

A MODEL PROCESS FOR
**Family Justice
Initiative Pathways**



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The Family Justice Initiative (FJI) is guiding courts toward improved outcomes for families, while managing costs, controlling delays, and facilitating healthy outcomes.

FJI is a partnership of the National Center for State Courts (NCSC), the Institute for the Advancement of the American Legal System (IAALS), and the National Council of Juvenile and Family Court Judges (NCJFCJ). It is supported with a grant from the State Justice Initiative (SJI).

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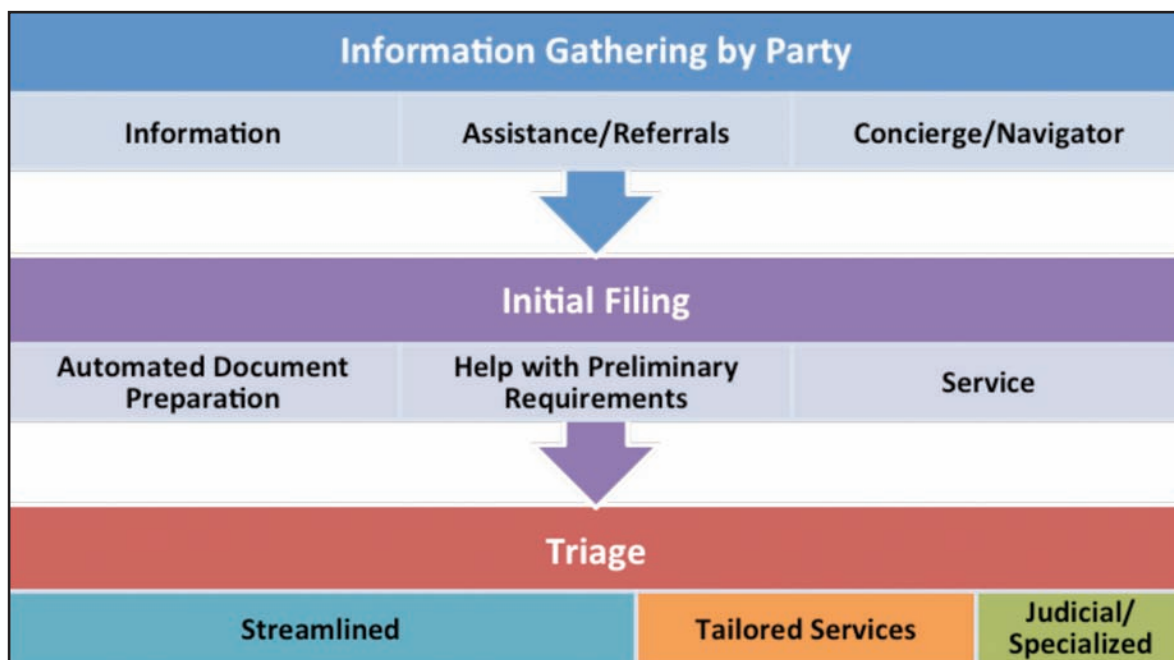
A Model Process for Family Justice Initiative Pathways



The Family Justice Initiative: Principles for Family Justice Reform establishes a flexible approach to triaging domestic relations cases that matches parties and cases to resources and services. This document sets forth best practices for this approach, but specific practices can and should be adapted to local realities.

Courts¹ must assess their community's needs, practices, and resources and implement triaging processes, to the extent possible, that are consistent with the Principles. Because these suggestions represent a change in practice, community partners—especially any specialty bar, advocacy group, and other professional organization—should be engaged to promote collaboration and support from all stakeholders.

The following graphic provides a simple overview of a model Pathway approach.



¹ This includes any court entity with the capacity to make changes that implement the principles. This could be the court system as a whole, making broad rule or policy changes, or individual courts, making changes in their own day-to-day operations.

INFORMATION GATHERING

The first stage, information gathering, is when most litigants have their first contact with the court, obtaining information and assistance in determining their legal needs and how to address them.

This graphic represents typical ways people may become aware of a legal need and sources they use to gather information about the court process.²



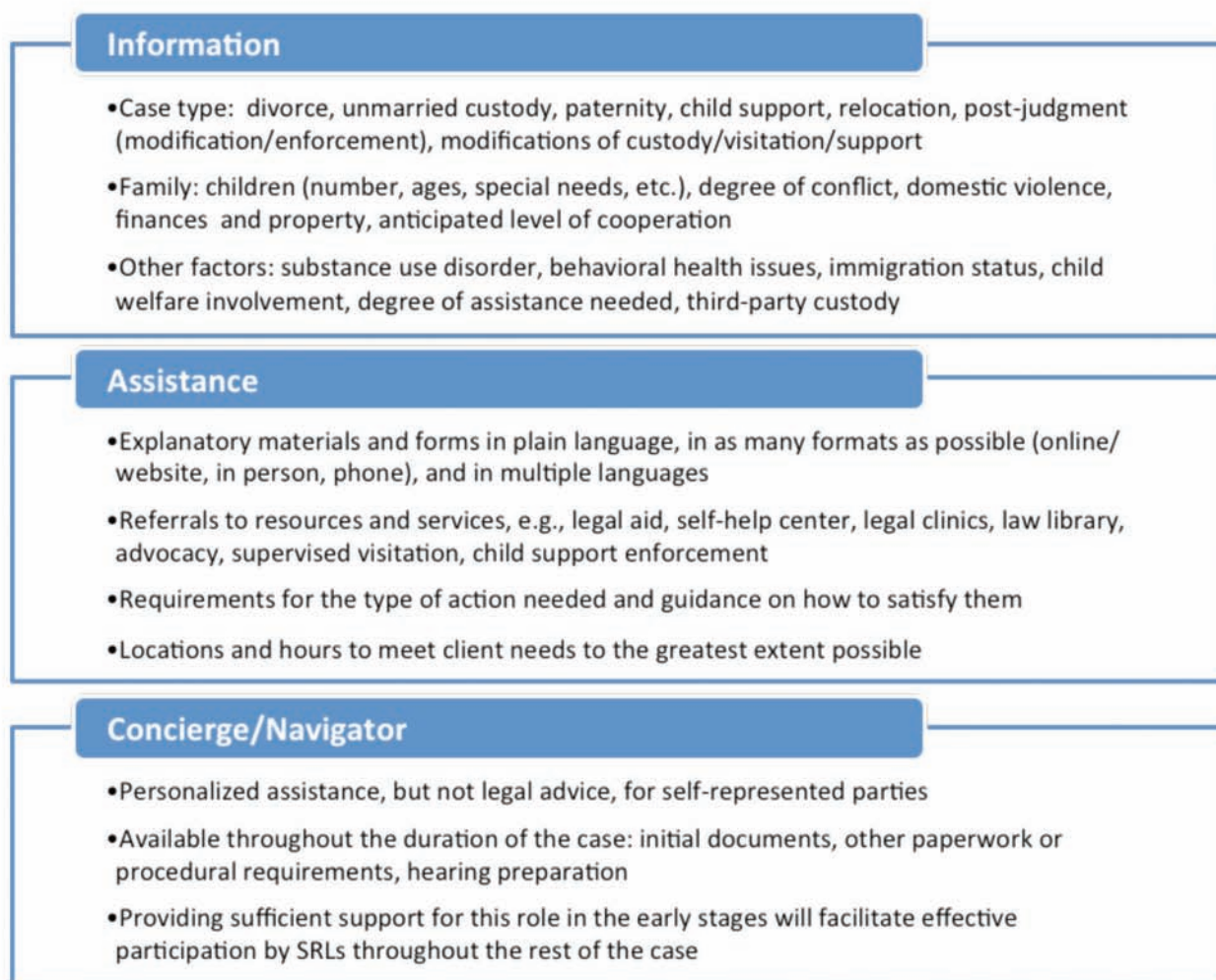
To foster a “no-wrong-door” approach, the court should take reasonable steps to ensure that information available to potential parties through these sources is accurate and easy to understand and provides guidance on how to access the court via the “door” appropriate to the parties’ legal needs. For sources managed by the court itself, court staff should be trained and provide appropriate resources and referrals.³ Additionally, the court can facilitate information gathering by having mobile-friendly websites embedded with wayfinding functions. Sources not managed directly by the court should receive informational materials (including sufficient copies for the public and potential parties) and should be offered training on court resources, access, and processes. Courts can also use Law Day presentations, ask-a-lawyer, or lawyer-in-the-library events to improve outreach.

² Please note that this list is not exhaustive; others may exist in a particular jurisdiction and should be included.

³ A wealth of information is available on effective resources and services. See, e.g., <https://www.ncsc.org/>, <http://iaals.du.edu/>, <http://ncjfcj.org/>, <https://www.srln.org/>, <https://www.courtinnovation.org/>.

Some people will simply need basic information from one of these sources. Others will need more information than these sources can provide, or they know they will need to commence or respond to a domestic relations court action.

INFORMATION GATHERING BY PARTY



Courts and clerk's offices should make information available in as many formats as possible, such as online, print, in-person (e.g., helpdesk or self-help center), or by telephone. Referrals to services, such as legal aid, a self-help center, advocacy, supervised visitation, or child support enforcement, among others, should be offered. Additional assistance can be given by allowing customers to obtain maps and instructions for getting to these resources. All information should be in plain language, should avoid legalese, and should be available in multiple languages. Care should also be taken to use language and processes that neutralize conflict wherever possible.

Parties who have counsel, and parties with or without counsel who have agreements they developed without court help, usually will not need direct access to these sources of information and can go straight to the initial filing. Nevertheless, many represented parties will find such information, presented in plain language and easily accessible,

to be helpful to their understanding of the process. Self-represented parties will find it useful to pattern any written agreements on available forms or templates. All parties should be able to access information about available process and service options, including triage pathways, and the implications of each.

Self-represented⁴ parties report that personalized assistance is most helpful, so a concierge or navigator model of assistance is especially useful.⁵ In addition, self-represented parties may need assistance to identify their legal and nonlegal needs and the appropriate case type, and then to determine what will be required of them and what assistance they might need. They will also benefit from document-preparation software and assistance with service or other preliminary requirements.

INITIAL FILING

Initial filing begins the formal court process. Represented parties will likely need no assistance to file the initial pleading and other paperwork.⁶ Self-represented parties, in contrast, often need assistance, as they have many questions about paperwork, legal requirements, and the process. Helpful tools include sending parties information and forms, providing automated document-assembly processes that guide parties through the forms, and allowing parties to complete and file forms remotely, online.⁷

Service is mentioned specifically because it can be such a major hurdle for self-represented parties. Easily understood and specific information for self-represented petitioners on how to complete service will help avoid processing delays due to service problems. The use of technology can help reduce obstacles for sending and receiving documents, increasing self-represented parties' likelihood of success.

Most jurisdictions have other requirements beyond the initial pleading and service, including additional paperwork and classes. The concierge/navigator can be tremendously helpful to self-represented parties in meeting these requirements promptly, allowing cases to move through the process quickly and efficiently rather than encountering delays due to missing or improperly completed requirements. This may include helping to gather information about related cases (e.g., criminal, protection orders, child welfare) to include in the cover sheet (described below). The concierge/navigator can also serve as an individualized case manager to help parties navigate, schedule, and develop

⁴ A debate continues about the appropriate term to refer to individuals who pursue a court case without counsel—"unrepresented" or "self-represented." The latter term is used more frequently in the literature, so it is the term used in this document. *See, e.g.,* N. A. Knowlton, L. Cornett, C. D. Gerety, and J. L. Drobinske, *Cases Without Counsel: Research on Experiences of Self-Representation in U.S. Family Court* (Denver: Institute for the Advancement of the American Legal System, 2016), available at http://iaals.du.edu/sites/default/files/documents/publications/cases_without_counsel_research_report.pdf; and J. Macfarlane, "The National Self-Represented Litigants Project: Identifying and Meeting the Needs of Self-Represented Litigants: Final Report," May 2013, available at <https://representingyourselfcanada.files.wordpress.com/2014/05/nsrlp-srl-research-study-final-report.pdf>. The scope of the debate and reasoning for each position is beyond this document's scope.

⁵ Several states use this type of position, including Alaska, California, Maryland, and Oregon. *See, e.g.,* <http://www.courts.alaska.gov/shc/family/selfhelp.htm>, <https://mdcourts.gov/family/familylawassistance>, <https://www.courts.oregon.gov/programs/family/selfhelp/Pages/default.aspx>, <http://www.courts.ca.gov/selfhelp-family.htm>.

⁶ Should implementation of the recommendations require any change in practice, such as the addition of a cover sheet or modification to an existing form to gather more complete data to assist in triage, the local bar should be engaged and encouraged to partner in developing and implementing any such changes.

⁷ Commercial vendors and free open-source providers offer this software. Examples of states that use this type of tool include Idaho and Illinois; *see* <https://www.ncsc.org/microsites/access-to-justice/home/Topics/Forms-and-Documents-Assembly.aspx>.

a plan for the process. Finally, information about issues such as domestic violence, child abuse, and substance use disorders will be important to the triage determination. The concierge/navigator, if trained and equipped with appropriate resources (e.g., private rooms), could play a role in screening represented and self-represented parties for these issues.

The information provided by parties as part of the initial filing will become part of the continuing court record. Parties should be made aware of this, and confidentiality issues should be addressed explicitly before parties submit information to the court.

INITIAL FILING

Automated document assembly process

- An assisted automated assembly process allows parties to complete a guided interview online and inserts information into proper forms; in the alternative, this would be an electronic, case management automated process
- Software designed for easy use by self-represented parties, including online dispute resolution tools; concierge/navigator can provide additional support if needed

Help with preliminary requirements and information

- Classes: parenting, process classes, etc. (e.g., Missouri; concierge/navigator can provide information to both self-represented and represented parties about any such requirements and how to satisfy them)
- Additional forms: financial declaration, fee waiver, cover sheets, etc.; concierge/navigator can help ensure filings are complete, avoiding delays caused by missing documents
- Screen for domestic violence, child abuse, substance use disorder, etc.

Service

- What service? Why is it necessary? Who is authorized to provide service? What are the costs of service?
- Obtaining and filing proof of service
- Counsel for represented parties will typically ensure service is complete; concierge/navigator can provide help to self-represented parties who are often confused by how to complete service

TRIAGE

Having sufficient information at the time of assignment will enhance the suitability of the track assignment. Much of this information can be collected with a well-designed cover sheet or other tool to capture critical data. Information about the degree of conflict and whether a history of domestic violence exists will largely influence whether the case may require specialized services. Some resources (e.g., supervised visitation, custody evaluation) are available only when children are involved. The financial aspects of the case will also affect pathway assignment. The definition of the tracks and the criteria for assignment in the initial triage instrument will necessarily be court-specific and should be based on research. The tracks, criteria, and instrument will be refined over time based on evaluation and experience.

Upon completion of the cover sheet and perfection of service, the case is ready for triage and assignment to the appropriate track: streamlined, tailored services, or judicial/specialized. Using artificial intelligence (AI), or machine learning, to identify cases with factors that reliably indicate suitability for a streamlined pathway, such as Alaska's model, can foster efficiency.

Triage Process

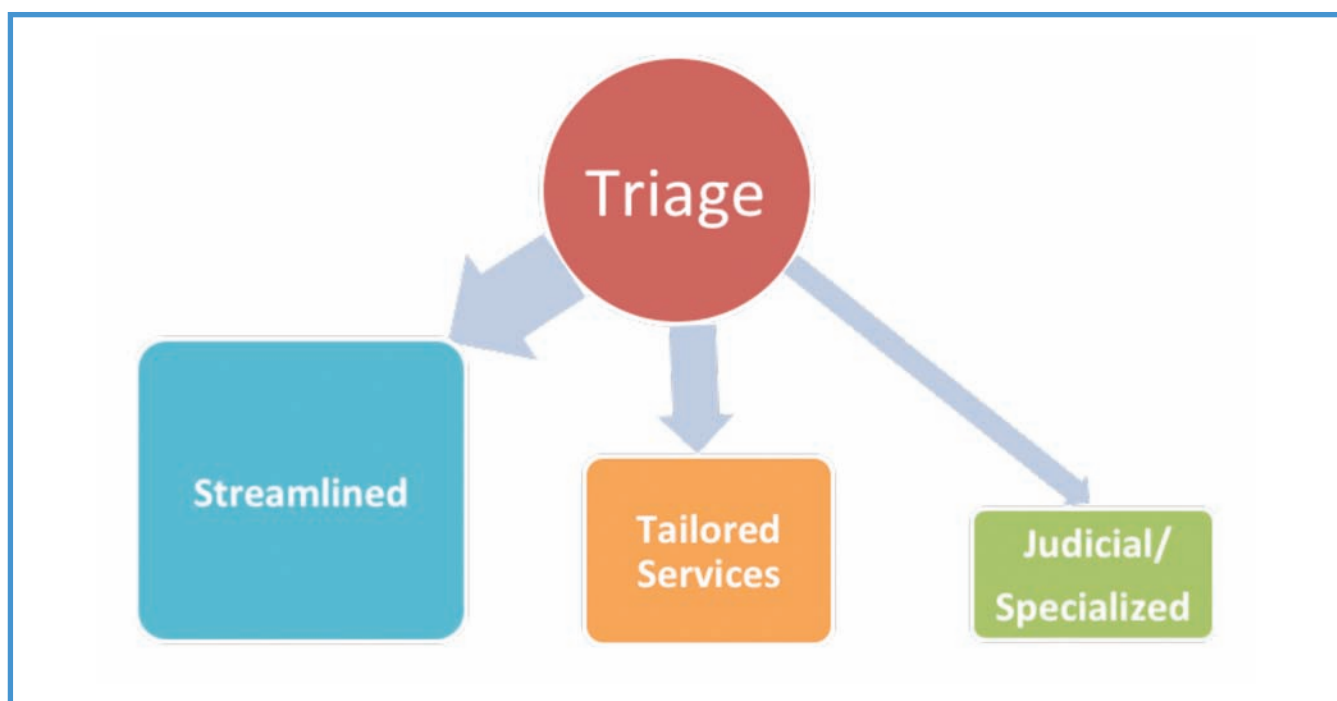
- Review information about the case: type of proceeding, facts about the family, presence/absence of complex factors, degree of conflict, parties' requests, parties' capacity to participate effectively in case/parties' need for assistance
- Initial assignment to a resolution track based on best information available by a judge at an early case conference, or by court staff based on documents or at an early meeting with the litigants and/or counsel
- Provision of a method for reassignment when the initial track proves unworkable, e.g., because of receipt of additional information or subsequent events

Tracks

- **Streamlined:** simple and/or limited issues, checklist approach with little or no discretion for decision maker, resolution quick and with minimal resources
- **Tailored services:** not suitable for streamlined track but no specialized knowledge or training necessary for judicial officer or other court-related professionals to address issues, unlikely to use experts/professionals
- **Judicial/Specialized:** one or more factors in the case require specialized training to address safely and appropriately (e.g., domestic violence, substance abuse, child abuse), may include use of experts/professionals (e.g., custody evaluation, mental health professionals, financial experts), greatest level of judicial control and resources

The system should allocate sufficient resources in the case's early stages to promote accurate track assignments. Depending on the resources and staff available in a particular court, the triage determination may be automated, at least in part.⁸ The parties also should be able to request their desired pathway, and if the case meets the criteria, particularly for the streamlined pathway, the request should be granted, and the case allowed to proceed as expeditiously as possible. In some states, statutes that impose a mandatory waiting period pose a barrier to efficient and prompt resolution of even simple cases; when possible under those statutes, courts should consider waiving the waiting period. In some jurisdictions, a case manager may review filed documents, such as pleadings, financial documentation, and the cover sheet, and may meet with the parties and/or their counsel. In other courts, the judge may hold an early case management conference at which a pathway assignment can be made. An online triaging portal can be created to assist users to assess and refer the case to the most appropriate resources. Other options are, of course, possible, and how a court implements the process will be highly specific to that jurisdiction's structure, staffing, resources, and community partners.

Once sufficient information is gathered, a preliminary assignment to one of three tracks is made: (1) streamlined process, (2) tailored services, and (3) judicial/specialized training and judicial oversight. Flexibility to reassign a case from one track to another at any stage of the proceedings must be built into the system.



⁸ Alaska, for example, has had success using AI to identify cases suitable for a streamlined process.

STREAMLINED

Stipulated Resolution

- No or minimal decision-maker discretion
- Generally decided based on standard paperwork
- Evaluation by a master/referee/commissioner/magistrate may be appropriate and efficient
- Include safeguard to provide remedy if standard result not appropriate in particular case; to maximize efficiency, inform parties when their proposal does not comply with applicable guidelines or requirements to allow revision before it is submitted to court or, if deemed appropriate, to permit justification by explaining reason for deviation

Administrative in Nature

- Limited issues, e.g., child support
- Result based on charts, very little if any discretion
- Option to seek deviation in extraordinary cases (e.g., special-needs child, safety concerns)

Default

- Failure to respond is deemed agreement to the facts and proposed remedies
- No hearing unless required to document or prove a critical issue
- A quick review to ensure the results promote safety and well-being of any children in the case or provision of method to set aside if shown to be appropriate

This track is assigned when a streamlined process, requiring little exercise of discretion and usually no hearing, is appropriate. Examples of typical processes that fit this track are administrative proceedings focused on limited issues (e.g., child support enforcement), default proceedings, and simple cases where the parties seek an order approving a stipulated result.⁹

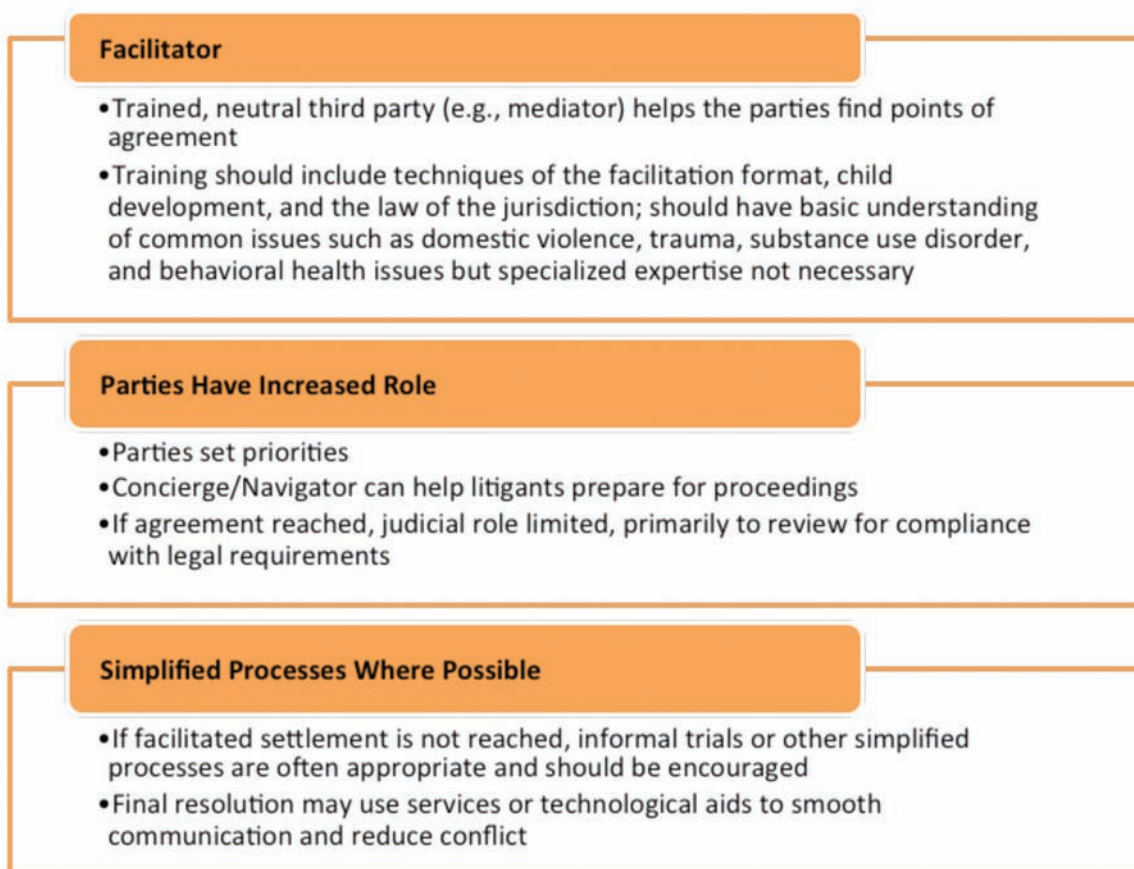
The goal is to grant the parties a swift resolution with minimal court resources. Nevertheless, safeguards should be in place to allow a different result in the event a case warrants an exception to the standard process (e.g., deviation from standard child support, option for motion to set aside a default or default judgment, discretion to order a hearing to review a stipulated result that seems extremely one-sided, especially if indicators of coercion are present, such as a related protection order).

⁹ For example, Nevada's and Colorado's joint divorce petition processes.

TAILORED SERVICES

These cases, while not suitable for the streamlined track, are fairly typical and do not include sensitive matters or issues likely to need expert or specialized training to be adequately addressed. Virtually all of these cases will be suitable for some form of facilitated settlement. Almost half of the states require mediation (or some form of alternative dispute resolution) in at least some cases or for certain issues, and only one state does not expressly permit it.¹⁰ Proponents of tailored-services resolution note that the result is more likely to meet the family's needs if the parties are invested and have agreed to the outcome.

If the parties are unable to agree, or if they agree on some issues but remain in dispute on others, the court should consider simplified processes when appropriate. Enabling litigants to appear by telephone or videoconference and using online dispute resolution where available can increase flexibility for all parties involved and increase efficiency for the parties and the court.



¹⁰ National Council of Juvenile and Family Court Judges, "Custody Mediation Where Domestic Violence Is Present," Reno, Nevada, 2014, available at <http://www.ncjfcj.org/sites/default/files/chart-mediation-dv-present.pdf>.

JUDICIAL/SPECIALIZED

Cases involving domestic violence, child abuse, substance abuse, or mental health issues require specialized knowledge and expertise to handle them safely and appropriately. These cases benefit from a greater degree of judicial involvement, provided that the judge is adequately trained on these issues. Such cases can be suitable for a facilitated settlement if the facilitator has sufficient training and if appropriate safeguards are taken (such as shuttle mediation, staggered arrival and departure times, separate waiting areas); some form of alternative dispute resolution may be preferable since litigation can be traumatizing. These cases, at least when the parties are represented by counsel, are more likely to include formal discovery and the use of experts or court-appointed professionals. Any such professionals should be selected carefully to ensure they have the required expertise for the issues in the case.

Resources or Services

- "High conflict"
- Substance use disorder (especially untreated/uncontrolled)
- Mental health issues
- Family violence
- Child welfare involvement
- Extended family involvement
- Immigration issues/foreign status
- Complex finances

Judicial Oversight and Specialized Training

- Judge has more control over the case as it proceeds, tailors processes to needs of family and factors involved
- Judge may be decision maker or may have stronger oversight role of facilitated settlement processes
- Broad training for the judge, and any court-related or appointed professionals, on the issues involved in the case will help ensure the outcome is fair, safe, and meets the family's needs so as to foster compliance

Services

- Final result may involve use of services such as supervised visitation and exchange, parent coordinators, technological aids to reduce conflict and foster safety
- May use professionals such as custody evaluators or guardians ad litem to assist court
- Experts much more common than in other tracks
- Efforts to secure legal services, including unbundled or remote, may be worthwhile and extremely helpful to litigants and the court; if unsuccessful, concierge/navigator may provide some assistance in preparing for proceedings

When one or both parties are self-represented, these cases can be extremely challenging for judges. Clear guidance on the appropriate role of the judge in cases with self-represented parties is helpful, as is training on effective management of these cases. Efforts to secure some level of legal services would be appropriate here and encouragement of unbundled representation may be desirable.

Allowing remote attendance at court hearings and digital submission of evidence can assist in streamlining some services in high-conflict cases. Higher complexity also introduces the importance of maintaining a list of parties' personal needs, which helps ensure needed services are arranged (e.g., supervised visitation, parenting coordination, substance use or mental health treatment). Investment of adequate resources for these cases will help ensure that the outcome meets the parties' needs, thereby avoiding post-decree motions and reducing noncompliance.



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