

# The Modern Family Court Judge— More Than Just Pots and Pans

by Emily E. Anderson, Kandace C. Gerdes, and F. Michael Goodbee, with contributions by Zachary Willis

For many Colorado residents, family court is their only foray into the legal system. Like many states, a significant portion of our state courts' dockets comprise divorce, separation, and parental responsibility cases. Judges with a domestic relations docket deal with a wide range of legal issues, including bankruptcy, estate planning, contracts, tax, military, immigration, and criminal law. Simultaneously, these judges must navigate the emotional and non-legal issues these families face, which often fall within the realm of social work, psychology, and problem solving.

Family court judges make decisions every day that immediately and significantly impact families and children, but the domestic docket is often regarded as a "pots and pans" rotation and, to some, it is considered among the least gratifying and esteemed dockets. Although the work of our family court judges is critical to society, these judges are often undervalued, even by their peers on the bench. Furthermore, the broad, interdisciplinary expertise required to do the job well is not always recognized or acknowledged.

In 2014, the Institute for the Advancement of the American Legal System (IAALS) at the University of Denver partnered with a diverse working group to define what family court expertise entails. IAALS published its findings in "The Modern Family Court Judge: Knowledge, Qualities & Skills for Success" (available on the IAALS website), a report that draws attention to the complexities and special nature of family law cases, and speaks to the importance of having highly skilled and dedicated judicial officers making the decisions that impact families forever.

In keeping with information presented in the IAALS report, what follows are short presentations by three Colorado judges offering their recommendations and the insights they have gained from their experiences on the family court bench. Their brief first-hand explanations demonstrate the important role served by modern family court judges and the need for their work to be reprioritized and revalued. To the benefit of both family law attorneys and fellow jurists, these judges provide a window into the world of a domestic relations docket, a view of the lasting impact on the judges and the families they serve, and tips to make the process better for everyone involved.

## Judge Emily Anderson

Dear Judge Anderson:

You are the judge for my parents in their custody battle. My parents' battle is set two days before my 16th birthday. Other 16-year-olds ask for cars for their birthday, but what I want for my birthday is for this case to be over *forever*. My mental health is deteriorating and I worry about my well-being. I am politely asking for this court date to also be the final one.

—*Excerpt of a letter from Lucas, a 10th-grader*

In the cases I see involving children, most of the problems stem from the parents viewing their kids as prizes to be won. If I split Lucas in half (figuratively), that virtually guarantees that neither parent is going to be upset, because it is fair, right? Not necessarily.

## About the Authors

Emily E. Anderson is a 17th J.D. District Court Judge. Before being appointed to the bench, Anderson owned a private trial practice law firm focusing on family law, civil litigation, and mediation. Kandace C. Gerdes became a 2nd J.D. District Court Judge in 2013. Before her appointment, she focused on civil and criminal tax controversy resolution, and was a Senior Deputy District Attorney (DA) assigned to the Economic Crime Unit and several



metro task forces. F. Michael Goodbee was appointed as a 17th J.D. District Court Judge in 2008. Previously, he was twice elected DA for the 5th J.D., oversaw the Attorney General's Criminal Justice Division, and served as second in command at the 17th J.D. DA's Office. Zachary Willis is Associate Director of Communications for IAALS, the Institute for the Advancement of the American Legal System at the University of Denver.

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ily. It is my job to rule in the best interests of Lucas, not his parents. And attorneys should play their part by (1) encouraging clients to move toward a parenting plan rather than filing contested motions and briefs, (2) suggesting mediation over litigation, and (3) helping parents share child custody rather than divide the child.

What we do in the realm of family law is important and has lasting effects for all involved. The work I have done as a family lawyer, magistrate, and judge has changed me more than I have changed any one person's life. However, during one of my first court experiences, a new judge told me, "I have been assigned to pots and pans," as if to say that he had been banished to the dungeon. Why this mindset? Family law deals with arguably the most fundamental core, personal, and important institution in our society—the family. Choosing to practice family law is honorable. Long ago, I learned that the most important work that gets done in the courthouse is in the domestic and juvenile divisions.

There is nothing simple about family law. It involves complex legal issues and interesting social issues. It is always evolving. Families look different today than when I started—because they are different. There is a need for committed, creative, and thoughtful attorneys and judges to develop best practices for the families we work with.

Rather than tell you what you should or should not do in court, I am suggesting skills you might consider developing to become a superstar family law practitioner.

**1. Develop and blend your skills to be both a litigator and a negotiator.** On the litigation side, practice drafting clear and concise documents, conduct a thorough fact investigation, and know the rules of evidence. On the negotiator side, become an effective counselor and advocate.

You are an attorney and counselor at law (not a therapist), and you need effective client communication skills, the ability to explain the best- and worst-case scenarios, and strong mediation skills. Consider taking a basic forty-hour mediation course.

**2. Develop healthy time management skills.** The practice of family law is about putting out fires, but if you are prepared for court, you will be more comfortable and confident.

**3. Be courageous and settle the case.** Settling a case does not mean you are weak; it often means doing what is best for your client. Not only is settling a quicker alternative to court, it also enables you to be more creative than the judge. You can reach agreements that could never happen through litigation, and you can do so with the help of the parties themselves.

**4. Be cool and stay calm.** It will help you in court and in settlement conferences, and it will help your distressed client maintain confidence in your abilities. Humility is key, and colleagues should describe you as "incapable of pettiness" and "fair, always prepared, and reasonable."

**5. Be proud that you are helping another human being.** You may have heard the saying, "don't dabble in family law or you will get burned." I have a different and positive message for you: If you want to help people, be in the courtroom, and deal with sophisticated legal and social issues, practicing family law provides these opportunities. If you were to create a list of the truly talented family law attorneys who practice locally, it would probably be short. What this says to me is that there is a great deal of potential to rise to the top.

For fellow family law judges, I echo the same sentiments. It is vital that we recognize the importance of our role in the lives of the families who appear before us at their most difficult crossroads. Managing our time and cases effectively goes a long way not only toward keeping the process moving, but also toward maintaining public confidence in the court. That confidence is bolstered by concise and clear communication, understanding and facilitating alternative dispute resolution opportunities, and exercising leadership from the bench. "Pots and pans" doesn't even begin to convey the vast, unique, and specialized realm of the family law judge.

## Judge Kandace Gerdes

Prior to being appointed to the domestic relations docket, my only experience in family law was listening to anecdotes from friends going through divorce. My first day on the bench was also my first day in family law. This limited background left me wondering exactly what I would experience each day in this rotation.

Now, eighteen months later, the family law bench has provided me a clear understanding of its important role in helping people move forward in the most difficult of times. People are often driven by emotion and are daunted by the legal process. Patience, active listening, and simple conversation are needed to determine the rel-

evant issues that need to be addressed, such as parental alienation, substance abuse, mental health issues, and cultural nuances.

My colleagues writing here have powerful examples of cases they've worked on that capture the significance of our role in the lives of families who appear before us; however, I cannot limit my comments to just one case. Each case I have presided over has had an impact on me, from beginning to conclusion, with all its ups and downs. I'm sure this is a common feeling among family court judges.

For me, it is especially gratifying to see highly conflicted parties work through their differences to focus on their children and co-parenting. I try to acknowledge each party who makes a genuine effort to set aside hurt, anger, and distrust of the other party and consciously chooses to resolve the case. That being said, when parties are unable to reach solutions on their own, it becomes my responsibility to weigh the evidence and interests, determine what is fair and reasonable, and issue permanent orders accordingly as quickly as I can.

The challenge is how to achieve this success across the board. In my view, success can be achieved by employing the three Ps—punctuality, preparedness, and professionalism. The following tips apply equally to judges, *pro se* litigants, and practitioners.

**1. Punctuality.** Know the courtroom docket. Each one is different; if you are unsure, call in advance to confirm the start time. Running late? It happens. Call the courtroom so I can manage and adjust my docket accordingly.

**2. Preparedness.** Expect that the judge will read the file before the docket. If a different judge is hearing the case, ask whether he or she would like a brief history. If yes, make it a factual timeline; do not argue the merits.

If you enter an appearance just before permanent orders, do not count on a continuance. The judge has to find “good cause.” (See Colo. RPC 1.1 and 1.3 (competent representation).)

Know the procedures for the hearing. Call the courtroom staff if you are unsure.

Determine relevant issues, such as mental health, substance abuse, or marital waste, and non-relevant issues, such as marital fault or a new significant other.

Reduce stress and save time by objectively stating the issues, regardless of the type of hearing. Know the strengths and weaknesses of your case.

*Exhibits:* stipulate when possible, know their content, and use the admitted exhibit.

*Case law:* Especially if the issue is unique, bring full cites to the hearing or ask permission to brief in advance. Additionally, cite law in your pleadings. (See CRCP 121.)

*Evidence:* Know the rules and object judiciously.

*Communications:* If the judge allows telephone status conferences, try this approach to resolve matters without the cost and delay of motions practice.

*Witnesses:* Prepare them for direct and cross, including discussing the weaknesses in the case, so that witnesses are not caught off guard. Make sure you and your witnesses know as much as possible in advance.

**3. Professionalism.** You help set the tone for your client. By being even-toned, you are more likely to stay on track, efficiently and effectively use trial time, and possibly even lessen tension on the opposing side. Remember, a lawyer's duty to act with diligence does not require the use of offensive tactics or preclude being courteous and respectful. (See Colo. RPC 1.3 [1].)

*Court personnel:* While courtesy to the judge is very important, it is more important to remember that the judge's court judicial assistant and law clerk (also a licensed attorney) are the gatekeepers. If you are rude to them, you have also been rude to the judge—and trust me, we will find out.

*Opposing counsel and courtroom staff:* You will see them again. The Oath of Admission states, “I will treat all persons whom I encounter through my practice of law with fairness, courtesy, respect, and honesty.” Being discourteous not only reduces the likelihood of resolution, but may even further entrench the opposing party in their position. (See Colo. RPC 3.4.)

## Judge F. Michael Goodbee

As a new judge—on the bench for just two months—it was important for me to be prepared for hearings, so I had read the whole file; the Child and Family Investigator (CFI) report was detailed and insightful. This family's troubles began about a dozen years into the marriage, around the time their third son was born, when Mom was injured at work and began a dangerous pain pill habit. Dad coped by burying himself in his work, and their oldest boys soon fell in with the wrong crowd. Eventually, the couple filed for divorce. In court, Dad walked with a confident gait, while Mom walked cautiously, grimacing as she sat down. Her eyes looked tired, and only lit up when she spoke of her youngest son.

This child is where their dispute centered. They agreed that Dad would care for the teen boys, but Mom wanted her youngest son. On the stand, it was clear that she profoundly loved him. However, after being served with the divorce petition, Mom threatened suicide and was briefly hospitalized. Although her doctors determined she was not a threat to herself or her children, Dad testified that her addiction and instability posed a potential risk. The CFI recommended caution, which seemed very appropriate.

After the hearing, I had a weekend to stew over the case. That next week, they returned to my courtroom and I entered final orders. Mom received half of Dad's sizeable pension and Dad was to be the primary caregiver for the youngest child, with frequent supervised visitation for Mom, pending her getting a handle on her pill addiction. I anticipated the chance to revisit this decision.

Given the pension award, I told Mom she now had the means to pay for an inpatient facility. Her demeanor as she walked out of courtroom was the same as when she walked in. On Monday morning, it was back to the domestic relations caseload treadmill. I noticed Mom's attorney in the back hallway near my courtroom. We spoke in chambers, where he told me that Mom was a no show for her first supervised visit. He learned that the reason was that her family had found her body in her apartment that weekend. Her suicide notes blamed many people, including me.

I still think about her, and her love for her son. I also think about my decision. I probably will for a long time.

In family law, we are tasked with equitably dividing things such as retirement accounts, heirlooms, real estate, jewelry, pets, and yes, sometimes even pots and pans. Judges determine the amount of money on which a husband or wife can reasonably live, and then must explain their calculation. How much money should support a parent raising a child? These are big tasks.

Most important, as we all know, divorces divide families. Judges' orders can separate brothers from their sisters, dads from their daughters, and moms from their sons. Our decisions often have life-long impacts. Sometimes, those decisions can contribute to tragedies. A "pots and pans" description just doesn't quite capture the rotation.

In my time on the domestic docket, a number of insights have struck me as important for practitioners in this area. They are pieces to a complicated puzzle, to which there are certainly more. The following recommendations can help us not only practice better law, but also allow families to find a glimmer of hope in a process that can be scary and overwhelming.

**1. Know your case, and know it well.** This means knowing the facts, the law, and your targeted goals for your clients. Be prepared for hearings and conferences, because a lot is on the line for these families. Always be on time (and early is better).

**2. Know your clients.** Court can be a daunting place, so prepare your clients for what will happen before, during, and after. Prepare them for their testimony and advise them on what not to do.

**3. Know your court.** As judges, we have our own lists of dos and don'ts. Know that certain arguments may carry more weight with certain judges.

**4. Respect the clerk.** The fastest way to get a judge's attention is to disrespect their clerk. This rarely translates well for a case.

**5. Know your evidence and how to use it in court.** Stipulate where appropriate, and be prepared for the objection that you should know is coming. Cite rules and case law.

**6. Be concise (when you can).** To a limited degree, we all like the sound of our own voices, but remember that the court is your juror; lose the court, and risk losing your case.

**7. Don't get sucked into the drama.** This is not your tragedy. First and foremost, you perform an important and quality legal service. Clients depend on you for a clear head and sound advice.

**8. Be a professional.** This includes court staff, clients, and yes, your legal colleagues, too (even when they do not return the courtesy).

**9. Recognize that life is for the living.** Truth is that not all of us may be well suited for this challenging area of practice. There is nothing wrong with that. Recognizing whether you are or not is important both for your practice and for yourself.

## Conclusion

To be sure, judges assigned to domestic rotations are involved in the division of property, including, in some cases, the pots and pans. But the rotation is so much more than that, and its importance and effect on families cannot be overstated.

Colorado's family law judges are dedicated to applying the law fairly and doing their part in helping families through the rigors of dissolution and parental allocation issues—yet there is always room to learn and to grow. Readers can find more recommendations for successful family court judges in "The Modern Family Court Judge: Knowledge, Qualities & Skills for Success." A downloadable PDF is available at [iaals.du.edu/images/wygwam/documents/publications/The\\_Modern\\_Family\\_Court\\_Judge.pdf](http://iaals.du.edu/images/wygwam/documents/publications/The_Modern_Family_Court_Judge.pdf). ■