



Family Justice Initiative

The Landscape of Domestic Relations Cases in State Courts

In collaboration with the Conference of Chief Justices (CCJ) and the Conference of State Court Administrators (COSCA), this project was designed to assess the current landscape and promulgate recommendations to improve domestic relations proceedings, legislation, rules, and practices that impact resolutions for families. The Family Justice Initiative (FJI) will help guide courts toward improved outcomes for families while managing costs, controlling delays, and facilitating healthy outcomes. 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) are working together to support the FJI Project.

Project MISSION



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Executive Summary

Domestic relations cases are a key entry point into the state court system for many American families. The characteristics of these cases have changed rapidly over the last several decades, and the landscape of current domestic relations litigation is not fully understood. The positive response to the findings and subsequent recommendations of the CCJ Civil Justice Improvements Committee prompted the CCJ/COSCA Joint Committee on Courts, Children and Families to initiate the Family Justice Initiative (FJI), which employs a similar methodology to domestic relations cases. An FJI Task Force has been formed to develop recommendations for issues facing domestic relations cases, and an FJI Landscape study was commissioned to provide the Task Force with information about domestic relations caseloads in state courts.

Currently, anecdotal accounts and conventional wisdom are the most prevalent evidence for issues in domestic relations cases. This landscape study tested that conventional wisdom using actual court data, finding that many are correct. This report documents the caseload characteristics of domestic relations cases disposed between July 1, 2016, and June 30, 2017, across eleven large, urban courts. Three levels of analysis were used to examine the landscape of litigation in domestic relations cases: case-level, court procedures and operations, and community characteristics. The sample of 147,436 cases represented approximately 8 percent of domestic relations caseloads nationally.

Findings

More than three-quarters (76%) of cases were divorce/dissolution cases, followed by “other” (14%), a case type used by some courts in their case management system. The final 10 percent of cases involved parental responsibility claims (e.g., custody/visitation, child support). Some courts were unable to provide one or more of these case type categories and may have grouped categories together more broadly (e.g., a custody case grouped under the initiating divorce case). About half of cases (51.7%) involved minor children.

Cases were primarily disposed by a judgment (76.5%), followed by dismissals (20.3%), with the remaining cases disposed by transfer or by an unknown disposition type. Judgments were mostly unspecified formal adjudications (34%), followed

by settlements (26%), then default judgments (17%). Time to disposition was examined at the 75th percentile, which represents the time it takes for 75 percent of cases to dispose. This method was chosen as averages are sensitive to extreme values and medians often reflect optimistic standards for comparison. The 75th percentile for time to disposition across all cases was 263 days, or about 8 and a half months. Divorce cases typically have statutory waiting periods before a final decree can be issued. Each site’s statutory waiting period was factored into their divorce caseload by subtracting the minimum statutory waiting period from the total time to disposition for divorce cases. The adjusted time to disposition for divorce cases was 170 days, or about five and a half months when excluding waiting periods. Overall, the cases included in the study were close to meeting the Model Time Standards.



Contested versus Uncontested Cases

The majority of cases (64.3%) in the FJI Landscape were uncontested, which was consistent across courts and case types. Contested cases were more likely than uncontested cases to involve minor children and had higher rates of requests for emergency or injunctive relief and allegations of domestic violence. Scheduled and held in-court hearings and pretrial conferences were also more frequent in contested cases, indicating more court involvement in those cases with contested issues. Interestingly, there was no significant difference

in average time to disposition between contested and uncontested cases. Other case characteristics may have confounded this result, as other case factors are important contributors to case time (e.g., manner of disposition, case type).

Representation Status

As expected, the majority of cases (72%) involved at least one self-represented party. The petitioner was more likely to be represented than the respondent across courts and case types (42% versus 33% overall, respectively). Both parties were more likely to be represented in contested cases. For initial filings, both parties were more likely to be represented when the case involved minor children. In reopened filings, both parties were more likely to be represented in cases without the involvement of minor children. Cases in which there was at least one self-represented party were less likely to secure a final judgment, and more likely to have their case dismissed.

Self-help resources for litigants at each court were examined in light the representation status of litigants and community demographics. The number of self-help resources provided by the court was related to the proportion of self-represented litigants in the study caseload. The self-help resources most highly related to self-representation were fillable and interactive forms and presence of a domestic relations navigator. As the median adjusted income across sites increased, the presence of these resources decreased.

Filing Type

Most cases (80%) were initial filings of a new case, rather than a reopened case requesting modification or enforcement. This was consistent across sites, ranging from 65 percent to 95 percent. Based on the overall proportion of reopened cases across sites, approximately 25 percent of new cases will eventually reopen. Considering only reopened filings, the average number of reopened petitions per case was 2.7. Reopened cases were more likely to be contested and more likely to involve minor children than initial filings. Cases without minors tended to reopen within the first two years following the original disposition and level off, while cases with minors reopened at a higher rate and had a wider spread of reopened petitions over several years post-disposition.

Conclusions

The FJI Landscape study represents the first large, aggregate examination of how family court cases are litigated in the state courts. Much of the findings confirmed conventional wisdom about family court litigation, though several offered new insights into the typical domestic relations case.

The study findings also raise questions both of how domestic relations cases should be managed and whether the judicial branch is still the most appropriate forum for such cases.

The findings from this study highlight the importance of data quality in the management of family court cases. Much of the CMS data that are routinely collected by state courts harken to a predominantly adjudicative system that no longer exists in domestic relations cases. The CMS data captured by courts fail to indicate both the need for closer judicial involvement in dispute resolution and the appropriate allocation of resources to assist litigants as they reorganize their family relationships. Moreover, the data fail to provide a systematic basis for assessing court performance with respect to the effective use of court resources and its relationship to case outcomes.

The study findings also raise questions both of how domestic relations cases should be managed and whether the judicial branch is still the most appropriate forum for such cases. External resources and programs, such as private mediation, have continued to develop to serve families and resolve conflicts. The judiciary has developed programs and resources to meet the needs of families as well, but still maintains many features of the adversarial system used to litigate other case types outside of family court. Judges and court staff understand their role in achieving better outcomes for families, but the litigation framework for these cases may be ready for reconstruction. Resources for litigants and judicial officers to aid in gathering pertinent case information and to support healthier outcomes for families should continue to be developed and implemented across state courts.

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A brief Introduction

While civil and criminal case types are unique and present their own challenges, family case types including divorce, separation, and cases allocating parental responsibility (e.g., child support, custody/visitation) have some important characteristics that distinguish them from other types of cases filed in state courts. For example, the basis for most claims in civil cases concern a past event, static in time. Many issues in family cases are ongoing, changing even while the case is pending. The issues are also forward looking, requiring a court to assess past events for purposes of shaping future behaviors and relationships. Relationships between family court litigants do not end when the family case ends, and the court decisions and experience during the process can have a lifelong impact. For this reason, many judges and family law attorneys report that cases frequently come back to court to adjust for new circumstances or to resolve new disputes surrounding custody, support visitation, and division of assets.

Due to the circumstances giving rise to divorce and separation cases, litigants often present with complicated emotional and non-legal issues, including mental health and substance abuse.¹ Indeed, some family court cases are precipitated by cases involving other areas of law or other courts (e.g., child abuse/neglect, domestic violence, or criminal charges). Many families benefit from therapeutic, financial planning, and other future planning services provided by the court or community resources.² Similarly, family courts benefit from familiarity with interdisciplinary theories and tools from social work, psychology, and dispute resolution. Ancillary legal issues in family cases can also be extensive, including bankruptcy law, estate planning, contract law, immigration law, criminal law, tax law, and others. Judges and judicial officers must be familiar with a breadth of potential legal issues to make informed decisions in family cases.

The look and feel of family law cases has changed dramatically over the last half-century. Through the 1960s, divorce was based on establishing fault

(e.g., through adultery, cruelty, abandonment), and dispute resolution around these issues fit reasonably well in the context of an adversarial system of justice designed to apportion fault between parties. States began moving to no-fault divorce in the late 1960s, which changed the function of the adjudicative process from finding facts and assessing fault to equitably distributing marital assets and allocating parental responsibilities.



The institution of marriage has also changed over the last 50 years. A growing number of couples now choose to cohabitate without formalizing their relationship through legal marriage. Gender roles have also changed within families so that a much greater proportion of women work outside the home rather than staying home to care for minor children. Conversely, more men are assuming full-time caregiver roles for children.³ Consequently, assumptions about which parent is the predominant income earner in the family are often no longer valid. While it is difficult to calculate a precise divorce rate, common references estimate it to be between 40 and 50 percent.⁴ Those families sometimes come before the court for help as well in matters of paternity, parenting time, and child support. In short, the number of individuals who come before the court in some family-related cases are significant. For many, it may be the only exposure they have to the justice system.

¹ National Institutes of Health Public Access, Reasons for Divorce and Recollections of Premarital Intervention: Implications for Improving Relationship Education 5-6 (June 2013), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4012696/pdf/nihms574558.pdf>.

² Adversarial procedures are essential but do not fit the needs of most separating and divorcing families. Many litigants, even those who prevail at trial, have expressed dissatisfaction with the adversary process, reporting that the court process escalated their level of conflict and distrust to an extreme. In addition, decades of research clearly show that the level of conflict between parents is one of the most important influences on how well children cope with the challenges that separation and divorce present. See IAALS, Courts and Communities Helping Families in Transition Arising from Separation and Divorce 360 (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 Growing Number of Dads Home with the Kids (June 2014), available at <http://www.pewsocialtrends.org/2014/06/05/growing-number-of-dads-home-with-the-kids/>.

⁴ American Psychological Association, available at <http://www.apa.org/topics/divorce/>.

Although the context changed dramatically, the adversarial model persists as the primary means of resolving divorce and separation cases. In most state courts, divorce, separation, and cases involving allocation of parental responsibility are handled within the framework of litigation processes. Certainly, adversarial procedures rooted in due process are of foundational importance in some family cases, particularly those in which divorcing and separating families need the court's protection, fact-finding, and enforcement functions. But many families do not require these core functions. Many families need only a formal divorce decree, or resolution of some contested issues. Responding to these changes, some courts have adjusted procedural rules to reduce the amount of formal court involvement for cases in which parties agree about the terms of the divorce decree and no children are involved. Although the number of cases that remain contested throughout the process and go to full hearing may be relatively small, those cases tend to be more complex and may require more court and judge time. They may also be the cases that come back on post-decree motions.

For many families – in contested and uncontested cases alike – adversarial processes inflame tensions and divide spouses and parents at a time when they most need to be making good decisions concerning children, assets, and future events. Parental conflict is a primary indicator of how well children fare following the divorce or separation.⁵ Parents in crisis and constant conflict are limited in their abilities to act as positive role models for their children, make healthy compromises, and plan together in support of their children.⁶ An acrimonious, divisive divorce can have long-term impacts on children's lives, putting them at risk of emotional, behavioral, and psychological problems. Children experiencing divorce tend to fare better when both parents are productively co-parenting and engaged in a healthy reorganization of the family.⁷

To minimize the degree of conflict, many family courts have implemented non-adversarial dispute resolution processes, such as mediation, Early Neutral Evaluation/Assessment, Early Resolution Conferences, and others. Additionally, parental education programs are now widespread in family courts around the country, providing parents with information about how to minimize conflict, facilitate co-parenting, and broadly prioritize the child during the divorce process. Nonetheless, litigation is the default for divorcing and separating families, and, in some places, it remains the first, and often only, recourse.

As is increasingly true in other areas of law, in many courts, majorities of divorce and separation litigants are without legal representation. In some courts, upwards of 70 to 80 percent of cases reportedly involve at least one self-represented litigant (SRL). The reason for self-representation may differ from case to case and from litigant to litigant. Some people simply cannot afford to hire a lawyer.⁸ Others may be able to afford a lawyer, but choose not to because they believe they can achieve a satisfactory result without one and do not believe that the added value of a lawyer justifies the cost.⁹ Some people believe that lawyers make the process unnecessarily adversarial and prefer not to create additional conflict in the relationship.¹⁰ None of these reasons are necessarily mutually exclusive.

Research shows that SRLs struggle with numerous facets of the process: forms and paperwork, compiling and presenting evidence, understanding what to do at various stages of the process, and participating in hearings and trial.¹¹ Research has also suggested that difficulties presenting evidence at trial can impact case outcomes to the extent that judges do not have the information they need to make an informed decision in the case.¹² Relatedly, SRLs themselves often express the perspective that they feel disadvantaged in the system without an attorney, and they repeatedly ask for better services from the court in helping them navigate the system.¹³

⁵ Robert E. Emery, *Renegotiating Family Relationships: Divorce, Child Custody, and Mediation* 205–15 (1994).

⁶ *Id.*

⁷ IAALS, *Courts and Communities Helping Families in Transition Arising from Separation and Divorce* 354 (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.

⁸ IAALS, *Cases Without Counsel: Research on Experiences of Self-Representation in U.S. Family Court* 12–13 (May 2016), available at http://iaals.du.edu/sites/default/files/documents/publications/cases_without_counsel_research_report.pdf.

⁹ *Id.* at 15.

¹⁰ *Id.* at 18.

¹¹ *Id.* at 32–34.

¹² *Id.* at 44.

¹³ *Id.* at 26–28, 43–44; Dr. Julie Macfarlane, *The National Self-Represented Litigant Project: Identifying and Meeting the Needs of Self-Represented Litigants* 49 (May 2013), available at http://www.lsuc.on.ca/uploadedFiles/For_the_Public/About_the_Law_Society/Convocation_Decisions/2014/Self-represented_project.pdf.



70%-80%

of cases reportedly involve at least one SRL

40%-50%

is the estimated annual divorce rate across the United States

4.5 M

is the estimated number of state-level domestic relations cases in 2016

Reform Efforts

The mismatch between the adversarial system and the needs of children and families, coupled with the increasing numbers of SRLs, has led courts to try to develop new tools and new processes, such as onsite self-help staff or centers; online video tutorials, instructions, and packets of information; fillable and interactive forms; onsite workshops and volunteer attorney sessions; and more recently online dispute resolution (ODR). Some courts are testing streamlined resolution systems, designed to give

To make smart decisions about what needs to change, we first try to understand what currently exists.



Scott M. Matheson Courthouse, Salt Lake City, UT

The Landscape of Domestic Relations Cases in State Courts analyzed family court caseloads from 11 large, urban courts. One of the participating courts was the Third District Court in Salt Lake County, Utah.

the litigants greater access to a mediator, attorney (for unbundled help), and judge such that they can triage and complete their cases more effectively.¹⁴ Other courts are testing hearings with the judge at which the litigants are not bound by the rules of evidence and can just state their position.¹⁵ Additionally, judges are having to walk new lines and receive new training in how to navigate family cases with SRLs.¹⁶ This area of the court's work cries out for new solutions. But to make smart decisions about what needs to change, we first try to understand what currently exists.

¹⁴ Early Resolution for Family Law Cases in Alaska's Courts, https://www.uaa.alaska.edu/academics/college-of-health/departments/justice-center/alaska-justice-forum/31/1-2springsummer2014/d_erp.cshtml.

¹⁵ See Alaska Informal Domestic Relations Trial Program, available at <http://courts.alaska.gov/shc/family/shcdr-trials.htm>; See also Oregon Informal Domestic Relations Trial, available at <https://www.courts.oregon.gov/courts/deschutes/go/Pages/informal-dom-rel-trials.aspx>; Idaho Informal Custody Trial, available at <https://isc.idaho.gov/irflp713>. In addition, the Idaho Rules of Family Law Procedure replaces the Federal Rules of Evidence and sets forth a simpler standard of evidence, available at <https://www.isc.idaho.gov/irflp>.

¹⁶ IAALS, Cases Without Counsel 44, 49-51.

Background to FJI



In many respects, problems associated with domestic relations case processing are similar to those that plague tort, contract, and real property cases – namely, excessive cost, delay, and inadequate access to justice. These were the primary focus for members of the Conference of Chief Justices (CCJ) Civil Justice Improvements Committee (CJI Committee), which was convened in 2014 to develop recommendations to improve the civil justice system.¹⁷ The effort began with an NCSC study of civil caseloads in state courts to provide the CJI Committee with an accurate snapshot of case and litigant characteristics on which to debate recommended policies. The *Landscape of Civil Litigation in State Courts (Civil Landscape)*¹⁸ focused exclusively on general civil cases (e.g., tort, contract, real property, small claims, and “other civil”¹⁹ cases). In defining the scope of the study, the CJI Committee recognized that divorce/dissolution, guardianship/conservatorship, child welfare, and similar case types were sufficiently different in terms of the relationship between litigants and the available remedies that it excluded these case types from the Civil Landscape study.

The CJI Committee comprised representatives from key stakeholders in the civil justice system, including judges and court administrators at all levels of the court system, the civil bar, the business community, Legal Aid, and the legal academy. Working collectively and in subcommittees focused on court rules and court operations, respectively, the CJI Committee members spent two years reviewing evidence derived from state pilot projects and other applicable research,

and informed by implemented rules changes and stakeholder input.²⁰ The resulting report proposed a set of 13 recommendations that highlighted the importance of court rather than party control of civil case management, effective civil case triage and assignment to an appropriate case management pathway, adequate administrative support to monitor and enforce compliance with rules and court orders, and improved customer services for litigants. The recommendations were endorsed by CCJ and the Conference of State Court Administrators (COSCA) at their annual meeting in August 2016.

After reading the CJI Committee report, several CCJ/COSCA Joint Committee on Courts, Children and Families (CCF Committee) members expressed their belief that the CJI recommendations could be easily modified and implemented in domestic relations courts. They recognized, however, that the comprehensive scope and quality of the CJI Committee recommendations was due in large part to the process the Committee employed. Consequently, the CCF Committee secured funding from the State Justice Institute to replicate the CJI Committee process, including a study of domestic relations caseloads, the careful review of evidence from pilot projects and other research, the extensive stakeholder input, and ongoing support for implementation efforts. The present study—*The Landscape of Domestic Relations Cases in State Courts* – is the first step in this process.

¹⁷ CCJ Civil Justice Improvements Committee, *Call to Action: Achieving Civil Justice for All* (2016).

¹⁸ Civil Justice Initiative: *The Landscape of Civil Litigation in State Courts* (2015).

¹⁹ “Other civil” includes appeals from administrative agencies and limited jurisdiction courts, and cases involving criminal or domestic-related matters (e.g., civil stalking petitions, grand jury matters, habeas petitions, and bond claims.) *Id.* at 17.

²⁰ With a generous grant from the State Justice Institute (SJI-13-P-201), the NCSC and IAALS provided research and logistical support to the CJI Committee throughout this process. Since 2016, the NCSC and IAALS have continued to work with state and local courts across the country to implement the CJI recommendations (SJI-16-P-231).

About the Data & Methods

To ensure a well-rounded examination of litigation in family court cases, the FJI Landscape study involved three separate levels of analysis: case-level, court procedures and operations, and community characteristics. The case-level analysis was based on data extracted from the case management systems (CMS) of 11 large, urban counties.²¹ The study was designed to focus primarily on “bread-and-butter” family court cases involving divorce/dissolution or annulment, related property distribution and spousal support, and the allocation of parental rights and responsibilities, including custody/visitation and child support. Court orders related to these types of petitions are sometimes entered in other types of cases, such as domestic violence, guardianship, juvenile, and child dependency cases. The unique legal, social, and psychological issues associated with those case types often complicate the management of domestic relations cases. Consequently, the present study excludes cases that originated as criminal, probate, or juvenile dockets; child support enforcement cases brought by Title IV-D agencies; paternity actions unless filed specifically to allocate parental rights and responsibilities; child dependency cases; and adoption actions.

Figure 1
Domestic Relations Composition in 20 States, 2016
Court Statistics Project, www.courtstatistics.org

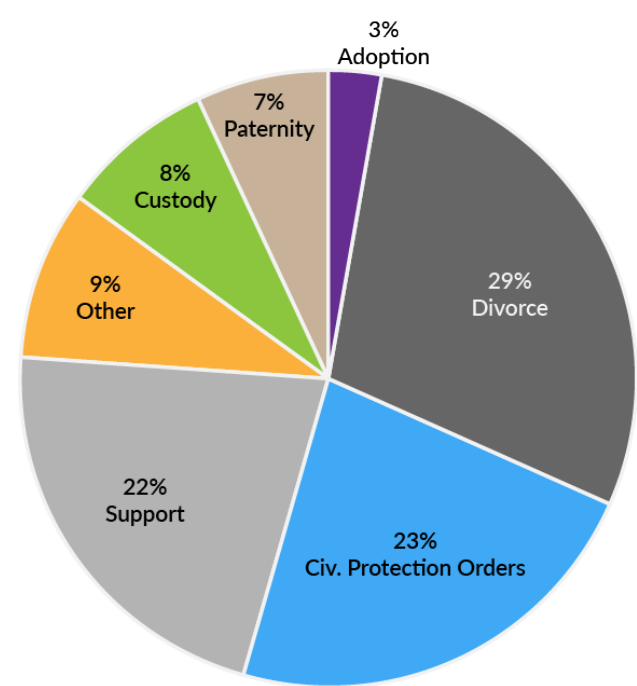
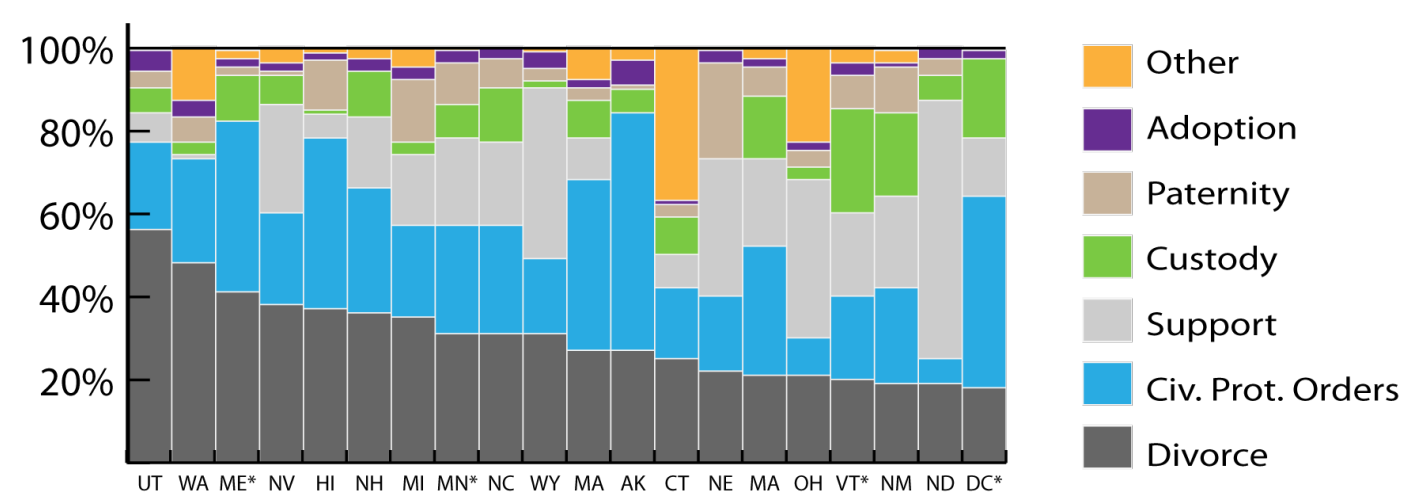


Figure 2
Statewide Domestic Relations Caseload Composition in 20 States, 2016
Court Statistics Project, www.courtstatistics.org



* Single-tiered court system.

²¹ Except in research that focuses on issues of particular importance to smaller, rural jurisdictions, the NCSC generally partners with large, urban courts for studies that rely heavily on empirical data. Urban courts generally have sufficient case volume to ensure an adequate sample size on which to draw reliable conclusions. Moreover, urban courts often have more sophisticated CMS, greater probability of capturing data elements of interest, and more rigorous adherence to case management procedures, which minimizes the risk of distortion due to local court idiosyncrasies. In the context of family court operations, urban courts also often have a greater variety and better quality resources for litigants than rural courts.

The case types examined in the present study comprise approximately two-thirds of domestic relations caseloads,²² although case composition varies dramatically from state to state (see Figures 1 and 2).²³ The NCSC requested information on 46 data elements for domestic relations cases that disposed between July 1, 2016 and June 30, 2017. The requested data elements focused on case identification information, case and litigant characteristics, and case events. Appendix A provides a detailed list of the requested data elements. Eligible cases included initial cases as well as cases that had been reopened for modification of an earlier domestic relations court order. Twenty courts were initially invited to participate in the study,²⁴ with an aim to recruit ten courts to provide data. Eleven courts agreed to participate and provide data to the study specifications. Collectively, these courts serve approximately 8 percent of the total U.S. population.

None of the courts provide all the requested data elements from their CMS. On average, these courts routinely capture 28 of 46 requested data elements (60%), but the range varied from 16 to 37.

Some data elements were readily available in all sites while others were rarely, if ever, documented in CMS. All sites provided basic case information, such as the case number, case type, filing and disposition dates, manner of disposition, and representation status of the parties (Table 1). Fewer sites could provide data on case events and motions, document whether parties had complied with mandatory court orders (e.g., parent education), or flag cases with potentially complicating factors (e.g., motions for emergency relief; allegations of domestic violence, child abuse, substance abuse, or mental illness). Some courts capture the data elements in CMS, but in a format that could not be easily extracted or as text fields that lacked consistency in data entry. Data quality for individual data elements also varied considerably from court to court.

Table 1
Number of Sites Providing Requested Data Elements


Requested Data Element	Number of Sites Providing Data
Case number	11
Case type	11
Representation status plaintiff	11
Representation status defendant	11
Current filing date	11
Current disposition date	11
Manner of disposition	11
Petitioner/plaintiff name	10
Respondent/defendant name	10
Other party name	10
Minors Involved	10
Filing date for initial case	10
Disposition date for initial case	10
Disposition date for reopened case	10
Party relationship to action	9
Filing date for reopened cases	9
Was the case contested	9
Filing type (initial or reopened)	8
Number of minors	8
Date answer/Responsive pleading	8
Guardian ad litem	8
Number of pretrial conferences scheduled	8
Number of in-court hearings scheduled	8
Dates of in-court hearings	7
Number of times reopened	6
ADR scheduled	6
Both/Either party attend education	6
Dates parent education	6
Dates of pretrial conferences	6
Attorney appointed for minor	5
Ages of minors	5
ADR held	4
ADR date	4
Petitioner attend education	4
Respondent attend education	4
Number of in-court hearings held	4
Joint or stipulated petition	3
Petitioner request emergency relief	3
Respondent request emergency relief	3
Domestic violence allegations	3
Number of pretrial conferences held	3
Parent education scheduled	2
Number of adversarial motions	2
Mental illness allegations	1
Child abuse allegations	0
Substance abuse allegations	0

²² NCSC Court Statistics Project, Domestic Relations Composition in 20 States, 2016, located at <http://www.courtstatistics.org/~media/Microsites/Files/CSP/Domestic%20Relations/PDFs/EWSC-2016-DR-Page-2-Comp-Pie.ashx>.

²³ NCSC Court Statistics Project, Statewide Domestic Relations Caseload Composition in 20 States, 2016, located at <http://www.courtstatistics.org/Domestic-Relations/Domestic-Relations-Caseloads-2016.aspx>. Eight of the 20 states reflected in Figures 1 and 2 differentiated Title IV-D from non-Title IV-D cases. Those states reported that two-thirds of the support caseloads were Title IV-D cases, 13% were non-IVD cases, leaving 20% reported as other support-related issues.

²⁴ Based on population statistics provided by the U.S. Census Bureau, the NCSC identified the largest county population for each state and the District of Columbia and solicited participation from courts with domestic relations jurisdiction for the 20 most populous counties.

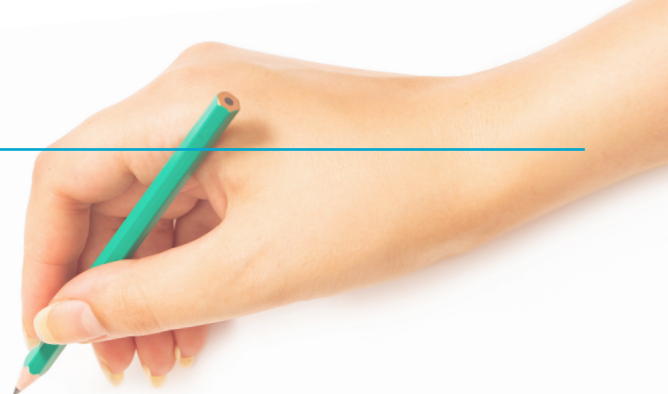
The case-level analyses were supplemented with both court- and county-level data. Court-level data were collected by IAALS through research on statutes and court rules as well as in-depth interviews with court administrators from each site to document internal policies and procedures (see Appendix B). Of interest was the relative workload and stability of the family court bench in each of the participating courts, the existence and use of screening criteria for family case triage, and the types of litigant services including self-help resources provided by the court. These court-level factors can affect court and litigant management of domestic relations cases, including the amount of time needed to fully resolve cases and the ultimate manner of disposition.

- 
- *Eleven diverse sites were selected to participate in the study.*
 - *The NCSC requested information on 46 data elements for domestic relations cases.*
 - *The case-level analyses were supplemented with both court- and county-level data.*
 - *All sites provided basic case information.*

Key information from these Court Profiles was collected for analysis using a standardized coding form and incorporated into the case-level dataset.²⁵

Finally, community characteristics can affect domestic relations filings as well as case management practices by the court, especially the types of resources offered to litigants. For example, counties with comparatively high marriage rates have a larger potential pool of litigants who might file for divorce, and the larger the married household size, the greater the likelihood that divorce petitions will include requests for child support and child custody and visitation orders. Similarly, counties with comparatively high divorce rates may have a larger potential pool of litigants filing motions to modify existing child support or child custody orders. Courts serving communities with comparatively lower incomes and education rates may have higher rates of SRLs, which in turn may prompt the court to provide a greater array of self-help resources. To assess the impact of community characteristics, NCSC staff downloaded demographic information (e.g., marital status, household income, education) from the U.S. Census Bureau and incorporated it into the case-level dataset (see Appendix C).

²⁵ A summary of common practices and procedures across the FJI Court Profiles will be published as a separate monograph and posted on the FJI website at www.ncsc.org/FJI. The Interview Protocol for the Court Profiles is attached as Appendix B.



Participating Sites

Although the participating sites had many similarities, they also had significant differences, especially in terms of jurisdiction, and caseload volume and composition. Most of the participating courts have jurisdiction over the full range of case types that were the focus of this study: divorce/dissolution, child custody, child support, and visitation cases. In Cuyahoga, Fairfax, and St. Louis counties, however, custody and child support cases involving unmarried parents are the jurisdiction of a separate juvenile division within the broader court or a separate juvenile court altogether. Case-level data from other divisions or courts were not included in the FJI dataset. All but two of the participating jurisdictions have a separate domestic relations division or docket. Fairfax and Salt Lake counties operate under a mixed docket in which judges have a caseload that includes domestic relations, criminal, and general civil cases.

These structural differences affect the proportion of the domestic relations caseload comprised by the sample of cases selected for the study as well as the average caseload per judge in each site. Table 2 shows selected caseload statistics for domestic relations cases in these courts. Even adjusting for population, the number of domestic relations filings varied considerably from 506

per 100,000 population in King County to 3,689 in Mecklenburg County. Courts with larger caseloads generally had more judicial officers assigned to those dockets, which controlled to some extent the degree of variation in the average domestic relations caseload per judge. Nevertheless, there was

The analytical framework employed by the NCSC focused on testing conventional wisdom.

a strong positive correlation between population-adjusted domestic relations filings and the average caseload per judge,²⁶ which suggests two possible implications about contemporary management of domestic relations dockets. The first possibility is that the creation of judicial positions has not kept pace with filing increases, so higher-volume courts also have larger caseloads per judge. The second is that urban courts have allocated more resources (e.g., court staff, technology) to support judges in managing larger caseloads. These two possibilities are not mutually exclusive. On average, the FJI Landscape sample comprised slightly more than

Table 2
Domestic Relations Caseloads for FJI Participating Courts

County	State	Total Population	Total DR Filings per 100,000 population	Total DR Filings, 2017	# DR Judges	Average Caseload per Judge	FJI Landscape Sample	Landscape as % of DR Caseload
Maricopa	AZ	3,235,890	1,568	50,748	39	1,301	29,839	59
Los Angeles	CA	8,164,241	1,134	92,544	56	1,653	41,034	44
Miami-Dade	FL	2,209,298	1,462	32,305	27	1,196	17,970	56
Montgomery	MD	825,326	1,801	14,868	9	1,652	7,006	47
St Louis	MO	817,072	1,634	13,349	16	834	3,414	26
Mecklenburg	NC	802,038	3,689	29,584	7	4,226	21,091	71
Cuyahoga	OH	1,036,388	743	7,705	5	1,541	5,236	68
Salt Lake*	UT	830,882	954	7,928	33	240	6,255	79
Fairfax*	VA	906,576	605	5,484	15	366	4,346	79
King	WA	1,714,253	506	8,682	7	1,240	7,519	87
Milwaukee	WI	758,616	1,261	9,568	5	1,914	3,726	39
		21,300,580	1,281	272,765			147,436	54

²⁶ Pearson's $r = 0.8301$, $p = 0.002$.

A Summary

of participating courts, the number of contributed data elements used in the study, and relevant demographics.

Arizona Maricopa County Superior Court

37 Contributed Data Points
46.9% Married
13.9% Divorced / Separated
\$64,778 Adj. Median HH Income
28.7% 4-Year College Degree
3.28 Avg. Married HH Size

California Los Angeles County Superior Court

32 Contributed Data Points
42.5% Married
10.9% Divorced / Separated
\$68,588 Adj. Median HH Income
21% 4-Year College Degree
3.73 Avg. Married HH Size

Florida Miami-Dade County Circuit Court

24 Contributed Data Points
40.8% Married
16.2% Divorced / Separated
\$128,146 Adj. Median HH Income
31% 4-Year College Degree
3.44 Avg. Married HH Size

Maryland Montgomery County Circuit Court

37 Contributed Data Points
53.3% Married
10.1% Divorced / Separated
\$77,908 Adj. Median HH Income
20.1% 4-Year College Degree
3.8 Avg. Married HH Size

Missouri St. Louis County Circuit Court

31 Contributed Data Points
48.2% Married
12.6% Divorced / Separated
\$74,763 Adj. Median HH Income
24.7% 4-Year College Degree
3.11 Avg. Married HH Size

North Carolina Mecklenburg County District Court

18 Contributed Data Points
45.3% Married
12.8% Divorced / Separated
\$63,578 Adj. Median HH Income
18.2% 4-Year College Degree
3.11 Avg. Married HH Size

Ohio Cuyahoga Court of Common Pleas

28 Contributed Data Points
40.3% Married
14.4% Divorced / Separated
\$90,779 Adj. Median HH Income
30.1% 4-Year College Degree
3.16 Avg. Married HH Size

Utah Salt Lake County District Court

30 Contributed Data Points
51.9% Married
12.5% Divorced / Separated
\$44,183 Adj. Median HH Income
17.4% 4-Year College Degree
3.77 Avg. Married HH Size

Virginia Fairfax County Circuit Court

22 Contributed Data Points
55.7% Married
9.4% Divorced / Separated
\$68,037 Adj. Median HH Income
19.8% 4-Year College Degree
3.4 Avg. Married HH Size

Washington King County Superior Court

30 Contributed Data Points
49.7% Married
11.8% Divorced / Separated
\$126,893 Adj. Median HH Income
26.6% 4-Year College Degree
3.39 Avg. Married HH Size

Wisconsin Milwaukee County Circuit Court

16 Contributed Data Points
37.8% Married
12.7% Divorced / Separated
\$61,438 Adj. Median HH Income
19.2% 4-Year College Degree
3.23 Avg. Married HH Size

half (54%) of the domestic relations caseload, but this proportion also varied by court from a low of 26 percent in St. Louis County to a high of 87 percent in King County.²⁷

Demographic information about each county as well as the national average based on U.S. Census Bureau statistics is shown on the preceding page.²⁸ Nearly half (48.1%) of the population age 15 and older in the United States is married, but the marriage rate among the FJI Landscape counties ranged from 37.8 percent in Milwaukee County to 55.7 percent in Fairfax County.²⁹ Not surprisingly, the rates of divorce and separation were inversely correlated with marriage rates, ranging from 9.4 percent in Fairfax, Virginia, to 16.2 percent in Miami-Dade.³⁰ Salt Lake City had the lowest adjusted median income (\$44,183) and the lowest proportion of residents with a 4-year college degree (17.4%); Miami-Dade had the highest adjusted median income (\$128,146) and college education rates (31.0%).³¹ St. Louis and Mecklenburg counties tied for the smallest married household size (3.11) and Montgomery County had the largest (3.8).³²

Before undertaking data analysis, the NCSC reviewed the datasets submitted by the participating courts to ensure accurate understanding of their respective data codes and the processes those codes reflect and to ensure comparability across sites to the greatest extent possible. The NCSC then combined the individual datasets into a single dataset for analysis. The final dataset also included court-level variables from the Court Profiles interviews, and community-level variables from the U.S. Census Bureau.

The analytical framework employed by the NCSC focused on testing conventional wisdom about case and litigant characteristics and their impact on domestic relations case processing and outcomes. The analyses particularly focused on contested versus uncontested status of cases, the representation status of litigants, the type of filing (initial or reopened case), and the manner of disposition.³³ The findings reported below follow this general outline. Detailed tables describing selected findings are reported in Appendix D.

Most of the analyses in the FJI Landscape study are presented as aggregate, rather than court-specific, findings that reflect case-level averages for the overall dataset. Case-level averages are calculated using all cases from all jurisdictions as the denominator. Consequently, courts with a higher volume of domestic relations cases (e.g., Maricopa, Los Angeles, Miami-Dade, and Mecklenburg Counties) have a disproportionate impact on the reported statistics, due to their larger contribution to the overall sample. As a practical matter, the case-level averages in most instances are close to the court-level averages within each court. However, when an average is influenced by a single court that appears to be a statistical outlier, NCSC staff report both the case-level and court-level statistics. Court-level averages consider the caseload differences among the sites and are calculated using the average for each court divided by the number of sites. Finally, for analyses involving data elements that were not uniformly provided by the courts or that raised substantial concerns about data quality, the NCSC excluded those courts' cases from the analyses. All instances of deviations from this approach are noted in the findings.



²⁷ Clearance rates were close to 100% across all courts. Consequently, the number of filings as compared to dispositions reported in the FJI dataset should be roughly equivalent.

²⁸ All U.S. Census Bureau statistics are drawn from the 2016 American Community Survey 5-year average. The median household income statistic has been adjusted for cost-of-living.

²⁹ U.S. Census Bureau, Table S1201: Marital Status, 2012-2016 American Community Survey 5-Year Estimates.

³⁰ Id. Pearson $r = -0.651$, $p = 0.022$.

³¹ U.S. Census Bureau, Table S1901: Income in the Past 12 Months (in 2016 Inflation-Adjusted Dollars), 2012-2016 American Community Survey 5-Year Estimates; Table S1501: Educational Attainment, 2012-2016 American Community Survey 5-Year Estimates.

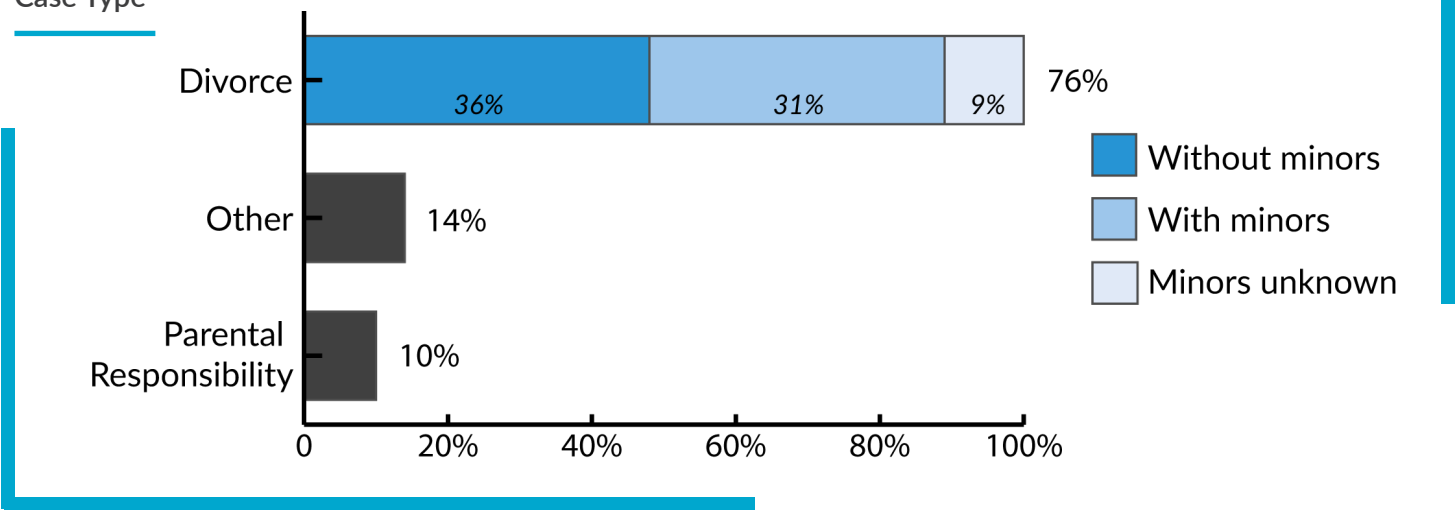
³² U.S. Census Bureau, Table S1101: Households and Families, 2012-2016 American Community Survey 5 Year Estimates.

³³ This was also the framework for the Landscape of Civil Litigation in State Courts, which was effective in part because the Landscape findings often contradicted conventional wisdom.

The Findings

An important first step in assessing domestic relations caseloads is determining the types of cases and legal issues that are filed in state courts. The datasets provided by the participating courts had varying levels of specificity in their codes for case type. The Montgomery County dataset included nine unique case type codes³⁴ compared to just one (Divorce/Dissolution) for St. Louis County.

Figure 3
Case Type



To conduct meaningful analyses based on case type, the NCSC collapsed the case types into three categories: petitions for divorce or similar termination of a marriage relationship (Divorce); petitions for judgments concerning rights and obligations for minor children (Parental Responsibility); and “other domestic relations” cases, which included “missing” case types (Other). For the courts that provided information about the existence of minor children in the case, the NCSC created three subcategories of Divorce: Divorce with Minors; Divorce without Minors; and Divorce, Minors Unknown. Figure 3 shows the composition of the caseload based on this taxonomy. Divorce petitions comprise three-quarters of the FJI caseload (76.1%) and Parental Responsibility cases comprise another 10 percent of the caseload. Fourteen percent (13.8%) of the cases were coded by the courts as “other domestic relations,”³⁵ or the case type was missing (see Table 1 in Appendix D). Less than one-third (31%) of the cases were divorce/dissolution cases involving minor children, while 9

percent were unable to indicate whether minors were involved. Ten of the eleven courts provided an indicator of minor children involved in any case type, though several courts that provided the indicator still had some missing/unknown data. If data for all courts are considered, slightly less than half of cases (46.3%) are known to involve minor children (e.g., divorce with minors; custody/

visitation). Of the ten sites that provided this indicator, the proportion of cases with minor children present is 51.7 percent.

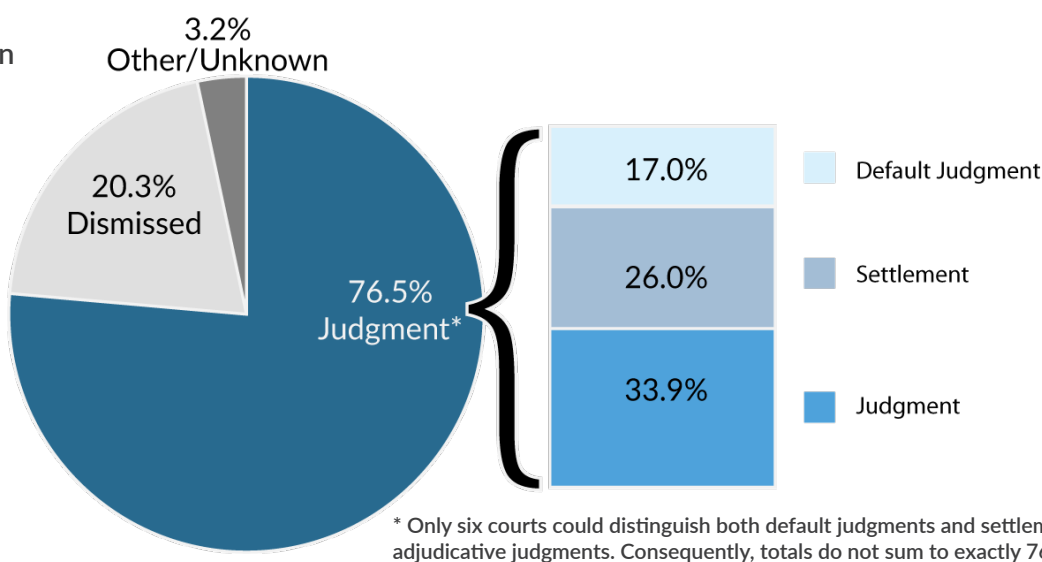
A data element of particular interest in the FJI Landscape study was the ratio of initial to reopened cases, the latter of which are widely believed to comprise a disproportionate amount of court time and attention. Eight of the eleven courts could identify reopened cases, and several of these provided information about the original case, including the original filing date and the number of times it had been reopened. The ratio of initial to reopened cases in the FJI Landscape dataset was four to one (80.1% initial filings).

The legal outcome of a case has historically been of critical importance not only to the litigants, but also to third parties. In domestic relations cases, legal outcomes obviously affect minor children who are the subject of court orders concerning custody, visitation, and support. Court orders also

³⁴ The case type codes for Montgomery County included Divorce/Dissolution, Legal Separation, Annulment, Child Custody/Visitation, Child Support, Child Support Enforcement, Paternity, Spousal Support, and Other.
³⁵ “Other” was not an aggregation of domestic relations case types by the NCSC, but rather was the case type coded in the courts’ CMS.

affect the distribution of assets and liabilities, which then affects the rights of creditors to collect debts or to seize assets that were previously the responsibility of both parties. Figure 4 shows the manner of disposition recorded in the FJI dataset. The participating courts were universally able to report whether a final judgment had been entered in a case, but the ability to make finer distinctions deteriorated sharply thereafter. Eight courts identified whether those judgments resulted from a settlement.³⁶ A different set of eight courts could distinguish default judgments from adjudicated judgments, six of which could also distinguish judgments resulting from settlements. Based on these six courts, approximately one-quarter (26%) of all cases resolved by settlement while one-third (33.9%) presumably disposed through

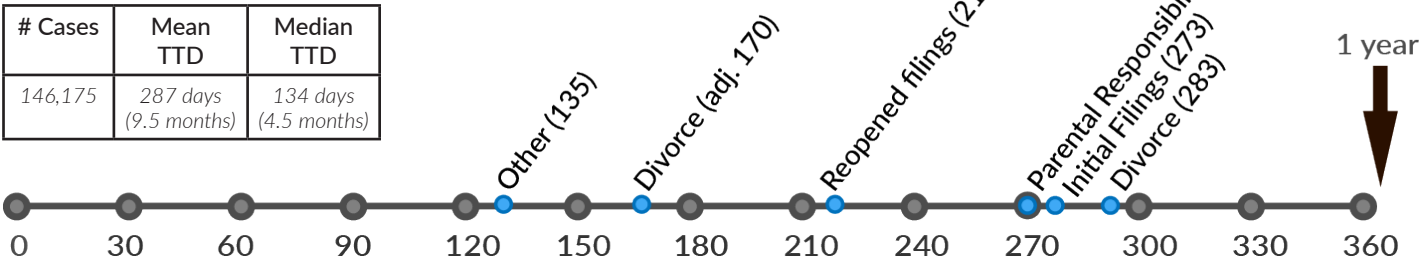
Figure 4
Manner of Disposition



some adjudicative process resulting in a formal court judgment. Slightly less than 40 percent of cases were either dismissed (20.3%)³⁷ or were default judgments (17%).³⁸ To facilitate meaningful analyses, the NCSC collapsed these five categories into three: a formal court judgment of any type (76.5%); a dismissal of any type (20.3%); and other or unknown manner of disposition (3.2%).

A common complaint about the American justice system is that cases take too long to resolve. In general civil court dockets, delay is associated with a number of factors, including lack of sufficient judicial resources to manage the volume of cases, the complexity of discovery, the need for adequate time to negotiate settlements fairly, unfamiliarity on the part of SRLs on the steps needed to keep cases moving to a final resolution, and simple foot-dragging on the part of the litigants and their attorneys. Figure 5 shows time to disposition (TTD) at the 75th percentile for the FJI cases overall, by filing type, and by case type. The average (mean) time to disposition tends to be higher than what most cases experi-

Figure 5
Time to Disposition (TTD) in Days: 75th Percentile



³⁶ The six courts were Fairfax, King, Maricopa, Milwaukee, Montgomery, and St. Louis counties. Los Angeles and Miami-Dade counties could identify settlements, but not default judgments, and Mecklenburg and Salt Lake counties could identify default judgments, but not settlements.

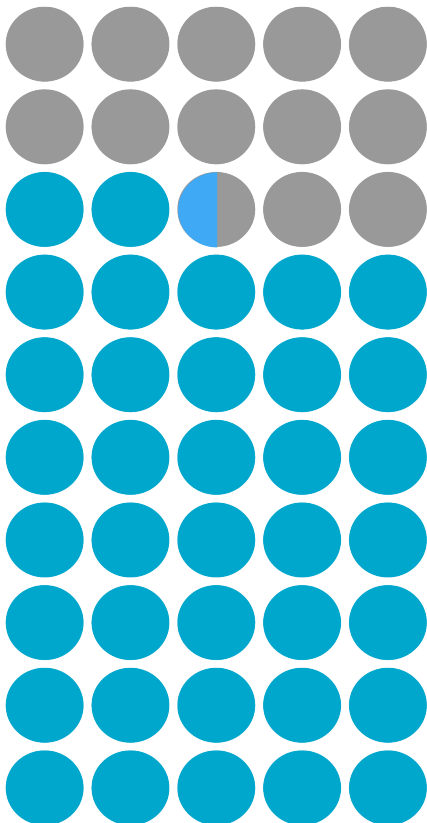
³⁷ Only Maricopa and Montgomery counties could definitively identify cases dismissed by the courts, and only Montgomery County could do so for cases withdrawn by the parties. The remaining courts either coded all cases as “dismissed” or the party or court dismissal identification was substantially incomplete.

³⁸ The default judgment rate in Los Angeles was the highest (41.1%), which skewed the case-level average considerably higher than the court-level average across courts (13.2%).

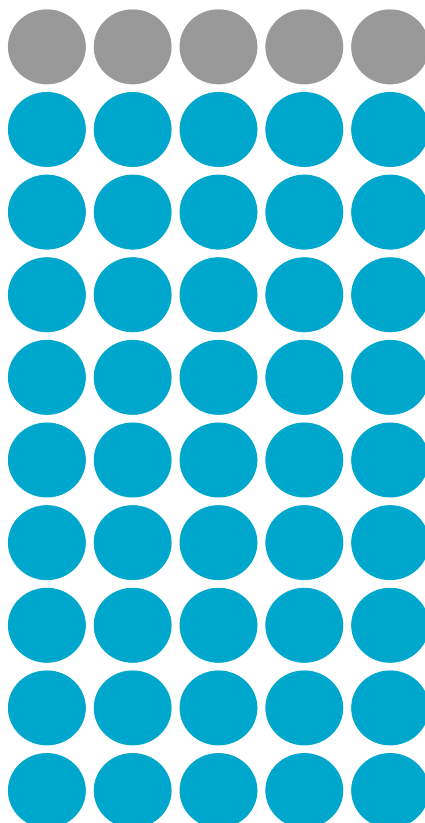
Not including statutory waiting periods, the Model Time Standards for State Trial Courts recommends that **75** percent of divorce/dissolution cases be disposed within 120 days, **90** percent within 180 days, and **98** percent within 365 days.



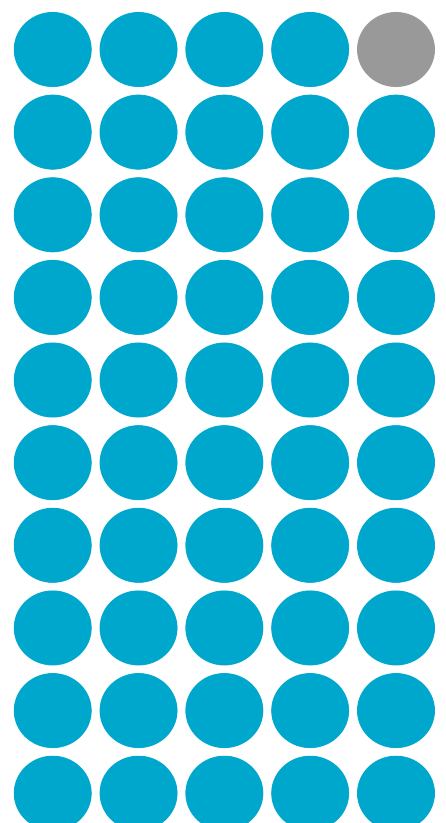
75% Standard



90% Standard



98% Standard



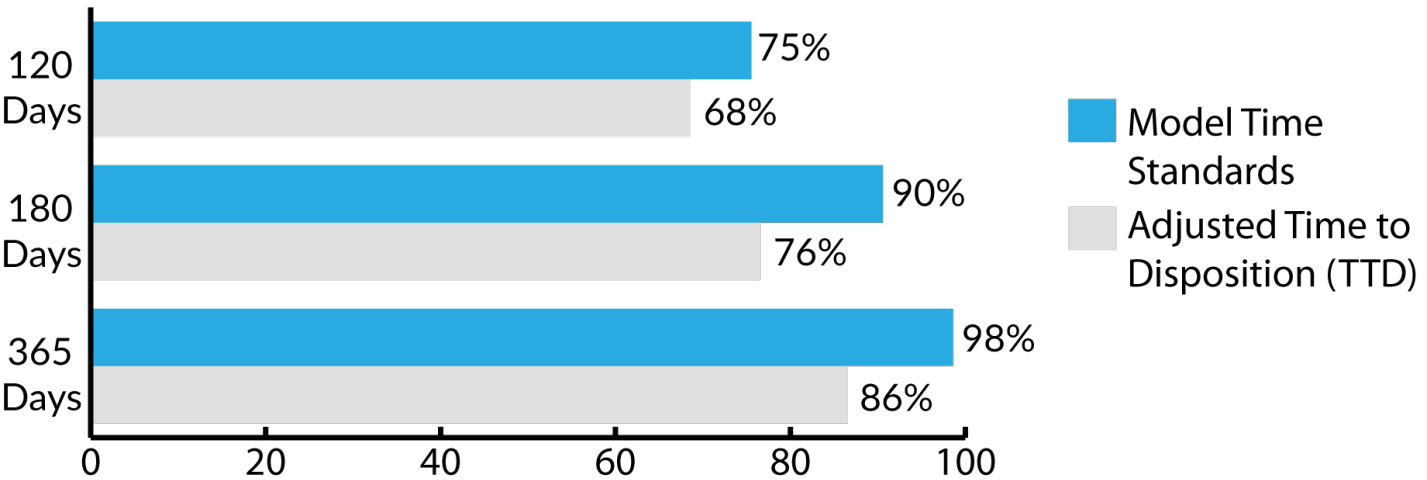
ence due to the skewing effect of cases that linger on court dockets for extremely long periods of time. The 75th percentile is more reflective of the “normal” time frame for cases to resolve, which indicates that 75 percent of cases resolved in 10 months or less.

Divorce cases have an additional factor that may contribute to delay – namely, statutory waiting periods up to 12 months in some jurisdictions before a divorce decree may be finalized. Some jurisdictions begin the waiting period at the time of filing and others at the time of separation, the latter of which was not included in the NCSC data request. The values for “divorce (adjusted)” reflect the time to disposition minus the statutory waiting period for each jurisdiction. This adjustment ensures that time to disposition reflects only the time associated with court processes, and not time during which the case is on hold pending expiration of the waiting period. Because the start of the waiting is not recorded in the FJI dataset, 38 percent of the divorce cases had adjusted time-to-disposition values that were negative numbers, suggesting that those cases were filed long after the parties separated. The adjusted time-to-disposition values, therefore, reflect an overly optimistic view of case processing time.

Not including statutory waiting periods, the “Model Time Standards for State Trial Courts”³⁹ recommends that 75 percent of divorce/dissolution cases be disposed within 120 days, 90 percent within 180 days, and 98 percent within 365 days. Based on the adjusted time to disposition for divorce cases, 68 percent of cases resolved within 120 days, 76 percent resolved within 180 days, and 86 percent resolved within 365 days (Figure 6). The adjusted time to disposition at the 75th percentile was 170 days (5.6 months), at the 90th percentile was 569 days (12 months), and at the 98th percentile was 2,609 days (7 years). Although not fully compliant with Model Time Standards, the FJI cases are resolving in a more timely manner than cases in the Civil Landscape.⁴⁰ The Model Time Standards also recommend that 98 percent of post-judgment motions in domestic relations cases be resolved within 180 days, but the disposition rate in the FJI dataset was 70 percent.⁴¹ Instead, at the 98th percentile, the time to disposition was 1,173 days (3.2 years).

These basic demographic characteristics – case type, filing type, manner of disposition, and time to disposition – cannot be interpreted in isolation. The next several sections of this report explore how these factors are interrelated in family court litigation.

Figure 6
Model Time Standards for Divorce & Landscape Site Statistics



³⁹ Richard Van Duizend, Model Time Standards for State Trial Courts (NCSC 2011) (hereinafter Model Time Standards). The Model Time Standards were adopted by the Conference of Chief Justices, the Conference of State Court Administrators, the American Bar Association, the National Association for Court Management, and the NCSC in 2011.

⁴⁰ Landscape of Civil Litigation in State Courts, *supra* note 17, at 28-31.

⁴¹ *Id.* at 19-22.

Contested vs. Uncontested Cases

Widespread adoption of no-fault divorce statutes dramatically changed how domestic relations cases are litigated and managed in state courts. There is no longer an implicit requirement for an adversarial process, and resources such as private or court-annexed mediation, online self-help, and fillable forms can support litigants in reaching agreement on most, if not all, legal issues before they come to court. Conventional wisdom tells us that divorce and domestic relations cases are more likely to be contested in the presence of high conflict between the parties over responsibility for minor children or significant property interests, and given the higher levels of conflict, parties are more likely to retain legal counsel in contested cases. In addition, parties who are dissatisfied with existing court orders – because the court order didn't resolve the underlying dispute or new disputes have arisen – are more likely to seek post-judgment modifications. Consequently, cases that are reopened are likely to be contested. Time to disposition is also predicted to be longer in contested cases than in uncontested cases, due to the need for more robust judicial oversight and possible mediation to resolve contested issues.

is generally determined at the pleading stage. Nine of the 11 sites provided that data element. For the two courts that could not provide it, the NCSC team used data indicating the presence of an answer or responsive pleading as a proxy for contested status. An important caveat about this data element is that a case's status as contested

There is no longer an implicit requirement for an adversarial process.

does not necessarily reflect the magnitude of the conflict or its persistence over time. In some cases, the parties may disagree about one issue, but generally agree on the others. In addition, parties may resolve issues relatively quickly, so that cases that were contested at the pleading stage of litigation are uncontested by the time a final judgment is entered. The majority of cases (64.3%) in the FJI dataset were uncontested, which was consistent across courts and case types.⁴² Figures 7 through 10 compare contested and uncontested cases across several key characteristics. As expected, reopened cases were significantly more likely to be contested compared to initial petitions,⁴³ and a significantly larger proportion of cases involving minor children were contested compared to cases without minor children present.⁴⁴ Only three courts provided information on petitions for emergency or injunctive relief. Of those three, less than 5 percent of cases involved petitions for emergency or injunctive relief by either party,⁴⁵ but those that did were significantly more likely to be contested.⁴⁶ A different set of three courts provided information on allegations of domestic violence, which comprised less than 7 percent of domestic relations cases,⁴⁷ and were significantly more likely to be contested.⁴⁸



One of the data elements requested of the participating courts was a binary variable (yes/no) indicating whether the case was contested, which

⁴² For courts that provided information on which to determine contested status, the proportion of uncontested cases ranged from 53.2% to 83.2%.

⁴³ Seven courts could indicate both contested status and type of filing for their caseloads. Of these, initial filings were mostly uncontested while reopened filings were mostly contested: initial = 25.7% contested, reopened = 67.9% contested, Pearson $\chi^2 = 13,476.866$, $p < .001$.

⁴⁴ Seven courts could indicate both contested status and the presence of minors in their caseloads. Of these, cases involving minors were more likely to be contested than those without minors: minors involved = 48.5% contested, without minors = 24.2% contested, Pearson $\chi^2 = 6098.458$, $p > .001$.

⁴⁵ Petitioners requested emergency relief in 4.2% of cases; respondents requested emergency relief in 4.4% of cases; and both parties requested emergency relief in 2% of cases.

⁴⁶ Petitioner (P) seeks emergency relief = 70.9% contested, P did not seek = 32.6% contested, Pearson $\chi^2 = 2190.954$, $p < .001$; Respondent (R) seeks emergency relief = 83.5% contested, R did not seek = 31.9% contested, Pearson $\chi^2 = 4229.989$, $p < .001$; Both parties seek emergency relief = 81.9% contested, neither party sought = 34.7% contested, Pearson $\chi^2 = 1462.790$, $p < .001$.

⁴⁷ King, Los Angeles, and Miami-Dade provided information on allegations of domestic violence, which comprised 6.8% of their combined caseloads.

⁴⁸ Overall, 26.2% of cases were contested in the three sites; DV allegations indicated = 73.8% contested, DV allegations not indicated = 27.4% contested, Pearson $\chi^2 = 2649.971$, $p < .001$.

Figure 7
Contested vs. Uncontested: Case Type

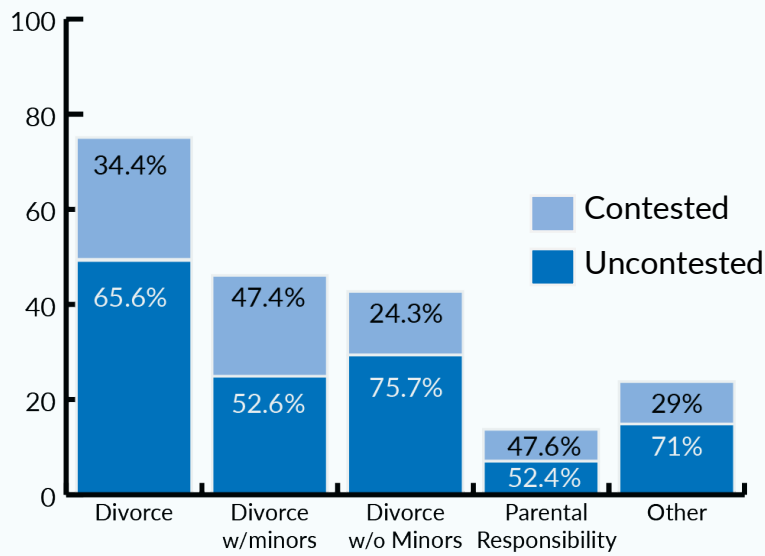
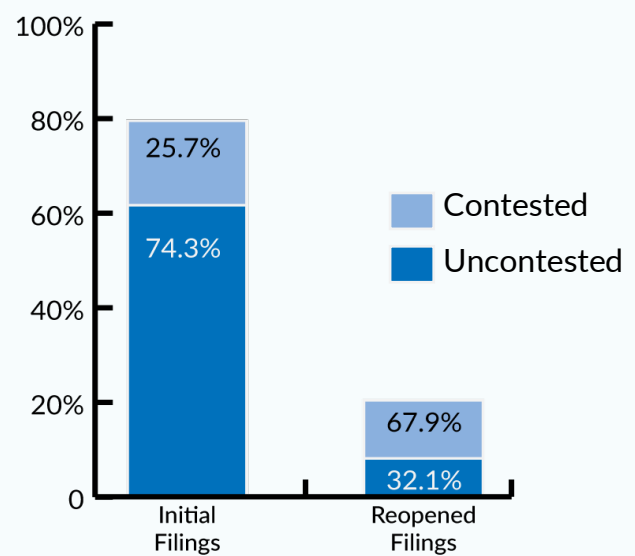


Figure 8
Contested vs. Uncontested: Filing Type



The cases in Figures 9 and 10 comprise less than 5% of the total caseload.

Figure 9
Contested vs. Uncontested: Emergency Relief (<5%)

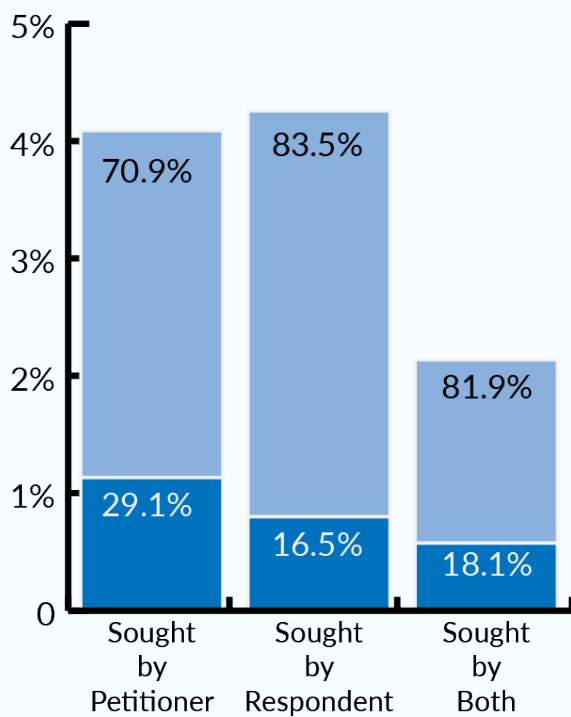
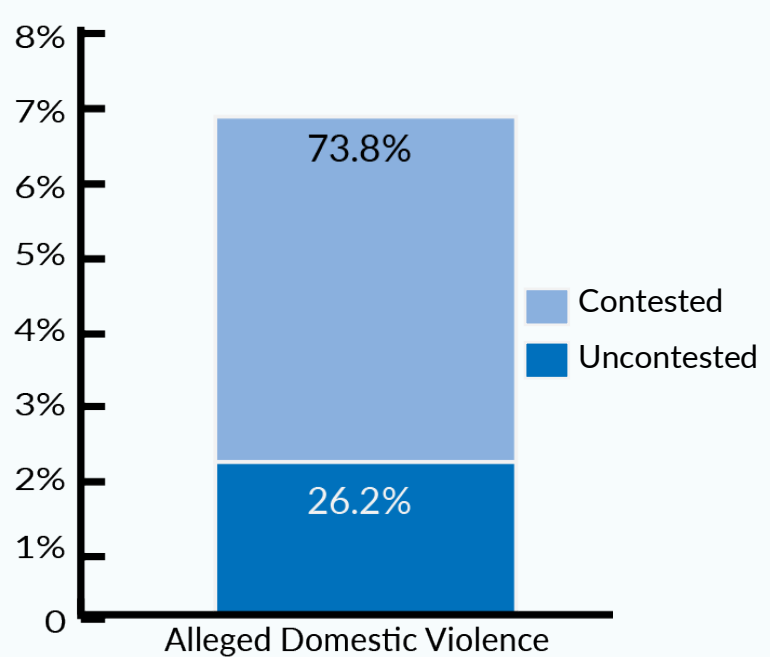


Figure 10
Contested vs. Uncontested: Allegations of DV (<5%)



It was expected that contested cases would have more case-related activity due to the presumptive level of conflict in the cases and the need for judicial resolution of disputed issues. This was examined using the number of scheduled and held pretrial conferences and hearings. Table 3 displays the proportions of contested and uncontested cases with at least one scheduled or held event. A couple of points are especially noteworthy. First, a substantial proportion of cases had no meaningful court involvement. It is certainly possible, even probable, that case events may be scheduled, but not ultimately held, because the case resolved before the scheduled event could take place. Nevertheless, only 53.4 percent of contested cases held any pretrial conferences and only 43.7 percent held any in-court hearings.

Table 3
Case Related Events for Contested & Uncontested Cases with at least One Event

Case Status	Scheduled		Held	
	Pretrial Conferences	Hearings	Pretrial Conferences	Hearings
Uncontested	24.6%	32.4%	33.4%	15.6%
Contested	47.4%	60.7%	53.4%	43.7%

Second, as expected, contested cases were more likely to have case-related activity compared to uncontested cases.⁴⁹ Specifically, contested cases were approximately twice as likely as uncontested cases to have pretrial conferences or in-court hearings scheduled and more than five times more likely to have an in-court hearing held; the likelihood of a pretrial conference being held was 20 percent higher for contested cases compared to uncontested cases. Moreover, the number of scheduled and held case-related events was significantly higher for contested compared to uncontested cases.⁵⁰ Figures 11 through 14 display the proportion of contested and uncontested cases by the number of scheduled and held events.

Finally, pretrial conferences were held in approximately one-third of uncontested cases, and in-court hearings were held in approximately one-sixth of uncontested cases. Because this variable

⁴⁹ Eight sites provided some degree of information on case-related events including pretrial conferences and hearings, scheduled and/or held. All case-related events were significantly more prevalent in contested cases compared to uncontested cases. Only four sites reported that they held pretrial conferences and hearings for uncontested cases. Scheduled pretrial conferences: Pearson $\chi^2 = 5817.821$, $p < .001$; scheduled hearings: Pearson $\chi^2 = 8034.345$, $p < .001$; held pretrial conferences: Pearson $\chi^2 = 393.753$, $p < .001$; held hearings: Pearson $\chi^2 = 2640.155$, $p < .001$.

⁵⁰ Of the cases that had at least one event scheduled or held, the following means were calculated for each event type. Mean number of pretrial conferences scheduled: contested = 1.82, uncontested = 1.47, $t = -23.384$, $p < .001$; mean number of pretrial conferences held: contested = 1.59, uncontested = 1.23, $t = -31.442$, $p < .001$; mean number of hearings scheduled: contested = 3.58, uncontested = 1.89, $t = -51.711$, $p < .001$; mean number of hearings held: contested = 1.96, uncontested = 1.24, $t = -29.566$, $p < .001$.

Case events may be scheduled, but not ultimately held, because the case resolved before the scheduled event could take place.

is determined at filing, the cases characterized as uncontested were always uncontested. These case events are most likely routine, mandatory conferences with the parties to complete and review necessary paperwork or mandatory litigant education sessions (e.g., parent education). In the absence of an actual dispute or the need for a hearing in which the parties present evidence supporting their respective claims for relief, one wonders whether these case events still perform a useful function or if they are simply artifacts of the previous adversarial system.

Interestingly, the average (mean) time to disposition was not significantly different between contested and uncontested cases. Table 4 shows the mean, median, and interquartile range for days to disposition of these cases. Approximately one-quarter of both contested and uncontested cases resolve in approximately three months, and on average both types of cases resolve within one year. But contested cases take slightly more time than uncontested cases, particularly in the higher percentile ranges. For example, half of uncontested cases resolve within five months compared to 6.5 months for contested cases. Seventy-five percent of uncontested cases resolve within eight months compared to 12 months for contested cases.

Table 4
Days to Disposition for Contested & Uncontested Cases

Case Status	N	Mean	Median	25th percentile	75th percentile
Uncontested	69,515	337.61	147	90	252
Contested	37,992	341.05	196	86	370

Figure 11
Pretrial Conferences Scheduled

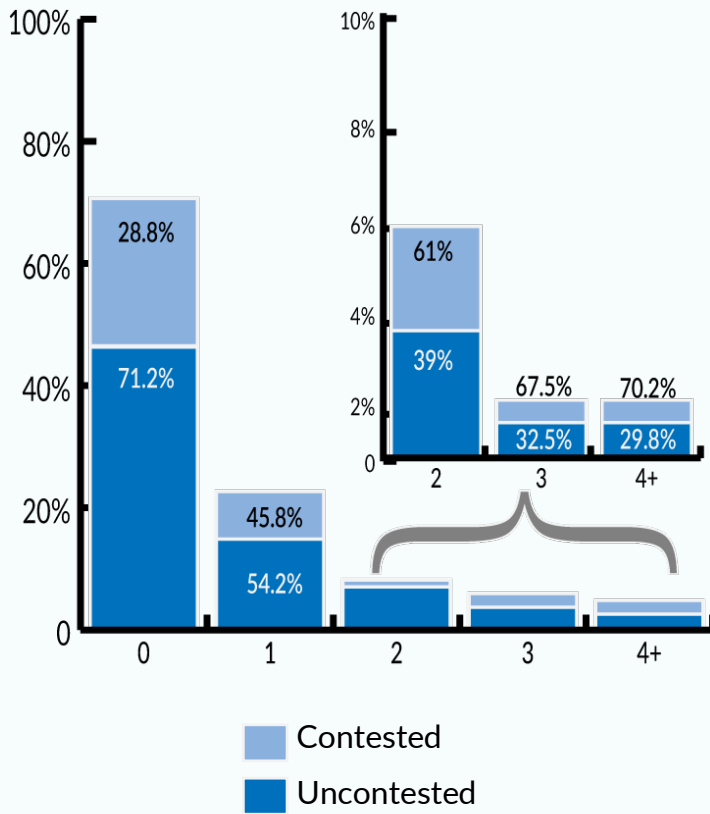
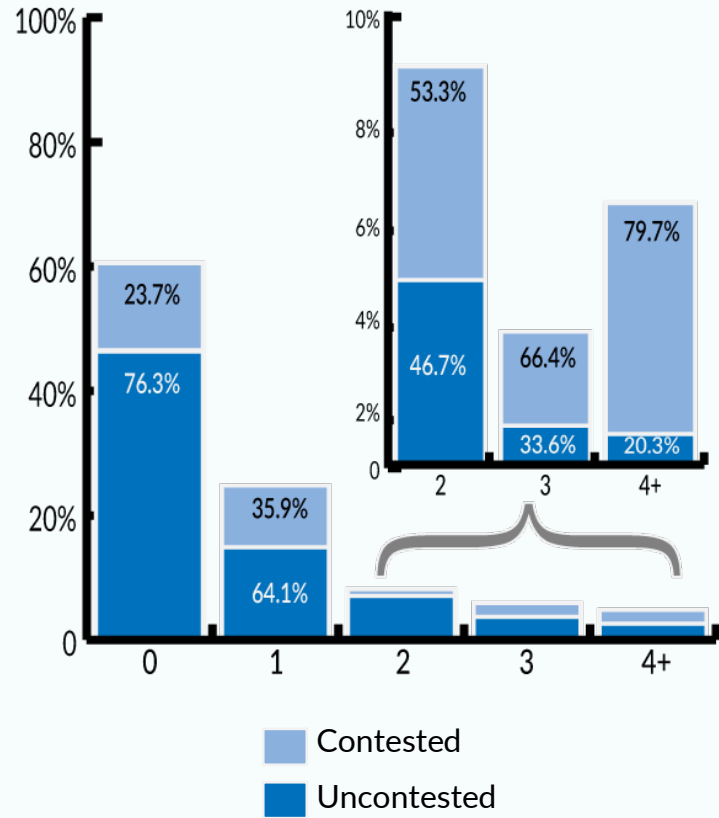


Figure 12
Pretrial Conferences Held



*Most cases have few or no case events scheduled or held.
The small proportion that do have case events are more likely to be contested.*

Figure 13
Hearings Scheduled

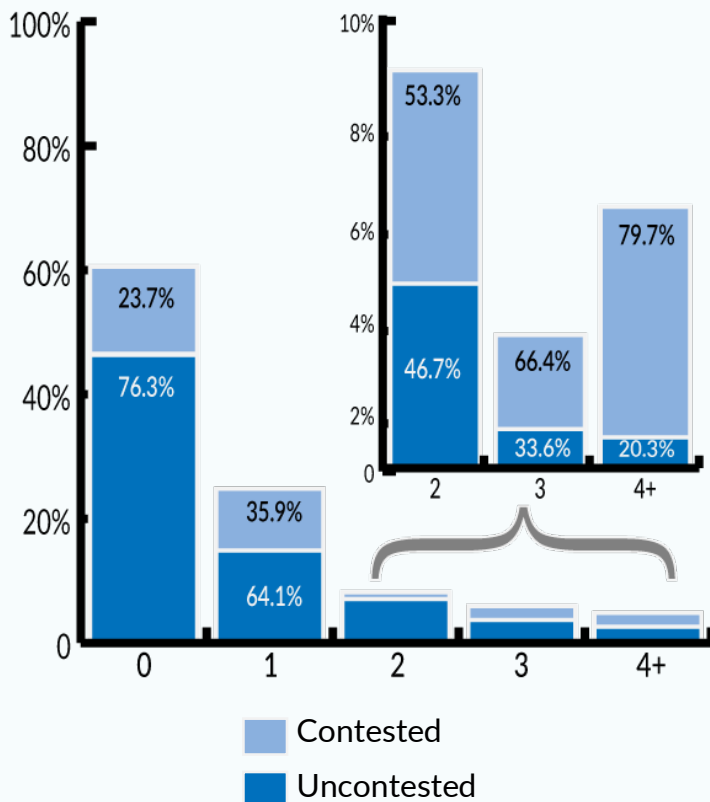
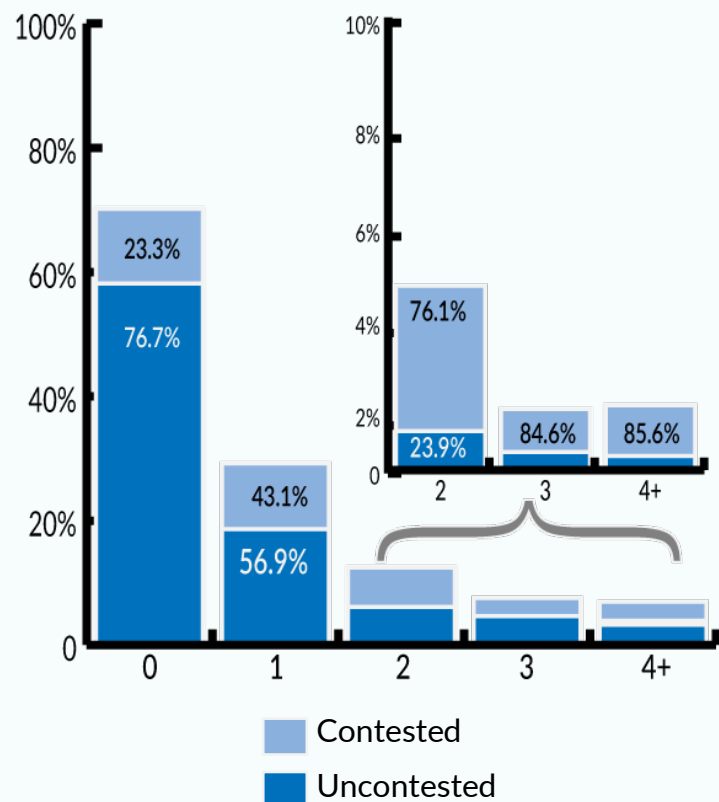


Figure 14
Hearings Held



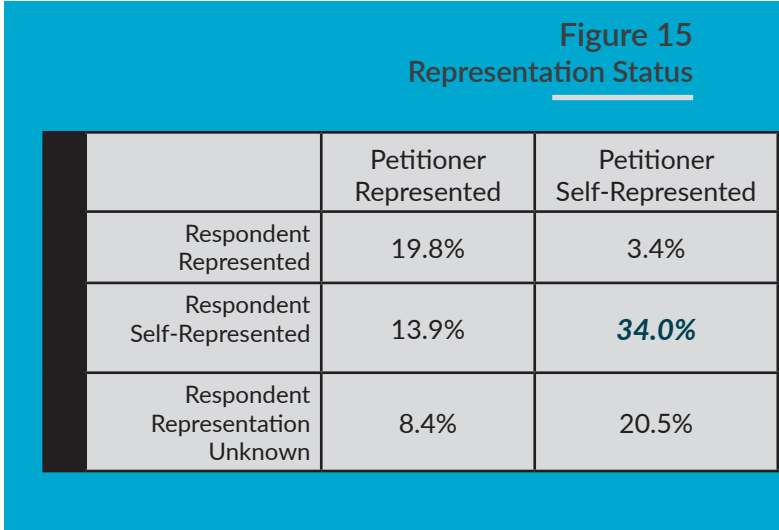
Representation Status

All eleven sites indicated if the petitioner or respondent was represented by an attorney at some point during the case. However, the time at which this indicator is captured varies by site. In most courts, this variable reflects the representation status at disposition, but others capture the presence of an attorney at filing, while others report based on any indication of representation throughout the case, even if the attorney was only retained for one appearance. In the above instances, it is unknown whether the parties had intermittent representation. Moreover, the court's documentation of representation status would not generally reflect whether an SRL consulted with an attorney on an unbundled basis. Two sites provided the beginning and end dates for attorney representation of the parties. The NCSC State Court Guide to Statistical Reporting advises that a respondent's representation status should be coded as "unknown" for cases in which the respondent fails to file a responsive pleading or otherwise fails to make an appearance on grounds that it is impossible to know whether or not the respondent consulted with an attorney.⁵¹ The NCSC followed this prescription for uncontested cases without an answer date and for which an attorney was not specifically identified for the respondent and no event data was listed.⁵²

72% of cases indicated that the petitioner and/or respondent was self-represented

Aligned with conventional wisdom, 72 percent of cases indicated that the petitioner and/or respondent was self-represented; however, this varied considerably by site, 33 percent to 86 percent. Petitioners were more likely to have retained counsel than respondents, 42 percent to 23 percent overall, respectively.⁵³ Figure 15 shows the overlap in representation status between the two parties across all cases. The largest category was both parties self-represented, again confirming conventional wisdom.

resentation status between the two parties across all cases. The largest category was both parties self-represented, again confirming conventional wisdom.



Eight of the eleven sites could indicate whether the case was contested and had minors involved; the three sites that did not have these indicators were excluded from Figure 16. Confirming conventional wisdom, both parties were more likely to be represented in contested cases.⁵⁴ Petitioners were more likely to be represented than respondents in both contested⁵⁵ and uncontested⁵⁶ cases with and without minors involved (see Table 2 in Appendix D). However, contested and uncontested cases with minors involved were not always more likely to involve an attorney.⁵⁷ Figure 16 shows the overlap in representation status between the two parties between contested and uncontested cases. The largest category for uncontested cases was both parties self-represented, while the largest category for contested cases was both parties represented by an attorney.

Eight of the sites identified the filing type of the case, in those eight sites, both parties were more

⁵¹ NCSC State Court Guide to Statistical Reporting 34-35 (ver. 2.1.2, Mar. 20, 2017).
⁵² N = 42,612 (28.9%) cases had the respondent's representation status as unknown/missing.
⁵³ Represented petitioner (RP) = 42.1%, represented respondent (RR) = 32.6%, Pearson $\chi^2 = 29217.203$ p <.001.
⁵⁴ RP in contested = 60.3%, uncontested = 30.2%, Pearson $\chi^2 = 9316.008$, p <.001. RR in contested = 53.1%, uncontested = 16.2%, Pearson $\chi^2 = 13949.242$, p <.001.
⁵⁵ Contested cases: Pearson $\chi^2 = 409.814$, p <.001. Contested with minors: RP = 57.6%, RR = 51.7%, Pearson $\chi^2 = 172.347$, p <.001. Contested without minors: RP = 59.6%, RR = 49.9%, Pearson $\chi^2 = 206.506$, p <.001.
⁵⁶ Uncontested cases: Pearson $\chi^2 = 399620.786$, p <.001. Uncontested with minors: RP = 27.8%, RR = 14.8%, Pearson $\chi^2 = 1071.419$, p <.001. Uncontested without minors: RP = 24.1%, RR = 15.6%, Pearson $\chi^2 = 640.993$, p <.001.
⁵⁷ Petitioners were more likely to be represented in contested cases without minors involved (59.6%) versus with minors (57.6%), Pearson $\chi^2 = 12.6$, p <.001. Respondents were more likely to be represented in uncontested cases without minors involved (15.6%) versus with minors (14.8%), Pearson $\chi^2 = 5.323$, p <.001.

likely to be represented in reopened cases than in initial cases (see Table 3 in Appendix D).⁵⁸ Petitioners were more likely than respondents to be represented in both initial and reopened filings.⁵⁹ Seven sites could identify both filing status and the involvement of minor children. For initial filings, both parties were more likely to be represented

reopened filings. The largest category for initial filings was both parties self-represented, while the largest category for reopened filings was both parties represented by an attorney.

Sites with a higher percentage of cases involving both parties being self-represented tended to

Figure 16
Representation by Contested Status

UNCONTESTED				CONTESTED			
		Petitioner Represented	Petitioner Self-Represented		Petitioner Represented	Petitioner Self-Represented	
	Respondent Represented	13.8%	2.4%		46.0%	7.2%	
	Respondent Self-Represented	21.9%	61.9%		14.4%	32.5%	

when the case involved minor children.⁶⁰ In reopened filings, both parties were more likely to be represented in cases **without** the involvement of minor children.⁶¹ Petitioners were more likely than respondents to be represented in cases with minors involved, in both initial and reopened filings.⁶² Figure 17 shows the overlap in representation status between the two parties in initial and

have a lower median income (adjusted for cost of living) and a lower percentage of the population having college degrees (Table 5). A Self-Help Index was created for each site by adding together the number of available self-help resources for self-represented litigants.⁶³ A higher Self-Help Index was correlated with a higher percentage of both parties being self-represented. All sites offered

Figure 17
Representation by Type of Filing

INITIAL FILINGS				REOPENED FILINGS			
		Petitioner Represented	Petitioner Self-Represented		Petitioner Represented	Petitioner Self-Represented	
	Respondent Represented	15.7%	3.5%		49.8%	9.9%	
	Respondent Self-Represented	21.0%	59.8%		15.4%	24.9%	

⁵⁸ RP in initial filings = 33.9%, reopened filings = 61.6%, Pearson $\chi^2 = 6741.056$, $p < .001$. RR in initial = 19.2%, reopened = 59.7%, Pearson $\chi^2 = 13657.4$, $p < .001$.

⁵⁹ Initial filings: Pearson $\chi^2 = 7690289.625$, $p < .001$. Reopened filings: Pearson $\chi^2 = 17.931$, $p < .001$.

⁶⁰ Initial filings: RP with minors involved = 29.9%, RP without minors = 22.5%, Pearson $\chi^2 = 560.340$, $p < .001$; RR with minors involved = 24.3%, RR without minors = 12.2%, Pearson $\chi^2 = 1259.173$, $p < .001$.

⁶¹ Reopened filings: RP with minors involved = 62.4%, RP without minors = 71.5%, Pearson $\chi^2 = 101.374$, $p < .001$; RR with minors involved = 57.2%, RR without minors = 62.7%, Pearson $\chi^2 = 32.892$, $p < .001$.

⁶² Initial filings with minors involved: RP = 29.9%, RR = 24.3%, Pearson $\chi^2 = 222.319$, $p < .001$. Reopened cases with minors involved: RP = 62.4%, RR = 57.2%, Pearson $\chi^2 = 92.870$, $p < .001$.

⁶³ Nine key self-help resources were assessed, and a point was added for each provided by the site: on-site self-help center, online self-help center, written forms and instructions, fillable forms and instructions, interactive forms and instructions, legal clinics, DR navigator, on-site pro bono attorney, and unbundled attorney services.

on-site and online self-help services and written forms and instructions. Of the other six services measured that were not applicable to all sites, those sites that offered fillable and interactive forms and instructions, legal clinics, and/or a DR navigator were more likely to have both parties go without representation (Table 6). Availability of unbundled legal services was inversely related to both parties being self-represented, which may indicate that parties were making use of these services and marked as having representation. As the median adjusted income of the sites increases, the availability of fillable

Table 5
Pearson Correlations
between Percent of Both
Parties Self-represented,
Income, Education, and
Self-help

	Median Adjusted Income	% BS/BA	Self-Help Index
% Both Parties SRL	-.201	-.150*	.116*

*Correlation significant at $p < .001$

and interactive forms and instructions and a domestic relations navigator decreases, while availability of an onsite pro bono attorney and unbundled services increases (Table 7). This purports to lower-income jurisdictions having higher self-help tools such as forms, and lower attorney-driven resources such as pro bono help. Fillable and interactive forms and instructions, the services with the highest correlation, tend to be more intentional means to provide self-help services to clients.

With respect to whether representation status affects time to disposition, there are two competing hypotheses. The first is that cases in which both parties are represented will, on average, take longer to resolve. As discussed, cases in which the parties are represented are more likely to be contested and are more likely to result in a formal court judgment, both of which are likely to require more time to resolve disputes. Alternatively, unrepresented parties may not have sufficient familiarity with court rules and procedures to keep the case moving toward final resolution, creating delays. Moreover, the interplay of contested status, representation status, and manner of disposition is difficult to disentangle.

Table 6
Pearson Correlations between Percent of Both Parties Self-represented and Components of Self-help

	"Fillable Forms"	Interactive Forms	"Legal Clinics"	"DR Navigator"	Onsite pro bono attorney	Unbundled services
% Both Parties SRL	.216*	.297*	.017*	.085*	-.233	-.249*

*Correlation significant at $p < .001$

Table 7
Pearson Correlations between Median Adjusted Income and Components of Self-help

	"Fillable Forms"	Interactive Forms	"Legal Clinics"	"DR Navigator"	Onsite pro bono attorney	Unbundled services
Median Adj. Income	-.598*	-.574*	-.001	-.614*	.336*	.085*

*Correlation significant at $p < .001$

For more focused comparison, manner of disposition was condensed into two categories: judgment or dismissal. Figures 18 and 19 display the proportions of judgments or dismissals across representation status. Cases in which there was at least one self-represented party were less likely to secure a final judgment, and more likely to have their case dismissed.⁶⁴

Figure 18
Judgments by Representation Status

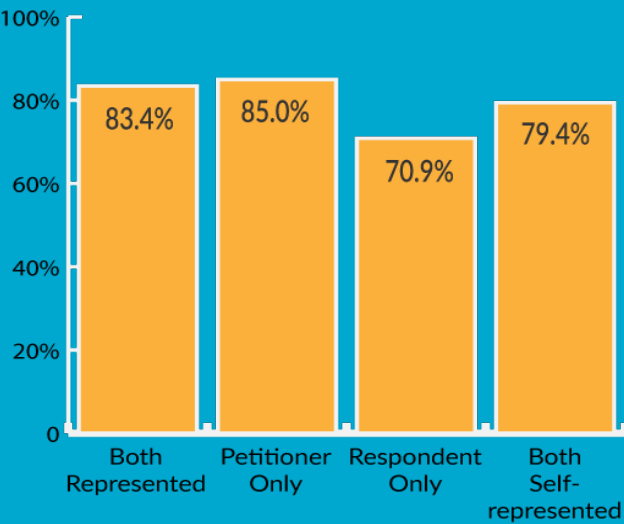
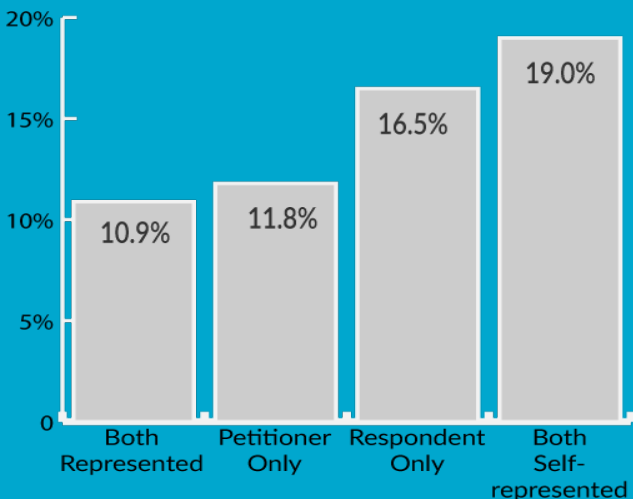


Figure 19
Dismissals by Representation Status



The overall average time to disposition was 287 days with a median of 134 days.⁶⁵ Because cases with extreme times to disposition can distort comparisons of averages, using the median to examine the differences in time to disposition provides a less biased comparison. The median time to disposition is equivalent to the 50th percentile, or the number of days until 50% of cases are disposed. Table 8 presents the median days to disposition across representation status and manner of case disposition, overall, by contested status, and by filing type. Dismissed/other dispositions had higher median days to disposition across representation categories, except when both parties were represented, in which judgment had the highest median time. Cases in which both parties were represented took approximately one month longer secure a judgment than cases in which both parties were self-represented. Contested cases took longer than uncontested cases for all manners of disposition and representation except when both parties were self-represented. Cases in which both parties were represented took about five months longer to reach a judgment in contested cases than uncontested cases. Reopened cases were disposed faster than initial cases across all manners and representations types.

These differences, and lack thereof, are particularly striking given that cases in which the parties were represented by attorneys were more likely to be contested and were more likely to involve issues related to minor children. Conventional wisdom would suggest that these cases would take much longer to resolve than uncontested cases or cases without minor children. It is possible that SRLs lose any inherent advantage in resolving uncontested cases quickly due to their unfamiliarity with the litigation process.

Overall, the majority of domestic relations cases still involved at least one self-represented party. Cases that were reopened, contested, and involve minors were more likely to have attorneys involved. Locations that have higher median adjusted incomes and a higher proportion of the population with college degrees tended to have domestic relations cases with attorney involvement and fewer self-help resources.

⁶⁴ All eleven sites reported representation status and manner of disposition. Presence of at least one self-represented litigant (SRL) (yes/no) on judgments entered: Yes SRL = 74.8% judgments, No SRL = 83.4% judgments, Pearson $\chi^2 = 950.567$, $p < .001$; on dismissals entered: Yes SRL = 22.7% dismissals, No SRL = 10.9% dismissals, Pearson $\chi^2 = 1999.867$, $p < .001$.

⁶⁵ Time to disposition may include waiting periods.

Conventional wisdom suggests that contested cases with represented parties and cases involving minor children will take much longer to resolve than uncontested cases and cases without minor children. Table 8 shows that SRLs lose an inherent advantage in resolving uncontested cases quickly due to their unfamiliarity with the litigation process.

Table 8
Median Days to Disposition by Representation Status

	All Cases	Judgment	Dismissed / Other
ALL CASES	134	129	155
Neither Represented	179	167	220
One Party Represented	133	125	170
Both Represented	190	200	152
CONTESTED CASES	196	198	182
Neither Represented	149	142	202
One Party Represented	188	189	184
Both Represented	242	254	160.5
UNCONTESTED CASES	147	139	188
Neither Represented	185	183	479.5
One Party Represented	126	118	126
Both Represented	107	105	140
INITIAL FILINGS	140	134	161
Neither Represented	185	182	706
One Party Represented	147	133	239
Both Represented	289	296	238
Reopened Filings	85	81	103
Neither Represented	84	76	117
One Party Represented	88	78	109
Both Represented	105	105	98

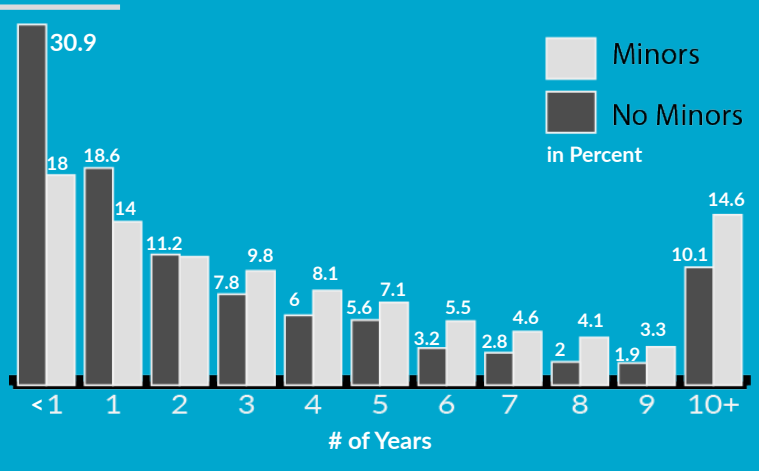
Initial and Reopened Cases

Anecdotally, family courts have noticed a high proportion of reopened cases, particularly those that involve minor children. These cases seem to never fully resolve but recycle through the court as new issues arise until the children come of age. Some courts employ a one judge-one family model

pared to initial filings, which seemed to support the conventional wisdom that cases involving children were more likely to return to court.⁶⁶ Of the reopened cases, there was an average of 2.68 reopened filings per case; this number was significantly higher for cases involving minor children compared to cases without minors.⁶⁷

The original disposition date of the initial petition for these reopened cases varied widely and was significantly older for cases involving minor children,⁶⁸ which lends some support to the notion that cases with minor children tend to return to court over longer periods of time. The mean number of years between the original disposition and the most recent reopened filing was 3.19 years (median 1 year). Cases without minor children tended to reopen within the first year and taper off considerably thereafter, whereas cases involving minors tended to level off more gradually and drag out past the 10-year mark (Figure 20). When the age of the original disposition was paired with

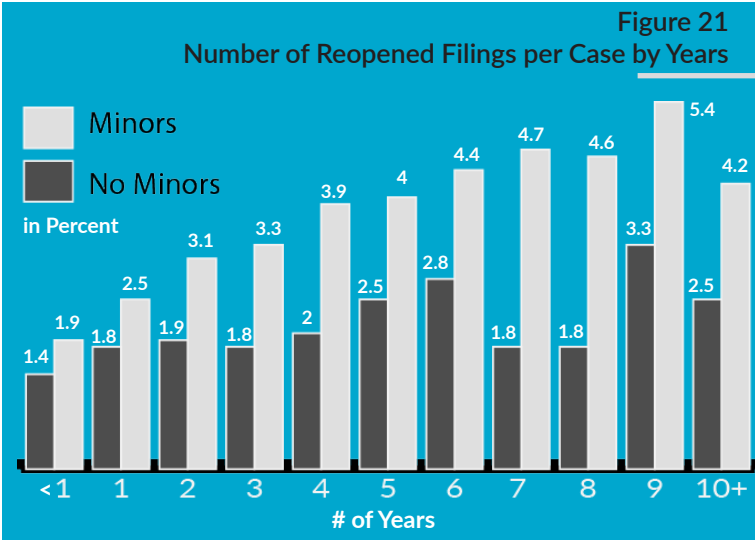
Figure 20
Proportion of Reopened Filings by Years Lapsed



in anticipation of future disagreement requiring court intervention. It was therefore expected that reopened cases would constitute a large portion of the caseload, particularly in cases involving minor children.

Ten sites indicated the type of filing for each case, initial or reopened. Two of those sites admitted that their data may be unreliable due to drawbacks of their CMS and its ability to match legs of a case across time, or the system overwrote key dates when a case was reopened. There were disproportionately fewer reopened filings at these two sites, and they were excluded from the following descriptives and analyses regarding filing type.

Against expectation, reopened cases represented only 19.9% of the caseload and were consistently in the minority across the sites that could identify reopened cases, ranging from 5% to 35.5%. Based on the overall proportion of reopened cases in the caseload, approximately 25% of new cases will eventually reopen. Reopened cases were significantly more likely to involve minor children com-



the number of reopened filings, some interesting differences appeared as well. As time since the original disposition increased, the number of reopened filings for cases with minor children also increased (Figure 21). This relationship was not seen in cases without minor children, as the number of reopened filings remained stable over time.

⁶⁶ Five sites could provide information on both filing type and the presence of minors. Of those, reopened = 83.7% minors involved, initial = 44% minors involved, Pearson $\chi^2 = 10367.964$, $p < .001$.
⁶⁷ Five sites provided the number of reopened filings per case. Three sites provided both the number of reopened filings and minor involvement. Of these, the mean number of reopened filings was 2.92 for cases involving minors and 1.90 for cases without minors, $t = -17.17$, $p < .001$.
⁶⁸ Five sites provided the original disposition date of the initial petition for the case that was reopened in the current caseload sample. Only two sites provided both the original disposition date and indicated the presence of minors. Of these, cases involving minors had a mean time of 4.46 years (median 3 years) between the original disposition and most recent reopened filing, compared to 3.63 years (median 2 years) for cases without minor children, $t = -4.006$, $p < .001$.

Summary and Conclusions



This study documenting case and litigant characteristics in family courts was undertaken to look closely at case management data to fully understand the realities of family court litigation. One of the most valuable lessons from the work of the CCJ Civil Justice Improvements Committee was the importance of verifying the accuracy of conventional wisdom. As a general matter, the findings from this study have shown that much of conventional wisdom concerning family court litigation is true. Of particular importance:

- Nearly two-thirds of cases in the study were uncontested. Several of the participating courts had procedures that allowed “opposing” parties to file joint petitions for requested relief (e.g., divorce decree, child support, child custody and visitation). Other courts reported that parties may be indirectly dissuaded from filing responsive pleadings to save both parties time and money in securing a final judgment. Cases involving minor children and reopened cases were more likely to be contested, but even so, more than half of those cases were uncontested.
- Meaningful case events such as pretrial conferences and in-court hearings were relatively infrequent, even in contested cases. The majority of cases had no case activity whatsoever. It is important to note, however, that contested status was determined during the pleading stage of litigation, and disputed issues may have resolved through negotiation or mediation before case events were held or even scheduled. One surprise was that a number of uncontested cases nevertheless included some case events, which likely reflects court rules and practices that inflexibly mandate in-court hearings, even in the absence of a disputed issue to resolve.
- The study also confirmed high rates of SRLs in family court cases. Consistent with national reports, at least one party was self-represented in approximately three-quarters of cases. The SRL rate increased to 86.2 percent in uncontested cases. This rate does not account for the possibility that respondents who declined to file responsive pleadings may

have consulted with attorneys about their legal rights and obligations. Although contested cases comprised only one-third of cases in the study, both parties were represented by attorneys in half of the contested cases, which was higher than anticipated by the NCSC.

- Three-quarters of cases in the study disposed in less than 10 months. In divorce/dissolution cases, approximately four months of the total time-to-disposition may be attributed to statutory waiting periods rather than delays related to court management. Although the timeliness of case disposition was considerably better than was observed in the Civil Landscape, time-to-disposition in the current study still did not conform to Model Time Standards recommendations.
- One somewhat discouraging finding was that, controlling for case type and manner of disposition, contested and uncontested cases take about the same amount of time to dispose. This was particularly surprising given differences in the representation status of litigants in contested versus uncontested cases. Because cases with represented litigants were more likely to be contested, one might expect these cases to take longer to resolve. The absence of a difference in average time-to-disposition suggests that confusion or obstacles encountered by SRLs in moving their cases through family courts eliminates the expected increase in timeliness from the absence of disputes concerning the parties' requested relief.

- Approximately one in four family court cases will be reopened for post-judgment modification at some point in the future, and a majority of these cases are contested. It was not possible to determine whether the petition to reopen the case was failure to satisfactorily resolve the original dispute or the emergence of new disputes over time. Nevertheless, cases that did not involve issues related to minor children tended to reopen fairly quickly (e.g., within two years after the final judgment from the initial case) but were less likely to reopen multiple times. In contrast, cases with minors were more likely to reopen multiple times over a longer period of time.

In contrast to the number of surprising findings in the Civil Landscape, the conventional wisdom among family court practitioners was largely confirmed in this study. Possibly family court judges and court staff are more directly involved in these cases, even those that are uncontested, and thus have a more accurate perspective of the unique dynamics of case management in domestic relations.

What is also clear from the study is that family court procedures still largely reflect the traditional adversarial system rather than the contemporary reality of parties that mostly agree on how they want to arrange their family relationships and other commitments following the termination of a legal marriage. This presents a profound change in the role of the court from an adjudicative to a facilitative process. In only a very small propor-



tion of cases does the court impose a resolution on the parties after considering the evidence and legal arguments presented by lawyers representing their respective clients. In the vast majority of cases, the court's role is to provide education and resources, including ADR or other decision-making tools, as mostly self-represented parties go about reorganizing their families and financial affairs.



Although family court judges and lawyers are aware of the court's evolving role, CMS have not been configured to reflect this new reality. To better serve litigants, courts must develop and implement more effective data standards for family court cases, including when and how litigants are using court services and resources. Of the courts that participated in this study, only six documented whether ADR had been scheduled, and only four documented whether ADR actually occurred. All of the courts require parent education in divorce/dissolution cases involving minor children, but only four of the courts documented whether the parties actually attended those education sessions. Some correlations were found between the rate of self-representation in the participating courts, the demographic characteristics of the community, and the scope of self-help services available through the court. But the CMS data did not indicate the extent to which litigants used these resources. Adoption of better standards for data quality (completeness and accuracy) and technical development of more adept CMS would aid the courts in monitoring these important aspects of family cases.

Data quality is essential to identify case or litigant characteristics that indicate the need for more robust judicial involvement or supervision.

More information is needed to understand the relationship between community characteristics and self-help resources. Correlation does not necessarily mean causation, but the relationship does raise a "chicken-or-the-egg" question: are sites that offer more self-help services proactively providing services in response to the income and education levels of their constituents? Or are they offering more services reactively due to the volume of cases that involve both parties being self-represented? Further examination of when courts implement these self-help tools, and how they are used by the target population, would inform best practices for implementing these resources across state courts.

Many courts, including those in this study, are starting to adapt principles from DCM to triage cases into appropriate case management tracks. To do so effectively, however, data quality is essential to identify case or litigant characteristics that indicate the need for more robust judicial involvement or supervision. Contested versus uncontested status was a common determinant for case track assignment. As noted in the findings, however, it is a static data element determined by the parties' positions at the pleading stage of litigation but does not reflect either the degree of dispute or any changes in the parties' positions over time. To minimize the likelihood and frequency of cases being reopened, development of a more nuanced data element concerning contested status will be necessary to confirm that the parties' disputes have been thoroughly addressed and satisfactorily resolved. Of even greater importance is the need to capture information concerning allegations of domestic violence, child abuse, substance abuse, or mental health issues that would reasonably alert court staff to the need for closer oversight and inform decisions about case triage and recommendations for litigant education and resources. Only three sites could reliably indicate whether allegations of domestic violence were involved in the case, and only one site reported allegations of mental illness.

It is possible that some courts document information off-system and may be using the information to inform decision making about case triage and/or the types of supports and resources to offer litigants. But if so, the lack of integration with CMS creates substantial inefficiencies and elevates the risk that important information may be lost or overlooked. It also makes it more difficult to ensure accountability for the quality of these services and for the integrity of the case management process.

Concerns about data quality also highlight emerging questions about the role of the court in domestic relations cases.

Perhaps even more astonishing, courts very rarely captured information on which to assess the impact or the relative quality of the court orders that disposed of the case. The FJI dataset only allowed one to determine whether the case ultimately resulted in a final legal judgment or was dismissed. Only eight courts indicated whether the final judgment was a default judgment, a different set of eight courts indicated whether the final judgment was a stipulated judgment or settlement, and only six courts could differentiate default judgments from stipulated judgments from adjudicated judgments. Only three courts documented whether a dismissal was requested by the parties or was initiated by the court for lack of prosecution or other procedural noncompliance. Only one court documented specific provisions of the final judgment (e.g., concerning custody, visitation, child support, distribution of assets and liabilities) in CMS, and that was in a text field that lacked uniform or standardized coding. Without knowing how cases are likely to be disposed, case management is little more than happenstance.

Finally, concerns about data quality also highlight emerging questions about the role of the court in domestic relations cases. Under the traditional adversarial system, courts served a *parens patriae* function by protecting the substantive and due process rights of vulnerable parties and ensuring that parental responsibilities for child rearing served the best interests of the children. When

family court procedures primarily followed an adjudicative model, court records consisted entirely of paper files including pleadings, evidentiary submissions, and the resulting court orders. Until fairly recently, court automation was relatively unsophisticated, capturing only information needed to document the progress of the case from filing to disposition. The judgments themselves documented the quality of decision making in individual cases, but there was no system in place to document decision making across the entire caseload (e.g., sole versus joint custody, physical versus legal custody, visitation arrangements, compliance with state child support guidelines, etc.). Although court automation has evolved into much more highly sophisticated case management systems, courts have not added the capability to assess the quality of judicial decision making or to render systematic information about family outcomes.

Over the past several decades, the litigation process in family court has evolved from an adjudicative to a largely administrative model. Parties now must provide satisfactory evidence that their divorce/dissolution agreements address relevant rights and responsibilities vis-à-vis children, property, and liabilities. But in the absence of an unresolved dispute or a serious concern about the capacity of the parties to make informed judgments in their own best interest, courts rarely examine the substance of those agreements or second-guess their appropriateness. This dynamic is not unique to family courts, but has emerged as an ongoing topic of discussion concerning the core functions of the judicial branch in the context of problem-solving courts, probate and guardianship, and general civil cases. By confirming much of the conventional wisdom about family court cases and court processes, the findings from this study raise questions not only of how domestic relations cases should be managed, but also whether the judicial branch is still the most appropriate forum for such cases.

Acknowledgments

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Appendices

Appendix A		Requested Data Elements
Appendix B		Protocol Template for Court Profile Interviews
Appendix C		United States Census Bureau Data Tables
Appendix D		Detailed Data Tables for Selected Filings

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Appendix A Requested Data Elements

Project Scope

The Landscape of Domestic Relations Litigation in State Courts (DR Landscape) will focus primarily on cases involving divorce/dissolution, related property distribution and spousal support, and the allocation of parental rights and responsibilities. We recognize that other case types (e.g., domestic violence, guardianship, juvenile, and child dependency) often complicate the management of domestic relations cases. For the purpose of the DR Landscape, we have chosen to exclude cases that originated as a criminal, probate, or juvenile case, even if the court ultimately entered a separation or divorce/dissolution decree or an order affecting parental rights and responsibilities.

The NCSC requests data elements extracted from the court's case management system (CMS) for all domestic relations cases disposed between July 1, 2016 and June 30, 2017. Disposed cases include any case in which a final order is entered that fully resolves the issue that either initiated a new case or that reopened a previously closed case (e.g., modification of child custody/visitation order). The specific case types requested are:

- Divorce/dissolution: cases involving dissolution, divorce, or annulment of a marriage or civil union, including distribution of marital property/debts or the award of spousal support;
- Child support: cases in which an individual requests maintenance of a minor child by a person who is required by law to provide such maintenance, including requests to modify an existing child support order;
- Child custody: cases in which an individual requests the court to allocate rights of legal and/or physical custody of a minor child, including requests to modify an existing child custody order; and
- Child visitation: cases in which an individual requests the court to confer the right to spend time with a minor child, including requests to modify an existing child visitation order. Such requests can be brought by parents, grandparents, or other family members.

Case types excluded from the CMS data request are: Title IV-D child support enforcement actions; paternity actions (unless filed to establish paternity for the purpose of allocating parental rights and responsibilities); adoption actions; guardianship/conservatorship petitions; petitions for civil protection orders (related to domestic violence); juvenile criminal or status offenses; and child dependency cases.

Data Format

The NCSC requests that raw CMS data be provided as Microsoft Excel (.xlsx), Microsoft Access (.xdat), comma-separated variables (.csv), or text (.txt) files with an accompanying data dictionary describing variable codes for each data element. The NCSC has the technical capacity to aggregate data records; it is not necessary for MIS staff to clean or aggregate data records. Contact Lydia Hamblin at lhamblin@ncsc.org or 757-259-1599 with any questions concerning data definitions or format.

Data Elements Requested

The NCSC seeks the following data elements from the court's CMS:

1. Case number;
2. Case type (e.g., divorce/dissolution, child support, child custody, child visitation);
3. Petitioner/plaintiff name(s);
 - If multiple petitioners/plaintiffs: is this a joint or stipulated petition? Y/N
4. Respondent/defendant name(s);
5. Other party name(s);
 - If applicable, include party relationship to action;

-
6. Representation status for each named petitioner/plaintiff. If possible, indicate if the petitioner was represented by an attorney at any time during the life of the case; otherwise indicate if the petitioner was represented by an attorney at disposition;
 7. Representation status for each named respondent/defendant. If possible, indicate if the respondent was represented by an attorney at any time during the life of the case; otherwise indicate if the respondent was represented by an attorney at disposition;
 8. Number and ages of minor children involved in the action;
 9. Filing or reopened date;
 - For reopened cases only: Filing date for initial case;
 - For reopened cases only: Number of times the case has been reopened;
 10. Was the case contested? Y/N
 - If contested, date of Answer/Responsive pleading;
 11. Disposition date;
 12. Manner of disposition (e.g., dismissed/withdrawn, settlement agreement, judgment entered after bench hearing, default judgment, etc.)
 13. Was an attorney or guardian ad litem appointed to represent the child or the child's best interests? Y/N
 14. Was the case scheduled for ADR? Y/N;
 - If yes, was ADR session held? Y/N;
 - If yes, date of ADR session;
 15. Was the case scheduled for parent education class? Y/N;
 - If yes, did the petitioner attend the parent education class? Y/N and date of class.
 - If yes, did the respondent attend the parent education class? Y/N and date of class;
 16. Did the petitioner request emergency/injunctive relief? Y/N;
 17. Did the respondent request emergency/injunctive relief? Y/N
 18. Did the case involve allegations of domestic violence? Y/N;
 19. Did the case involve allegations of child abuse? Y/N;
 20. Did the case involve allegations of substance abuse? Y/N;
 21. Did the case involve allegations of mental illness? Y/N;
 22. Number of adversarial motions filed;
 23. Number of pretrial conferences scheduled;
 24. Dates of pretrial conferences held (if more than 2, include only the first and last pretrial conference held);
 25. Number of in-court hearings scheduled; and
 26. Dates of in-court hearings held (if more than 2, include only the first and last in-court hearing held).

Appendix B Protocol Template for Court Profile Interviews

A.	Inclusiveness of FJI Landscape
1.	Does the scope of the FJI Landscape data collection capture ALL relevant case types? <ul style="list-style-type: none"> • 0 – No • 1 – Yes
1a.	If No:
	If no, where else (dockets, limited jurisdiction courts) would such cases be filed? Approximately how many such cases are filed in those dockets/courts?
2.	Are court orders issued in cases on those dockets/courts temporary or permanent decisions? If temporary, how do cases get referred to the primary DR docket for a permanent decision?
B.	Staffing on Domestic Relations Cases
3.	Are domestic relations cases assigned to a dedicated family court docket or division within the court? Or are all judges on the court assigned DR cases? <ul style="list-style-type: none"> • 0 – No (All judges assigned DR cases) • 1 – Yes (Dedicated DR docket or division)
4.	Does this court operate as a “one-judge/one-family” court? <ul style="list-style-type: none"> • 0 – No • 1 – Yes
5.	How many judges are assigned to domestic relations docket/division? What is the total number of judicial officers on the court? _____ DR judges _____ Total judicial officers
6.	What is the scope of responsibility for the DR presiding/administrative judge (e.g., smaller docket, caseload coordination, supervision of DR judges, training, etc.)?
7.	How frequently do judges rotate through the DR docket/division? What amount of training in DR are judges given before assignment to the DR docket/division?
8.	Does the court assign quasi-judicial personnel on DR cases? <ul style="list-style-type: none"> • 0 – No • 1 – Yes
8a.	If Yes:
	If yes, number and types (e.g., magistrates, judges pro tem); qualifications. What is the scope of their responsibilities?
9.	What types and how many professional, paraprofessional, and administrative staff are assigned to the DR docket/division? E.g., navigator/facilitator; law clerk/staff attorney; paralegal/case manager; judicial assistant/courtroom clerk.
10.	Does the court “triage” or screen DR cases for specialized case management purposes? <ul style="list-style-type: none"> • 0 – No • 1 – Yes
10a.	If Yes:
	If yes, has the triage policy been implemented division-wide? Or on a judge-by-judge basis? <ul style="list-style-type: none"> • 0 – No • 1 – Yes

10b.	Who does the initial screening? When is the initial screening done?
11.	<p>What are the screening criteria (e.g., see illustrative list of potential case characteristics, below)?</p> <ul style="list-style-type: none"> • Case complexity (e.g., Alaska, Colorado) • Contested, uncontested, stipulated • Length of marriage, married/unmarried • Age of minor children • Significant property interests • Domestic violence • Substance abuse • Mental health issues
C.	Court Services
12.	<p>What kinds of services are available to litigants in DR cases (e.g., see illustrative list of services, below)?</p> <ul style="list-style-type: none"> • Mediation • Early neutral evaluation • Other ADR • Parent education • Foreign language interpreters for LEP litigants
13.	Are the services mandatory or voluntary? If mandatory, are they mandatory by court order, court rule, or statute?
14.	Who provides these services (e.g., court, county or executive branch agencies, for-profit organizations, volunteers/non-profit organizations? For non-court providers, please describe the contractual relationship with the court. Does the court maintain a list of private referrals for services? What are the criteria for inclusion on the court's list?
15.	What costs are associated with these services? Are services available on a sliding-scale fee structure?
D.	Self-Help Resources
16a.	<p>Onsite Self-Help Center</p> <ul style="list-style-type: none"> • 0 – No • 1 – Yes
16b.	<p>Online Self-Help Center – local or statewide website?</p> <ul style="list-style-type: none"> • 0 – No • 1 – Yes
16c.	<p>Written forms and instructions</p> <ul style="list-style-type: none"> • 0 – No • 1 – Yes
16d.	<p>Fillable forms and instructions</p> <ul style="list-style-type: none"> • 0 – No • 1 – Yes
16e.	<p>Interactive forms and instructions (e.g., hot docs)</p> <ul style="list-style-type: none"> • 0 – No • 1 – Yes
16f.	<p>Legal clinics</p> <ul style="list-style-type: none"> • 0 – No • 1 – Yes
16g.	<p>DR Navigator/Facilitator providing one-on-one assistance to SRLs</p> <ul style="list-style-type: none"> • 0 – No • 1 – Yes

16h.	Onsite pro bono attorney legal advice <ul style="list-style-type: none"> • 0 – No • 1 – Yes
16i.	Referrals to attorneys who offer unbundled legal services including legal advice <ul style="list-style-type: none"> • 0 – No • 1 – Yes
17.	What other types of DR resources are available for SRLs?
18.	Who provides these resources (e.g., court staff, state/local bar organization, volunteers, etc.)?
E.	Statutes, Rules, and Business Practices
19.	Is there a waiting period for entering a divorce decree? If so, what is that period? _____ Months
20.	Do the state statutes or court rules require in-court hearings or specialized case management provisions for DR cases? Are there other specialized procedures for DR cases (e.g., Alaska notice-by-publication rules)? <ul style="list-style-type: none"> • 0 – No • 1 – Yes
21.	Do the state statutes or court rules specify procedures for uncontested/non-contested cases? <ul style="list-style-type: none"> • 0 – No • 1 – Yes
22.	Do statutes or court rules specify circumstances requiring the appointment of a GAL or other court-appointed attorney?
23.	What is the filing fee for a DR case? _____ Dollars
24.	Does the filing fee apply only to the Petition? Or to subsequent filings (e.g., Response, Motions)?
25.	Describe the basic adjudicatory process and timeline for a run-of-the-mill DR case (e.g., divorce/dissolution with minor children, relatively low conflict). [Use VizTool to map divorce/dissolution process].
F.	Open-ended questions
26.	What are the biggest problems associated with DR cases?
27.	Where do litigants get hung up in the process?
28.	What kinds of innovative things are you trying or have tried? What is/was successful? If unsuccessful, why not?
29.	Is your court experiencing any unique or unusual circumstances that affect how DR cases are managed?

Appendix C

United States Census Bureau Tables

The following data tables were downloaded from the U.S. Census Bureau website for the United States and for the eleven counties that participated in the FJI Landscape study:

- S1101, Households and Families, 2012-2016 American Community Survey 5 Year Estimates
- S1201, Marital Status, 2012-2016 American Community Survey 5 Year Estimates
- S1501, Educational Attainment, 2012-2016 American Community Survey 5 Year Estimates
- S1901, Income in the Past 12 Months (in 2016 Inflation-Adjusted Dollars), 2012-2016 American Community Survey 5 Year Estimates

Appendix D

Detailed Data Tables for Selected Filings

Table 1: Case Type Distribution

Court Case Types	%	FJI Case Types	%	Minors	%
Divorce/Dissolution	74.6%	Divorce	76.1%	Divorce w/Minors	36.2%
Legal Separation	0.9%			Divorce w/o Minors	31.2%
Annulment	0.4%			Divorce, Minors Unknown	8.7%
Spousal Support	0.0%				
Child Custody/Visitation	3.9%	Parental Responsibility	10.1%		
Child Support	2.9%				
Child Support Enforcement	0.3%				
Paternity	3.0%				
Other	9.3%	Other	13.8%		
Missing	4.5%				

Table 2: Representation Status for Contested and Uncontested Cases

All Cases		Petitioner Represented	Respondent Represented
Contested		42%	33%
	Minors	58%	10.1%
	No Minors	60%	13.8%
Uncontested		30%	16%
	Minors	28%	15%
	No Minors	24%	16%

Table 3: Representation Status for Initial and Reopened Cases

		Petitioner Represented	Respondent Represented
Initial		34%	19%
	Minors	30%	24%
	No Minors	23%	12%
Reopened		62%	60%
	Minors	62%	57%
	No Minors	72%	63%

