require amendment.

The ABA Model Rules and analogous state provisions may benefit from amendments that explicitly recalibrate the role of the family law attorney as problem solver and counselor. While the Model Rules do acknowledge an attorney's role beyond that of an advocate “zealously assert[ing] the client's position under the rules of the adversary system,”¹⁸ Summit participants suggested that explicitly enumerating the problem-

¹⁷ *Id.* at GOAL 6 cmt.

¹⁸ MODEL RULES, *supra* note 15.

solving component within this definition would be important for family law attorneys. Additionally, making a family law attorney's obligations to the child(ren) clear would require amendments to state ethical codes. The AAML *Bounds of Advocacy* Goal 6 provides a good starting point for such amendments.

Given the interdisciplinary nature of family law practice, participants also discussed the authorization of multidisciplinary practice models, within which a family law attorney could work collaboratively with professionals in other disciplines in order to provide the holistic services from which many family law clients would benefit.¹⁹

A related point that came up during the Summit is the potential for one attorney to advise both parties in a family law case, with appropriate informed consent.²⁰ Some participants touted this joint counsel arrangement as a cost-effective and time-saving means through which to facilitate agreements between amicable parties. It must be noted, however, that some attendees had concerns with this proposition. At least one participant was more comfortable with a model in which parties worked out a resolution together with an advisor, but then had separate counsel review the agreement to determine whether it appeared fair.

Finally, Summit participants discussed alternative legal services delivery models—such as limited scope representation and/or non-attorney Limited License Legal Technicians—suggesting that the family law bar has a role to play in supporting the development of these practices, and assisting in defining and regulating them. This conversation touches on the larger issue of refocusing on the client in terms of service delivery. One participant noted: “The practice of law and how lawyers have organized the practice of law is at the cutting edge of the 19th Century. We still have ourselves in a lofty position where we define what the consumer wants.” Summit attendees recognized that public demands are increasingly veering toward new, innovative models of service delivery that actively include the consumer in defining his or her own needs.

Continuing Legal Education & Client-Centric Training

There is a reeducation component that accompanies the evolution of the family law attorney's role, and participants referenced this broad theme throughout the Summit. One of the prevailing suggestions was that attorneys handling family law cases should be required to complete some specific base-level Continuing Legal Education. In addition to substantive legal issues, family law attorneys must be educated on the extensive research available on the impacts of parental conflict on children, so that they can assist clients in focusing on the long-term well-being of the child(ren). This initial training should also contain content on preventive care and problem solving, among other topics.

Summit discussion also identified non-legal skills that family law attorneys would benefit from acquiring and/or improving, recommending client-centric education

¹⁹ Such a practice model is authorized in certain foreign jurisdictions, for example, the England and Wales Solicitors Regulation Authority allows for several different practice models in which non-lawyers may participate. SOLICITORS REGULATION AUTHORITY, PRACTICE FRAMEWORK RULES (2011), available at <https://www.sra.org.uk/solicitors/handbook/practising/content.page>.
²⁰ See, e.g., Rebecca Aviel, *Counsel for the Divorce*, 55 B.C. L. REV. 1099 (2014), available at <http://lawdigitalcommons.bc.edu/bclr/vol55/iss4/3/>.



Elena Karabatos
Partner
Schlissel Ostrow Karabatos, PLLC

“ The role of the lawyer really needs to be defined to address the needs of the people and the clients of today. ”

that teaches attorneys to better listen to, and therefore better understand, the needs of clients. Additionally, attendees highlighted the need for all attorneys, but especially those handling family matters, to manage and regulate their own emotional needs and stability. Said one participant, “Anyone who is doing something where you are absorbing anger needs some sort of self-care.”

The growing role and impact of technology in family law and family court is another area ripe for continuing education efforts. Specifically, Summit participants discussed training that educates family law attorneys on how technology can be leveraged for the benefit of clients—for example, client-facing portals, and electronic signature and forms.

FAMILY COURTS & COURT PERSONNEL

Acknowledge Exemplary Family Law Judges

Family court judges set the tone and direction of the family law dispute resolution system, and make vital decisions when necessary about the lives, property, and children of litigants. If there was one subject that Summit participants returned to repeatedly, it was the importance of having knowledgeable, dedicated, and skilled family court judges on the bench. This topic emerged throughout the two-day conversation, as a response to various substantive issues and perceived challenges. Attendees coalesced around the notion that exemplary family law judges should be widely acknowledged and applauded—and recognized beyond the court system, in the larger communities in which they serve.

Ensure Adequate Resources to Assist Litigants

Families moving through court without attorney representation largely lack information on process and options, highlighting an opportunity for courts to fill this gap. Summit discussion explored an in-court navigator-type process/program, delivered online or in person, through which courts could provide litigants with information on and set realistic expectations about the process. This function could also provide individuals with information on options for accessing affordable legal services, including lists of *pro bono* or “low-bono” providers, unbundled legal services providers, and out-of-court dispute resolution processes.

Summit participants also urged courts to focus on developing or working in conjunction with other justice system providers to develop user-friendly technologies for litigants, including interactive forms, online interactive self-help materials, e-filing processes, online dispute resolution systems, mobile-accessible websites, and related tools.



Implement Client-Centric Processes

In addition to creating and offering court resources that are truly in line with the needs of the users, participants discussed how court systems might develop client-centric processes. Attendees discussed a family court triage system, built on different pathways, each with accompanying resources/services for families, including built-in mechanisms for shifting paths at various points in the process. Additionally, for complex cases, courts might explore a set of protocols that mirror the management of complex civil cases, including provisions for encouraging cooperation between counsel.²¹

Summit discussion also considered the implementation of innovative procedural mechanisms to meet the unique needs of families in divorce and separation cases. For example, several states are experimenting with informal trial mechanisms in which the rules of evidence do not apply and the role of the attorney is limited.²² Similarly, bifurcated trial processes might enable families to resolve some of their issues on an expedited basis, providing an environment in which the bulk of the court staff's time and effort are spent helping families address the key issues in dispute. With respect to any streamlined, summary, or informal trial process, Summit participants expressed the importance of adequate information and informed consent.

Additionally, attendees discussed the frontloading of court interventions, in order to connect with people immediately upon—or soon after—entering the system. This could be achieved in a number of ways, such as a preliminary conference convened as soon as is reasonable after a case is filed, designed to facilitate realistic expectations and align parties on the pertinent issues in the case. Similarly, a client education video—that attorneys in the case would be required to view as well²³—could help set litigant expectations as early as possible in the life of the case and, accordingly, set a (positive) tone for the process going forward, including establishing a focus on resolution.

An interesting conversation occurred among attendees with respect to how courts might streamline the treatment of uncontested cases, including the potential for summary trial processes or document review in lieu of hearings for parties without minor children, assets, debts, etc. Summit participants debated divorce-by-registration processes to off-load this subset of cases from the court system—a subject that garnered mixed perspectives, with some attendees expressing discomfort with the idea of removing judicial review in any form, especially in the case of two self-represented litigants who did not have the benefit of counsel in reaching the agreement. There did, however, seem to be



Natalie Anne Knowlton
Director
Honoring Families Initiative

“ What does the public need from us, and how can we better train ourselves to listen to what they want and understand what they're going through? ”

21 The Conference of Chief Justices has established a national committee that is developing guidelines and best practices for civil caseload management in state courts. The IAALS *Rule One Initiative* is working alongside the National Center for State Courts to facilitate this effort. See *Conference of Chief Justices Civil Justice Improvements Committee*, IAALS, <http://iaals.du.edu/rule-one/projects/creating-just-speedy-and-inexpensive-courts-tomorrow/conference-chief-justices> (last visited March 18, 2016).

22 Idaho, Oregon, and Alaska have implemented informal trials for custody and other domestic relations matters. See *Simplified Court Processes*, IAALS, <http://iaals.du.edu/honoring-families/projects/innovation-around-country/simplified-court-processes> (last visited March 18, 2016).

23 Summit participants recognized that, although few and far between, there are subpar family law attorneys practicing in states around the country. Requiring an attorney to participate in a conference or video viewing ensures that court and judicial expectations are conveyed to parties and their legal counsel.

some level of agreement among attendees that not every uncontested case needs a hearing or a judicial review, a process change that would necessitate modification of a jurisdiction's standard of review, where such a standard exists.

With respect to processes that are specifically responsive to the needs of children in the process, participants urged courts to explore different models for incorporating the voice of the child. Attendees recognized that these processes will—and should—differ depending on the specific circumstances of the court and the unique legal culture in the jurisdiction.

Establish Specialization & Training

The family court bench is not a “pots and pans” rotation; it is a highly complex assignment. In addition to substantive family law issues, divorce and separation and parental responsibility cases often implicate ancillary legal issues, including bankruptcy law, contract law, military law, general civil law, criminal law, estate planning, and other diverse fields of practice. Family court judges must have a working understanding of these areas in order to adequately resolve disputes for the millions of families who come before the court every year.²⁴

Given the importance of these cases and the complicated nature of the issues that arise therein, Summit conversation focused on the desirability of specialized family law judges and/or courts, of which there are many models.²⁵ However, participants recognized that in many courts—especially those in rural jurisdictions—having a dedicated family court or family court bench may not be feasible given limited judicial resources. In these instances, comprehensive, specialized training in the myriad issues that arise in family cases can prepare our judges to best serve separating and divorcing families. Such training should include curriculum in interpersonal, family, child, and psychological issues—not just substantive law—and courses about how to manage cases involving self-represented litigants and those with limited service lawyers. Ultimately, such training is beneficial for any judge who deals with family cases—whether operating in a specialized court or not, as few judicial officers were engaged in family practice before ascending to the bench.

Finally, Summit participants suggested that courts establish similarly specialized training for non-judicial personnel in family court.



24 With the assistance of a national, multidisciplinary working group, including members of the *Honoring Families Initiative* Advisory Committee and representatives from the National Council of Juvenile and Family Court Judges and the National Judicial College, IAALS released *The Modern Family Court Judge*, enumerating 27 requisite skills, qualities, and areas of knowledge that family court judges need to be successful on the bench. NATALIE ANNE KNOWLTON, INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS., *THE MODERN FAMILY COURT JUDGE: KNOWLEDGE, QUALITIES & SKILLS FOR SUCCESS* (2014), available at <http://iaals.du.edu/honoring-families/publications/modern-family-court-judge-knowledge-qualities-skills-success>.

25 See, e.g., Barbara A. Babb, *Unified Family Courts: An Interdisciplinary Framework and a Problem-Solving Approach*, in *PROBLEM SOLVING COURTS* 65-82 (Richard L. Wiener & Eve M. Brank eds., 2013).

Maximize Available Court Personnel

State courts around the country are increasingly doing more with less, and, without exception, Summit participants applauded family courts in their jurisdictions for exemplary service in the face of diminishing budgets. Participants also recognized, however, that the prospect of increased budgets as a policy solution is not pragmatic. System improvements cannot rest alone on the promise of increased court funding.

Innovative use of non-judicial, administrative personnel can help courts maximize judicial officers' time, in turn ensuring that families who require the court's fact finding, protection, or enforcement functions have prompt and consistent access. Self-help efforts and navigator-type programs staffed by non-judicial personnel—attorneys or non-attorneys—can assist litigants on the front end, potentially reducing some of the administrative burdens that judicial officers encounter with respect to un- or under-prepared self-represented litigants at trial. Summit conversation also explored increased use of non-judicial personnel for reviewing uncontested parenting and support agreements.

Finally, discussions on streamlining uncontested cases, mentioned previously, either through divorce-by-registration or another vehicle, highlighted how assigning judicial personnel to administrative processes such as document reviews in lieu of hearings may be another way in which to maximize court time and resources.

Increase Understanding of Post-Decree Matters

Most Summit participants acknowledged that we have little research on post-decree issues in state courts. Accurate data is needed to better understand these cases in terms of numbers, nature of relief sought, impact(s) on the court, needs of litigants enmeshed in these issues, and how best to manage these cases. Courts, academics, and non-profits should commit to exploring these cases in great depth.

In conjunction with data collection efforts or in response to such efforts, participants suggested that courts should explore new methods for streamlining, restricting, and/or resolving post-decree issues. For example:

- **Increasing sanctions for frivolous filings;**
- **Developing a more robust system for disciplining lawyers who file frivolous post-decree motions or motions designed to harass;**
- **Resources for parents with repeated parenting time disputes;**
- **Cooperative and non-adversarial processes of resolving issues;²⁶ and**
- **Identifying 'frequent filers' and referral to community resources.**

26 The Center for Out-of-Court Divorce – Denver applies its interdisciplinary and cooperative approach to resolving post-decree matters as well as initial divorce and separation issues. THE CENTER FOR OUT-OF-COURT DIVORCE, <http://centerforoutofcourtdivorce.org/> (last visited March 18, 2016).



Michael Manely
CEO and Founder
Manely Firm, PC

“ We don't tend to think about family law resolution as peace making. But how apt that would be, if it were. ”

LAW SCHOOLS & LEGAL EDUCATORS

Specialization

As the role of the family law attorney and our understanding of effective representation within this context evolve, there are obvious implications for how future family law attorneys are educated. Law school curricula for students pursuing family law practice should be specialized in recognition of the different and interdisciplinary skill set that a family law attorney must possess:

- **Preventive care;**
- **Problem solving;**
- **Interdisciplinary interactions;**
- **Community partnerships;**
- **Listening to and understanding the needs of clients; and**
- **Ethical dilemmas so often faced by family law attorneys.**

Summit participants also suggested that law schools might consider centering legal education for all aspiring lawyers on the notion of recalibrating the role of the attorney as a problem solver and counselor, in recognition of the importance of those functions across fields of practice.

Incorporate Clinical & Experiential Components

There is a movement in legal education toward experiential curriculum and clinical experience.²⁷ In the family law arena, the Family Law Education Reform (FLER) Project is working to close the gap between the teaching and practice of law.²⁸ By expanding law school curricula that is focused on clinical and experiential education, we can prepare young family lawyers to best serve clients and their children. Accordingly, the bar should encourage law schools to adopt these innovative methods and experiential components.



Hon. Janice Davidson (Ret.)
Chief Judge
Colorado Court of Appeals

“The problems in the current family law system belong to all of us.”

27 The IAALS *Educating Tomorrow's Lawyers* initiative is dedicated to aligning legal education with the needs of an evolving profession. Working with a Consortium of schools and a network of leaders from both law schools and the legal profession, *Educating Tomorrow's Lawyers* develops solutions to support effective models of education. Learn more about ETL at <http://etl.du.edu>.

28 The Family Law Education Reform Project was co-sponsored by the Association of Family and Conciliation Courts and the Hofstra School of Law Center for Children, Families and the Law. Family Law Education Reform Project, <http://www.flerproject.org> (last visited March 18, 2016) (offering a host of valuable resources for family law educators, including: syllabi for family law courses that incorporate skills exercises, simulation exercises that integrate skills training with substantive family law, discussion guides that have been developed to encourage an interdisciplinary approach to teaching family law, and skills-based practical assignments). See also Mary E. O'Connell & J. Herbie DiFonzo, *The Family Law Education Reform Project Final Report*, 44 FAM. CT. REV. 524 (2006), available at http://www.flerproject.org/pdf/THE_FAMILY_LAW_EDUCATION_REFORM_PROJECT_FINAL_REPORT.pdf.

BROADER COURT-COMMUNITY PARTNERSHIPS

The responsibility for helping families transition through separation and divorce is shared between court systems and community systems. To further this partnership, HFI developed and pilot tested an out-of-court model for resolving divorce and separation cases, centered on providing interdisciplinary services to families with children and fostering a process that best serves children.

After several years of testing on the University of Denver campus, the interdisciplinary center moved into the Denver community in the form of the Center for Out-of-Court Divorce (Center). The Center offers families a suite of services, tailored to their specific needs, circumstances, and budget:

- **Education about family law;**
- **Individual counseling;**
- **Co-parent coaching;**
- **Mediation;**
- **Assistance drafting financial and parenting plan agreements; and**
- **Post-decree support services, such as counseling and mediation.**

Through an agreement with the Colorado Supreme Court, the District Courts will stay proceedings of those families receiving services at the Center. Additionally, final, non-contested hearings are held at the Center, entirely eliminating the need for families to go into the courthouse.

A national Center for Out-of-Court Divorce (COCD) organization is moving forward replicating this model in jurisdictions around the country. Summit participants considered and discussed this model, expressing broad appreciation for the benefits to separating and divorcing families of a holistic approach to providing services. The conversation focused on the importance of including the following components, most of which are built into the COCD model:

- **Inclusive of never-married, same-sex parents, and other non-traditional families;**
- **Provide processes to add the voice of the child(ren);**
- **Referral out to attorneys who offer limited scope representation and other services in the broader community, if necessary;**
- **Meet the needs of families where domestic violence is an issue;**
- **Framed as a constructive opportunity to problem solve for the benefit of children; and**
- **Include other disciplines as part of the Center.**



Another area that Summit participants identified in which the court and community partnership should be strengthened is in increasing domestic violence resources, including:

- Counseling, housing, and legal assistance for victims and children;
- Counseling and other intervention programs for perpetrators;
- Education and information on domestic violence and its impact;
- Supervised visitation centers; and
- Educational programs for children.

PUBLIC EDUCATION

There is an important and interrelated public education component to the recommendations and innovations discussed herein. With respect to the role of the family justice system, court users and the public more broadly would benefit from an increased understanding of what the court can and cannot do. With respect to the latter, managing litigant expectations on the role of the court is an important attorney function; but, for the many families who cannot or otherwise do not have legal counsel, misunderstandings on this front can lead to frustration and, on a broader level, decreased public trust and confidence in the system.

On the other hand, part of this conversation entails expanding the public's understanding of what the court is able to do. Emphasizing the alternatives to litigation for resolution of family issues and the importance of alternative dispute resolution is a vital component of a public education effort—and a means through which court systems can highlight the many options available to litigants.

Furthermore, it is the rare litigant who looks to the court today as a place for *positive* resolution of family issues. Those who work in and closely with the system, however, witness firsthand the positive impact that the family justice system has on countless families. Effective education efforts can change the public's perception of the court system, what that system can accomplish, and the environment in which these things can be achieved.

Broadly speaking, public education, as discussed over the course of the Family Bar Summit, did not simply entail a one-way flow of communication *from* justice system stakeholders *to* families and other court users. Rather, attendees also commented on the importance of hearing from the public, in order to better understand user needs and the extent to which courts are/are not meeting those needs. Establishing a two-way flow of communication and feedback redefines public education efforts, for the benefit of courts, justice system partners (including the family law bar), and the broader community.

The family law bar shares a responsibility with family courts for taking a leadership role in facilitating and increasing public education efforts.



MOVING FORWARD

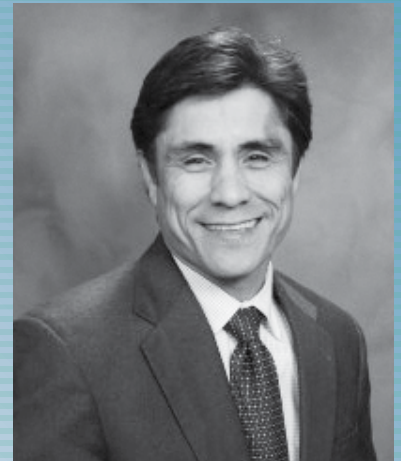
The responsibility for creating separation and divorce processes that support better outcomes for children and provide greater accessibility, efficiency, and fairness for all parties is shared among attorneys, courts, communities, and other family justice system stakeholders. However, family law attorneys—as a cohesive bar and individual members—have an important role to play in ensuring that the discussion does not end here.

For the family law practitioner, two central tenets underlie much of the discussion that occurred at the Family Bar Summit:

- **An Evolving Role of the Family Law Attorney**—The role of the family law attorney has evolved alongside our understanding of family cases and underlying family dynamics. The modern family law practitioner now must include problem solver and counselor as part of his or her duties in serving as an effective advocate. There is also an important interdisciplinary component to a modern family law attorney’s work. Effectively responding to the legal needs of 21st Century families necessitates that attorneys embrace this evolution and move toward a multifaceted approach to best serve the short- and long-term interests of families and children.
- **An Ongoing Responsibility For Continuous System Improvement**—As stewards of the family justice system, family law attorneys have an inherent and ongoing responsibility to participate in creating meaningful systems change. Bar associations must play a role in mobilizing members, and individual attorneys have a duty to energize others in pursuit of the goal of reshaping separation and divorce processes to serve families and children in the best manner possible.

Without exception, attendees at the Family Bar Summit demonstrated an unyielding commitment to spearheading system improvements for the benefit of clients and their children. There is little doubt that family law attorneys as a group more broadly are deeply aware of this responsibility to the system. Respondents to the HFI survey recognized an obligation to work to improve the court system, agreeing (89%) with the sentiment: “As a licensed attorney, I am not only professionally responsible to my clients, but I am also obligated to work to improve the court systems.”²⁹ A majority (86%) of survey respondents also agreed with the notion that bar associations and professional organizations should take a leadership role in promoting innovation in the divorce, separation, and parental responsibility process.³⁰

This report enumerates a host of actionable recommendations and suggestions for implementation that bear further exploration. Summit attendees have committed to an



Greg Ortiz
Chair, Family Law Section
American Bar Association

“ The clients that don’t have a voice, or as strong of a voice, are the children. How do we take care of those kids through an adversarial process? ”

²⁹ CORNETT, *supra* note 7, at 8.

³⁰ The survey asked respondents to react to the following statement: “I think my bar association/organization should take a leadership role in promoting innovation in the divorce, separation, and parental responsibility process.” *Id.*

Jacquelyn L. Bogges

Executive Director
Center for Family Policy and Practice

“ For me, being here, and IAALS incorporating this need—the need of the families that I focus on—into their conversation, is very exciting and gives me hope. ”



action plan, pursuing key recommendations for change in their respective jurisdictions, including:

- Establish a mandatory base-level Continuing Legal Education requirement for attorneys handling family law cases.
- Replicate the IAALS Family Bar Summit with family bar leaders in their local communities.
- Amend state rules of professional conduct to allow for collaborative law practice.
- Generate literature on access to justice issues, including the evolving role of family law attorneys.
- Launch law practices centered on providing unbundled legal services to family law clients and others, based on the model established by Justice Café³¹ and similar organizations.

IAALS urges all family law attorneys to consider how specific changes might be made in their jurisdictions—and to follow through, from action to implementation, as a matter of professional responsibility and commitment to the families in our communities.

31 The Manely Firm, P.C.'s Justice Café is bridging the justice gap by providing unbundled legal services to clients in family law, juvenile law, and criminal law cases. Co-founders Michael and Shelia Manely attended the IAALS Family Bar Summit.



ATTENDEES

FAMILY BAR SUMMIT:
SHAPING THE SYSTEM FOR THE FAMILIES WE SERVE

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Children and the Courts, University of Baltimore School of Law

Roberta S. Batley, Little, Gilman-Tepper & Batley, P.A.

Jacquelyn Boggess, Center for Family Policy and Practice

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