



Dear Family Justice System Stakeholder:

Given their unique role in the family justice system, family law attorneys are well positioned to identify and speak to the systemic obstacles they encounter in serving clients in a timely, efficient, and affordable manner, and facilitating a process that enables better outcomes for children. These same attorneys are likewise well positioned to design and implement recommendations that address the problems, challenges, and obstacles in the current system.

In an effort to engage practitioners as active participants in the larger movement to change the system for resolving family conflict, the *Honoring Families Initiative* (HFI) of the Institute for the Advancement of the American Legal System (IAALS)<sup>1</sup> convened the two-day *Family Bar Summit: Shaping the System for the Families We Serve* in November 2015. Attendees included prominent thought leaders from diverse professional organizations: the International Academy of Matrimonial Lawyers, the American Academy of Matrimonial Lawyers, the International Academy of Collaborative Professionals, the American Bar Association Section of Family Law, the Association of Family and Conciliation Courts, and other national groups.

The IAALS Family Bar Summit was an honest dialogue about how the family justice system might be realigned to meet the needs of the families it serves. Interactive, engaging conversation highlighted a number of themes and recommendations for reshaping the divorce and separation process, some of which Summit attendees have undertaken personal responsibility for pursuing in their respective jurisdictions.

Among the most popular of ideas to emerge was the replication of the Summit in state jurisdictions around the country. In order to assist these and other family bar leaders in hosting similar dialogues nationwide, HFI compiled this toolkit, containing the following pieces:

- Tool 1—An invitation letter to potential Summit attendees;

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<sup>1</sup> 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>.

- Tool 2—An introductory letter to attendees, setting forth the nature, organization, and goals of the Summit;
- Tool 3—A template for the Summit agenda, based on the two-day IAALS program;
- Tool 4—Ground rules and operating assumptions, to facilitate an honest, open, and respectful dialogue among attendees;
- Tool 5—Working group discussion questions, to guide breakout group sessions; and
- Tool 6—An attendee action item template, to collect attendee thoughts and individual plans for following up on Summit recommendations.

Additionally, a number of IAALS publications can be presented alongside jurisdiction-specific materials that are circulated to Summit attendees in advance:

- A foundational HFI white paper, [\*Courts and Communities: Helping Families in Transition Arising from Separation or Divorce\*](#)<sup>2</sup> describes legal and social trends for families, courts, and communities that call for a fundamental reconsideration of the support that communities provide for separating and divorcing families.
- [\*Expert commentaries responding to the HFI White Paper\*](#)<sup>3</sup> discuss various subthemes in greater detail, including the voice of the child, the importance of maintaining the traditional judicial process, the needs of self-represented litigants, and the advantages and disadvantages of dispute resolution services that exist solely outside of the courts.
- The [\*Modern Family Court Judge: Knowledge, Qualities & Skills for Success\*](#)<sup>4</sup> aims to reprioritize and revalue the role of the family court judge in the legal system. Additionally, this report enumerates 27 requisite skills, qualities, and attributes that family court judges need to be successful—a list with substantial applicability for family law practitioners.
- [\*It Is Just Good Business: The Case for Supporting Reform in Divorce Court\*](#)<sup>5</sup> examines ways in which familial distress surrounding divorce and separation can affect individual employee productivity and negatively impact a business' bottom line. This article is a useful tool in engaging businesses in supporting efforts to improve the process.

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<sup>2</sup> 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/honoring-families/publications/courts-and-communities-helping-families-transition-arising-separation>.

<sup>3</sup> *See id.*

<sup>4</sup> 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>.

<sup>5</sup> REBECCA LOVE KOURLIS, INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS., IT IS JUST GOOD BUSINESS: THE CASE FOR SUPPORTING REFORM IN DIVORCE COURT (2012), *available at* <http://iaals.du.edu/honoring-families/publications/it-just-good-business-case-supporting-reform-divorce-court>.

- An IAALS *Rule One Initiative*<sup>6</sup> publication, [Change the Culture, Change the System: Top 10 Culture Shifts Needed to Create the Courts of Tomorrow](#),<sup>7</sup> tackles the important role of cultural shifts in bringing about meaningful systemic change with respect to civil justice reform. Many of the points and suggestions in this paper are relevant for family law practitioners and other family justice system stakeholders.

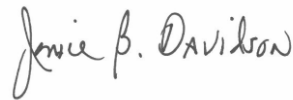
Finally, the HFI report that followed and synthesized the November 2015 Summit, [The Family Law Bar: Stewards of the System, Leaders of Change](#),<sup>8</sup> can serve as a foundational piece for beginning the dialogue in a jurisdiction or as a template for individual jurisdiction reports on local convening efforts.

It is our hope that these and similar dialogues will occur nationwide and harness the expertise of diverse, talented family law practitioners. Together, we can work toward meaningful change to ensure better outcomes for children, less-adversarial approaches for spouses/parents, and greater accessibility, efficiency, and fairness for everyone involved in the family court process.

Sincerely,

Hon. Rebecca Love Kourlis

Hon. Janice B. Davidson


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Director, Institute for the Advancement of the American Legal System

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Senior Advisor, *Honoring Families Initiative*

Natalie Anne Knowlton




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Director, *Honoring Families Initiative*

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<sup>6</sup> *Rule One* is an initiative of IAALS dedicated to advancing empirically informed models to promote greater accessibility, efficiency, and accountability in the civil justice system. Through comprehensive analysis of existing practices and the collaborative development of recommended models, the *Rule One Initiative* empowers, encourages, and enables continuous improvement in the civil justice process. Learn more at <http://iaals.du.edu/rule-one>.

<sup>7</sup> BRITTANY KAUFFMAN, INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS., *CHANGE THE CULTURE, CHANGE THE SYSTEM: TOP 10 CULTURE SHIFTS NEEDED TO CREATE THE COURTS OF TOMORROW* (2015), available at <http://iaals.du.edu/rule-one/publications/change-culture-change-system>.

<sup>8</sup> INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS., *THE FAMILY LAW BAR: STEWARDS OF THE SYSTEM, LEADERS OF CHANGE* (2016), available at [http://iaals.du.edu/sites/default/files/documents/publications/the\\_family\\_law\\_bar\\_stewards\\_of\\_the\\_system\\_leaders\\_of\\_change.pdf](http://iaals.du.edu/sites/default/files/documents/publications/the_family_law_bar_stewards_of_the_system_leaders_of_change.pdf).

## TOOL 1: INVITATION LETTER

Dear [INSERT: Potential Attendee Name]:

I am writing to invite you to be part of an invitation-only Summit that [INSERT: Individuals or Organization] is hosting on [INSERT: Date] at [INSERT: Location].

This Summit builds on the [November 2015 Family Bar Summit: Shaping the System for the Families We Serve](#), hosted by the Institute for the Advancement of the American Legal System (IAALS). Our follow-up dialogue will leverage the perspectives of diverse family lawyers in [INSERT: State or Jurisdiction] toward a common goal: identifying system improvements that will enable family law practitioners to serve clients in a timely, efficient, and affordable manner, and facilitate a process that fosters better outcomes for children.

This gathering offers a rare opportunity for you to interact with peers from diverse professional organizations and represents an important effort to unify the family bar as a powerful change agent. Attendees will be asked to shed preconceived notions about the current legal system and participate in a mutually respectful dialogue with their peers. An engaging and interactive format will allow Summit attendees to consider diverse problems in the current system and think through recommendations for improvement.

Your voice is essential and I sincerely hope you can join us.

## TOOL 2: INTRODUCTORY LETTER TO SUMMIT ATTENDEES

Dear [INSERT: Attendee Name]:

We are delighted that you have accepted our invitation to participate in the [INSERT: Event Title], hosted by [INSERT: Individuals or Organization]. We look forward to a robust discussion of the changes in the family justice system necessary to serve the needs of children and parents. The purpose of this letter is to detail the nature, organization, and goals of the Summit.

### Overarching Summit Goals

We are bringing together thought leaders from a cross-section of the family law bar with the purpose of engaging practitioners individually, and the bar as a whole, in the larger movement to facilitate change in the system for resolving family conflict and parenting disputes. A substantial body of literature<sup>9</sup> and our collective experience identify some of the key issues confronting the 21st Century system of separation and divorce:

- Crowded court dockets;
- Challenges in meeting children's needs for stability and support;
- The increasing costs and decreasing availability of legal services for middle income people and the poor;
- Multifaceted issues presented by the increasing number of self-represented litigants;
- Challenges presented by conflicts involving unmarried parents, same-sex unions, and reproductive technology;
- The disjunction between family issues and the adversarial system; and
- Complexities arising when cases involve interpersonal violence.

The family law bar possesses the experience and knowledge to respond to these opportunities. We anticipate that this Summit will identify areas of agreement about the problems in the family law system and result in specific proposals and processes for improvement.

[INSERT: Individuals or Organization] intends to issue a post-Summit report, outlining the problems confronted, the consensus goals of a reformed system, and specific programmatic recommendations. We are also hopeful that participants will be inspired from their time with each other to continue the work of the Summit by, for example, seeking implementation of a change recommendation in our jurisdiction.

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<sup>9</sup> See, e.g., 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/honoring-families/publications/courts-and-communities-helping-families-transition-arising-separation>. Also available are the various expert commentaries submitted in response to Courts and Communities, touching on self-represented litigants, family court reform, and related issues.

## The Bar's Desire for Change

Family law practitioners as a group are good and dedicated professionals who wish to better serve their clients. In preparation for its national 2015 Family Bar Summit, the Institute for the Advancement of the American Legal System (IAALS) surveyed the attitudes of the family law bar about the current state of family law conflict resolution, as well as possible reforms. Four hundred sixty-nine (469) divorce attorneys responded to the survey, all of whom are members of the American Bar Association Section of Family Law, the Association of Family and Conciliation Courts, the International Academy of Collaborative Professionals, and the American Academy of Matrimonial Lawyers.

A full report of the survey findings is available on IAALS' website<sup>10</sup>; however, the key results suggest that the surveyed family law attorneys overwhelmingly believe systemic change is necessary for them to better serve their clients:

- Almost three-quarters (73%) of divorce attorneys surveyed *disagreed* with 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";
- Survey respondents broadly agreed that a *less* adversarial system would better meet the needs of families than the current system of relying on litigation (88%);
- A large majority agreed (83%) that *comprehensive* changes in the current system are necessary; and
- A surprising and gratifying finding that evidenced the professionalism of these family law attorneys was that, of those who believed change was necessary, the overwhelming majority (95%) supported comprehensive change *even if* significant adjustments to their current practice would be required.

## Summit Organization

Discussion will center on a series of hypotheticals—distributed at the start of the Summit—that detail particular problems of the current system or proposed solutions. Designed to trigger conversation on how to translate the family law bar's desire for change into concrete suggestions for how to achieve it, the hypotheticals focus on issues that IAALS, [INSERT: Individuals or Organization], and others have identified as important to the future development of the system of family law conflict resolution:

- Interdisciplinary dispute resolution processes, removed from the court system;
- Triage and case classification systems for family cases;
- Informal and/or simplified trial processes for divorce, separation, and parental responsibility matters;
- The changing roles of the 21st Century family lawyer;

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<sup>10</sup> LOGAN CORNETT, INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS., FAMILY BAR SURVEY (2015), *available at* [http://iaals.du.edu/sites/default/files/documents/publications/on\\_current\\_issues\\_in\\_family\\_law\\_an\\_informal\\_survey\\_of\\_attorneys.pdf](http://iaals.du.edu/sites/default/files/documents/publications/on_current_issues_in_family_law_an_informal_survey_of_attorneys.pdf).

- Developments and innovations in handling situations involving or implicating domestic violence;
- Processes for custody, parenting time, and child support disputes between unmarried parents;
- The role of the child(ren) in court and the role of experts and parties' attorneys vis-à-vis child(ren);
- Litigation management and cost-containment issues in potentially contentious divorce and separation cases;
- Innovations for working with self-represented litigants in family law cases, including alternative methods of legal service delivery, such as limited scope representation, dedicated self-help centers, and Limited License Legal Technicians (LLLTs);
- Effective and efficient trial management procedures in the family law court system;
- Rationale and standards for judicial review of divorce agreements when a separating couple agrees on all issues; and
- Legal education for future family law practitioners.

The hypotheticals are deliberately brief and cue discussion questions that are intentionally broad, to encourage out-of-the-box thinking and vibrant discussion about how to modify the legal system to help attorneys better meet the needs of their clients.

Summit attendees will be divided into small pre-assigned groups to discuss these hypotheticals. Plenary sessions will follow to enable participants to consolidate and coordinate their recommendations and analyses. We will meet as a full group on the second day of the Summit, to consolidate the discussions of the prior day into concrete proposals for action, and share experiences and guidance on possible approaches for implementing these proposals. We are hopeful that attendees will choose an action item that he or she will seek to implement, and, from that, we will decide on an appropriate process for next steps.

**We will focus on sharing ideas and information, and finding answers.**

Again, we thank you for agreeing to participate in the Summit. We look forward to exciting, informative, and vibrant dialogue that will result in real change for lawyers so that they may better serve families and children.

## **TOOL 3: AGENDA TEMPLATE**

### **Day One:**

- ✓ Attendee Introduction & Summit Goals – Hosts (45 minutes)
- ✓ First Session Working Groups: Discussion Questions 1-6 – All (90 minutes)
- ✓ Working Group Reports & Full Group Session: Discussion Questions 1-6 – All (90 minutes)
- ✓ Second Session Working Groups: Discussion Questions 7-12 – All (90 minutes)
- ✓ Working Group Reports & Full Group Session: Discussion Questions 7-12 – All (90 minutes)

### **Day Two:**

- ✓ Synthesis of Day One Recommendations and Suggestions – Hosts (60 minutes)
- ✓ Full Group Session: Discussion on Recommendations and Implementation – All (120 minutes)
- ✓ Wrap-Up and Attendee Call to Action – All (30 minutes)



## **TOOL 4: SUMMIT GROUND RULES & OPERATING ASSUMPTIONS**

- ✓ We encourage informed, opinionated, and passionate discussion.
- ✓ We are a community of accomplished professionals with strongly held views and perspectives. In this room, we all must put aside established positions, known biases, and institutional loyalties—and be willing to be persuaded.
- ✓ Everyone has a voice. No one person has a veto.
- ✓ We have a limited amount of time and an expansive amount of talent and brain power. We will use time wisely, focusing on finding answers and solutions, as opposed to debating the problems and issues.
- ✓ Reaching consensus on some proposals for change would be splendid. However, if we are simply able to identify the reasons supporting any specific proposals and the challenges in implementing them, we will have achieved success.
- ✓ To facilitate candid dialogue, we ask that all agree to maintain confidentiality concerning what is said at the Summit. No one's comments are to be repeated outside of the meeting room unless the participant consents to attribution. Additionally, you have the right to not have statements or positions attributed by name in the final Summit report or accompanying materials.
- ✓ We intend for this discussion to begin with the Summit—but it will not end here. As the discussion unfolds and next steps solidify, we will determine how best to maintain the momentum created at the Summit and how best to leverage the expertise and commitment of participants.
- ✓ Meaningful change starts with you! You cannot rely on the person next to you.

## TOOL 5: WORKING GROUP DISCUSSION QUESTIONS

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| 2) A Holistic Center for Out-of-Court Divorce | 7) Self-Represented Litigants                 |
| 3) Judicial Review of Divorce Agreements      | 8) Informal Domestic Relations Trial          |
| 4) Triage and Differentiated Case Management  | 9) Children of the Divorce                    |
| 5) Litigation Management and Cost Containment | 10) Domestic Violence                         |
|   | 11) Unmarried Parents                         |
|   | 12) Education of a Future Family Law Attorney |

### **Discussion Question 1.      Role of the Family Law Attorney**

Husband, who is having an affair with another woman, wants a divorce from Wife of twenty-five years and consults a lawyer without telling Wife. The major asset in the marital estate is a real estate business that presents “key man” valuation difficulties. The only other major asset is a marital home in joint names. The only child of the marriage is thirteen years old, and Husband does not want to involve him in the conflict. Husband wants to maintain a strong relationship with Son during the divorce process and thereafter. Wife is an elementary school teacher who played no formal role in the development of the real estate business but was married to husband at the time he founded it and supported him emotionally and financially during the business’ development. Husband says he wants to be “fair” to Wife in the settlement but expresses concern that the Wife is very angry at the prospect of divorce and wants to “take husband for everything he is worth.”

### **Possible discussion points:**

- What should be the goals of Husband’s lawyer’s representation?
- What are the shortcomings of the existing legal system for divorce that prevent or limit reaching these goals?
- What changes should be made in the existing system to support achieving these goals?
- Is there any reason why lawyer should not make Husband aware of dispute resolution options such as: collaborative law, mediation, early neutral evaluation, and unbundled legal services? Should an advisement of this sort be required by ethics rules?

- Would it better serve clients if lawyer were able to partner with a psychologist or a financial planner to provide interdisciplinary services?
- What are the barriers to the recommended approach to the situation?
- What are the possible solutions?

**Discussion Question 2.      A Holistic Center for Out-of-Court Divorce**

A non-profit organization is considering establishing a Center for Out-of-Court Divorce (Center) in the town where you practice and wants the opinion of the divorce bar on the concept. The Center’s goal is to support separating and divorcing families through family reorganization with resources and services that promote a focus on the best interests of their children, and responsible management of their conflicts. Services are provided by a single organization in a single setting which for many families results in an agreement approved by the court. Center staff includes lawyer-mediators, mental health professionals, and financial planners experienced in working with divorcing and separating families. The Center accepts referrals from family courts, lawyers and mental health professionals as well as “walk-ins.” Both parents must agree to participate in Center services; the Center does not provide individual representation. Couples pay for services on a sliding scale based on their income. Couples fill out an application and are screened to ensure that they’re appropriate for Center services—no ongoing protection orders or criminal domestic violence, substance abuse, or mental illness. The couple agrees to a service plan developed by the Center staff which can include mediation, co-parent counseling, and support groups for the parents or children, or both. Financial planning is also available to advise parents on budgeting for a second household or filing for bankruptcy. If the parents reach an agreement in mediation, the Center drafts the necessary legal documents, advises the parents that they should seek independent counsel to review them, and presents the formal agreement to the court for final approval. The Center estimates that its average cost for services for families would be about \$4,000, but there are ample scholarships for anyone who cannot afford to pay. Time from initial intake to completion is estimated to average six months. The Center also has the capacity to serve as a place where new graduates (social work, psychology, and law) can do fellowships or residencies and can provide educational programs for the public.

**Possible discussion points:**

- Should the domestic relations bar encourage the creation of the Center and would it refer families to it?
- Does this strike you as a good option for some families? What worries you about it?
- What changes are needed in current procedures to maximize the number of appropriate families referred to the Center?
- What are the barriers to these approaches?
- What are possible solutions?

### **Discussion Question 3.      Judicial Review of Divorce Agreements**

Husband and Wife agree to divorce. They have reached agreement on division of their marital assets, maintenance payments, child support, and parenting/custody. Assets divided include a small business and a pension plan. They have agreed on a joint custody and time-sharing arrangement for their two children, ages 8 and 12. Both think the agreement is fair. They have “written up” their agreements using forms available on the Internet developed by the court system. They paid the appropriate fees. All forms have been appropriately completed, signed by Husband and Wife and submitted to the court.

#### **Possible discussion points:**

- What is the role of the court in reviewing the agreement?
- Should the court hold a hearing before approving the divorce agreement?
- Should the answer differ if Husband and Wife each had counsel?
- Should the answer differ if the parties do not have children?
- Assuming it was permissible, should the answer differ if both parties were jointly represented? Would it better serve families if joint representation of both parties were permitted under circumstances such as these? When would joint representation not better serve families?
- What are the barriers to these approaches?
- What are the possible solutions?

### **Discussion Question 4.      Triage and Differentiated Case Management**

The Chief Judge of the State asks for the input of the family law bar on how separation, divorce, and parenting cases should be classified for purposes of management and handling prior to creating a statewide judicial rule. She envisions a “triage” or tracking system, and wants the bar’s input on what allocation of limited judicial resources would best serve divorce clients. In her referral letter to the bar she notes that the judiciary budget is stagnant with no expectation of a significant increase in the future. The same is true of the budget for civil legal aid.

#### **Possible discussion points:**

- Would a court-wide differentiated case management system better serve clients’ needs than a system in which each judge sets his or her priority for cases?
- What characteristics of a case (such as the presence of children, the size and complexity of the marital estate, the level of conflict between the parties, the possibility of mental illness, drug or alcohol abuse, or the threat of violence) should be relevant in determining to which track the case is assigned?
- What should this tracking system look like? How should initial determinations of case assignments be made? By whom? How should the different “tracks” be categorized? By case complexity? By level of conflict between the parties? By whether counsel represents either party? Should the case classification determination ever be revisited? When?
- What are the barriers to these approaches?
- What are the possible solutions?

### **Discussion Question 5.      **Litigation Management and Cost Containment****

Parents who are hostile and suspicious of each other are in the early stages of divorce litigation. Pleadings have been served, but disclosure has not begun. The case has been assigned to a judge. Potential issues in the litigation include valuation and division of a family owned real estate business, the marital house and custody/parenting of the parents' sole child. Each parent has a job and enough income and assets to pay counsel a retainer amount of \$15,000 against an hourly rate of \$350. It will, however, create economic difficulty for each spouse to pay an additional retainer or fees above the \$15,000 initial retainer. Negotiations before the action was commenced lead both sides to believe that chances of settlement are currently "off the table" and litigation must proceed.

#### **Possible discussion points:**

- How should a lawyer (for either party) handle this case?
- How can the court system best manage situations such as this case to reduce expense but still provide a speedy and just resolution to the divorce?
- What are the barriers to these approaches?
- What are the possible solutions?

### **Discussion Question 6.      **Trial Practice****

The client's property distribution suit is ready for trial. Disclosure is complete. The key issue involves valuation of a closely held business potentially worth several million dollars, and the parties are way apart on their figures. Each side has hired a well-regarded expert witness to value the business who has submitted lengthy reports. Both sides estimate that they will need three trial days for their expert to testify and an additional two trial days for relevant additional testimony. The judiciary budget has not been increased in years. The same number of judges who presided over divorce and parenting cases in 2000 do so today, despite an increase in the number of petitions filed. The trial date has been postponed three times already. The judge who will preside over the trial advises the lawyers that her calendar is packed with cases, many of them involving self-represented litigants who take extra judicial time. She has three hours of trial time available next week, three hours three months later, and three hours three months after that.

#### **Possible discussion points:**

- What steps should the lawyers take in this situation?
- What steps should the court take in this situation?
- Assuming no increase in judicial resources, what are ways the system can be redesigned to alleviate situations such as the one here?
- What are the barriers to these approaches?

### **Discussion Question 7.      Self-Represented Litigants**

The Chief Judge of the State asks for the input of the family law bar on how the court system can best address the increasing number of self-represented litigants in divorce and parenting cases. In her referral letter to the bar she notes that the majority of litigants in divorce and parenting cases are self-represented. She would like the bar's input on how the growth of self-represented litigants has affected divorce and parenting cases and how problems, if any, can be addressed. She anticipates no growth in the judiciary budget for the foreseeable future. The same is true of the budget for civil legal aid.

#### **Possible discussion points:**

- Has the increase in self-represented litigants affected legal practice? How?
- What measures should be taken to address the increase of self-represented litigants? For example:
  - Simplify forms and expand self-help centers?
  - Mandate mediation and parent education programs?
  - Clarify the line between providing “legal advice” and “legal information” so that court help centers can expand their role?
  - Provide programs for unbundled legal services?
  - Create Limited License Legal Technicians (LLLTs), similar to nurse practitioners in medical care, to advise and assist clients in need of individualized legal assistance with non-complex family law problems?
- What are the barriers to these approaches?
- What are the possible solutions?

### **Discussion Question 8.      Informal Domestic Relations Trial**

A survey of stakeholders in family law cases conducted by the state court reflects frustration about trials when both or only one party is self-represented. Litigants complain that they are bewildered by complex rules and do not “feel heard” in court because of complex trial procedures. Lawyers complain that judges bend over backwards to help self-represented litigants. Some judges complain that they do not feel comfortable providing self-represented litigants with help and advice in complying with court rules because doing so makes them look like they favor one side over the other.

In response, the state court rulemaking body proposes that litigants can mutually agree to opt for an Informal Domestic Relations Trial (IDRT) in parenting disputes, economic disputes, or both. In the IDRT:

- Parties speak directly to the judge.
- The judge questions parties to ensure that they cover everything the judge needs to know to decide the case.

- The judge solicits additional questions from the other party or that party’s lawyer. If the questions seem helpful, the judge will ask them.
- Neither party interrupts the other or questions the other party.
- Most of the time, the parties are the only witnesses. An expert such as a doctor, counselor, custody evaluator, or appraiser can testify. Other witnesses are allowed only if the judge agrees they are needed.
- The Rules of Evidence do not strictly apply. The parties can provide any relevant documents or other evidence that they want the judge to review. The judge gives everything submitted whatever weight the judge deems appropriate.
- A lawyer for the party can help the party prepare and can sit next to the party during the trial to offer advice. The lawyer can also:
  - Identify the issues in the case;
  - Respond when the judge asks whether there are other issues that the judge should inquire about;
  - Question expert witnesses; and
  - Make short arguments about the law at the end of the case.

**Possible discussion points:**

- Should the domestic relations bar urge the State to adopt an IDRT and encourage litigants to use it? Are there disputes where it should be used and others where it should not?
- What are the barriers to this approach?
- What are the possible solutions?

**Discussion Question 9.      Children of the Divorce**

Divorcing parents bring cross motions. The parents live near each other in the same school district. Father wants the current joint custody arrangement dissolved and sole custody for him with visitation to Mother. Mother also wants the joint custody arrangement dissolved, but wants sole custody to her with visitation for Father. The child who is the subject of this motion is a twelve-year-old boy. Both parents claim: that the child wants to live with that parent; the child is suffering emotionally because of the acrimony surrounding the divorce (e.g., his school performance is declining, he is getting into trouble with peers; he has lost interest in school activities); and that the other parent is interfering in the relationship with the child.

**Possible discussion points:**

- What steps should the lawyers be able to take in this situation?
- What should the court be able to do?
- What duties, if any, should the lawyers for the parents have to the child?
- Should the court get the child’s input before resolving the motion? How?
- Should the lawyers seek, or the court order, a neutral forensic evaluation?
- Should any of the responses be different if the child were “alienated” from one parent? If a parent was accused of drug abuse or there are intimations that one parent suffered from mental illness or substance abuse? For any other reasons?
- What resources should be available in the community to address these situations?

- What are the barriers to these approaches?
- What are the possible solutions?

**Discussion Question 10.      Domestic Violence**

Lawyer represents Wife who is seeking a divorce from her Husband of five years. Wife tells lawyer the following: last night when she told Husband for the first time that she wanted a divorce, Husband got very angry and smacked her across the face. She, in return, threw a lamp at his head but missed. Husband also screamed various ugly words at her and accused her of having an affair with her best friend's former husband. Wife quickly packed a bag and moved out to temporarily live with her Mother. The police were not called. Wife tells lawyer that this is the first time that Husband has physically hit her though they have had angry arguments in the past that involved shouting, finger pointing, and shoving. This was the first time that she threw anything at him.

**Possible discussion points:**

- How should the lawyer respond to this information?
- Should a family law attorney be required to screen for domestic violence?
- How would the presence of children in the family change the response?
- What should the court be able to do in this situation? Does the court system adequately serve the needs of Wife and the family? If not, why not?
- What resources should be available in the community to address this situation?
- What are the barriers to these approaches?
- What are the possible solutions?

**Discussion Question 11.      Unmarried Parents**

Father is an auto mechanic. Last summer Father was involved in a romantic relationship with Mother, who worked as a receptionist when he met her. Mother got pregnant and gave birth to Son. Mother quit her job to raise Son and has no income other than government assistance. Father and Mother decided not to marry. They have had a falling out and no longer have a romantic relationship. In fact, their current relationship could be described as "hostile." Mother and Son are living with Maternal Grandmother who also receives public assistance.

Father is willing to acknowledge paternity of Son and states that he wants to be actively involved in Son's parenting. He is willing to pay child support and wants a regular parenting time schedule and joint decision-making. Father has not paid child support because Mother would not let him visit with Son. He has not visited with Son in several weeks due to Mother's opposition to his doing so. Mother states she wants Father to pay and has threatened to go to the local child support agency and garnish his wages. She told him she does not think he is capable of taking care of an infant. Father says he will rely on his mother to help care for Son. He also has a new girlfriend whose mention seems to infuriate Mother.



Mother believes Father's new girlfriend is a substance abuser. She believes that Father too abuses drugs. Mother does not think Father is capable of taking care of an infant and will delegate Son's care to his mother and the new girlfriend. Mother believes Father is only interested in taking care of Son to reduce his child support obligations. Mother wants Father to pay support. She is worried, however, that if she seeks support Father will seek custody of Son.

The local legal aid organization has a large backlog of requests for representation. Father makes too much to qualify for legal aid. Mother qualifies for legal aid (her household income is less than 125 percent of the federally recognized poverty level). Her case does not, however, have the elements (e.g. domestic violence, child abduction threat) that make it a legal aid priority. Pro bono organizations in the community are "maxed out" and not accepting new clients unless they have the same priority characteristics as the legal aid society.

**Possible discussion points:**

- Does Father or Mother or both need a lawyer? If so, how are they going to get one?
- What should the court be able to do in this situation?
- What are the barriers to these approaches?
- What are the possible solutions?

**Discussion Question 12.      Education of a Future Family Law Attorney**

A first year Law Student wants to be a divorce lawyer in her local community when she graduates. She is one of the few in her class to express that career aim. When she tells most of her classmates and the lawyers that she knows of her ambition they say things like: "that isn't real law"; "you will be an emotional wreck"; "the divorce bar has a bad reputation;" or "there is no financial future in such a practice because the divorce rate is declining and most people who get divorced don't have lawyers." A few of her friends and colleagues, however, encourage her and emphasize the importance of the family law attorney's role in serving clients and helping them and their children reorient their lives in a time of transition.

**Possible discussion points:**

- What courses and experiences should Law Student have during her law school career to help her realize her career ambitions?
- What can the family law bar do to help her realize her career ambitions?
- What are the barriers to these approaches?
- What are the possible solutions?

**TOOL 6: ATTENDEE ACTION ITEM TEMPLATE**

**ATTENDEE NAME:**

**DESCRIPTION OF TOPIC OR RECOMMENDATION:**

**POTENTIAL ACTION ITEM(S) FOR TOPIC OR RECOMMENDATION:**

<input type="checkbox"/>	Court Rules/Procedures	<input type="checkbox"/>	Culture Change: Bar	<input type="checkbox"/>	Article
<input type="checkbox"/>	Pilot Project	<input type="checkbox"/>	Culture Change: Bench	<input type="checkbox"/>	Legislation
<input type="checkbox"/>	Bar Organization Resolutions	<input type="checkbox"/>	Culture Change: Public	<input type="checkbox"/>	Other: _____
<input type="checkbox"/>	Rules of Professional Responsibility	<input type="checkbox"/>	Partnerships Created	<input type="checkbox"/>	Other: _____

**TENTATIVE TIMELINE FOR ACTION ITEM(S):**