



UNIFIED FAMILY COURT Connection

SPRING 2019
22ND ISSUE

UNIVERSITY OF BALTIMORE SCHOOL OF LAW ■ SAYRA AND NEIL MEYERHOFF CENTER FOR FAMILIES, CHILDREN AND THE COURTS

Moving Beyond Wise Words in Ontario—Finally!

BY GEORGE CZUTRIN AND TAMI MOSCOE

Much continues to be written about access to justice challenges in the family law arena. While there certainly remains room for improvement, recent developments have attempted to respond to those challenges in concrete and meaningful ways.

Before going any further, we want to reiterate the underlying theme from the *Meaningful Change for Family Justice: Beyond Wise Words* report of the Family Justice Working Group of Canada’s National Action Committee on Access to Justice in Civil and Family Cases. That report canvassed jurisdictions across Canada and concluded as follows:

The first conclusion we can draw is that it is going to take more than wise advice to change the system. To a significant extent, the ideas needed to make the family law system work better have already been articulated. What we confront is an “implementation gap.” The FJWG has observed that there is a gap between the vision of previous reports and the reality of today’s family justice systems. Many of the very promising recommendations contained in the previous reports have either not been implemented or only have been partially implemented. The reasons for this under-implementation are multiple. One reason is simply that limited resources are available for the family justice system. This resource problem is compounded by the current environment of fiscal restraint, in which family justice funding falls even further behind criminal and civil justice funding.”

Stated more concisely, the groundwork already has been laid for what remains to be done, and the time for concrete action is now.

Recognizing that many individuals may not be familiar with how family law proceedings are handled in Canadian jurisdictions, we offer the following information by way of background:

- Ontario is Canada’s most populated province with over four million residents and ongoing anticipated growth.
- Ontarians are more likely to be directly impacted by a family law dispute than any other legal proceeding. (See Report of the *Ontario Civil Legal Needs Project* May 2010 (available at https://lawsocietyontario.azureedge.net/media/iso/media/legacy/pdf/m/may3110_oclnreport_final.pdf)
- In Canada, the Federal and Provincial/Territorial governments share jurisdiction over family law (in terms of who makes the judicial appointments as well as who is responsible for the governing legislation).
- In Ontario, the Family Court Branch of the Superior Court of Justice (referred to below as the unified family court to be consistent with other jurisdictions) has comprehensive jurisdiction over family law and child protection/dependency cases.

Overview

With family law cases continuing to increase nationwide, the courts continually are refining their focus to create justice systems that help address the issues facing families in a more holistic and therapeutic way.

In this issue of the Unified Family Court Connection, we offer a myriad of articles on unified family courts.

- **The Honorable George Czutrin**, a senior justice of the family court in Toronto, and **Tami Moscoe**, senior family counsel, discuss access to justice challenges in the family law arena and how recent developments in Ontario courts have responded to those challenges in meaningful ways.
- **Julia F. Weber**, JD, MSW, a consultant, speaker, and mediator who teaches domestic violence law at Golden Gate University School of Law, writes about how California’s courts have responded to legislative, cultural, and budgetary changes over the years.
- **Barbara A. Babb**, an associate professor of law and the founder and director of the Sayra and Neil Meyerhoff Center for Families, Children and the Courts (CFCC) at the University of Baltimore School of Law, and **Gloria H. Danziger**, former CFCC Senior Fellow, write about their work with Nebraska to devise recommendations for the development and implementation of a unified family court pilot project with Nebraska.
- **Barbara A. Babb and Judith D. Moran** preview their recently published book, “Caring for Families in Court: An Essential Approach to Family Justice,” which offers a vital new perspective on how family courts and those who work within them must approach their work.

- At present, unified family courts exist in only 17 of 50 Superior Court locations in Ontario. In the balance of the province, jurisdiction over family law and child protection is divided and at times overlapping between the Superior Court of Justice and the Ontario Court of Justice. This often leads to confusion about what process should be followed, additional steps, costs, delays and differing routes to appeal (depending on where a case is started, and which issues are involved).
- Almost 50,000 new family and child protection cases are started annually in Ontario's Superior Court of Justice, just over half of which were brought in a unified family court. An additional 18,000 cases are started annually in the Ontario Court of Justice.
- Under Ontario's Family Law Rules, the court (with support from the parties and their lawyers) is required to apply the rules to deal with cases justly, including ensuring fairness, saving expense and time, and dealing with each case in ways that are appropriate to its complexity and importance.
- Most stages of the family court process under the Family Law Rules are aimed at facilitating consensual resolutions between the parties. Traditional litigation events (e.g. motions and trials) generally are permitted only after those efforts have been exhausted.
- And finally, the bulk of family court cases in Ontario come to final resolution without the necessity of a trial.

Separating families in Ontario have access to a wide range of supportive services including government-subsidized family mediation, family information sessions, information and referral coordinators, clinical investigation and child representation services, and family court support workers who help victims of domestic violence.

Free and even affordable legal advice services unfortunately are not as readily available. Parties who are involved in a family law case of modest means can obtain legal advice with assistance from Legal Aid Ontario, although those services are financial eligibility tested and, as a result, largely unavailable to middle class litigants. This has contributed to a gap in representation, with at least one litigant appearing without counsel at least 50 percent of the time and in some courts in up to 70 percent of family court cases. (Unfortunately in Ontario, these figures are only tracked at the outset of the case and therefore do not provide an accurate depiction of self-representation as cases progress). An exploration of the many challenges that this creates for the parties and the family justice system more broadly is beyond the scope of this article.

Over the past few decades, access to justice reports in Canada, including the recent *Meaningful Change for Family Justice* report, have universally supported the unified family court model. We believe that having access to a properly resourced, province-wide, unified family court is the most important access to justice improvement for several reasons. First and foremost, unified family courts should provide more consistent responses to separation and divorce, with comprehensive jurisdiction over family law and child protection cases. This removes the duplication of process and confusion that is noted above. They also include a dedicated family law judiciary, with a greater ability to provide single-judge case management. Equally important are the court-connected family mediation and information services that they

provide, as well as important linkages to community services for families in crisis.

When the unified family court first came to Canada as a pilot project in Hamilton, Ontario, 40 years ago, it represented an innovative and holistic approach - focused on less adversarial and more sustainable outcomes for families and children. The court was supported from the outset by early mediation and information programs, simpler court processes, and a dedicated family court judiciary. The unified family court was not expanded in Ontario until 1995 and then once again in 1999, after which time further expansion proved elusive, notwithstanding several attempts.

In 2017, an agreement was reached between the Superior Court of Justice, the Ontario Court of Justice, and the Provincial Attorney General, along with support from a very engaged family law bar as well as the Court of Appeal. This agreement led to Ontario's proposal to the federal government for the appointment of additional unified family court judges, which request has been approved effective April 1, 2018 (as well as requests from several other Canadian provinces). As a result, Ontario is getting ready to implement the first unified family court expansion in 20 years this Spring, which will bring unified family courts to 8 additional Superior Court of Justice locations and approximately 50% of Ontario's population.

This represents a huge step forward in moving toward our court's goal of province-wide unified family court expansion by 2025. We remain optimistic that both levels of government are prepared to continue to work toward this goal.

Several additional initiatives recently have been deployed in Ontario to enhance access to justice in family law that we would like to highlight briefly. There is a new Family Law Limited Scope Services Project (www.familylawlss.ca). This project aims to increase both the supply and the quality of unbundled family law services in Ontario by providing family lawyers with the tools and support they need to offer these services competently. The project also will make it easier for separating parents to find lawyers in their communities who are willing to provide the specific unbundled services they are seeking.

Turning to legal information and assistance, there is an exciting platform in Ontario where separating families can receive targeted legal information, as well as concrete instructions on navigating the process and steps along the way, based on their specific inquiries. Steps to Justice (www.stepstojustice.ca) was launched in 2017 by Ontario's Community Legal Education Ontario (CLEO) with the support of the courts, the Ministry of the Attorney General, and several other organizations. This portal recently was enhanced to include preparation assistance of court forms, making it as easy as possible for parties to complete the necessary paperwork based on the issues that must be addressed and where they are in the court process.

Finally, Ontario continues to work on improvements to further simplify its family court process through the Family Rules Committee, which includes representation from the courts, the Provincial government, and the bar.

Returning to our central theme, we are pleased to recognize the above initiatives as a few concrete examples of how much can be accomplished by justice partners, when we work together. We also can-

not stress enough how important it is for all participants in the family justice system, whether they provide services publicly or privately, whether facilitating consensual resolutions or adjudicating (when required), and whether in the legal, mental health or other professions, to work together, respectfully, to accomplish meaningful change. To do otherwise is to leave each of us in our respective silos, at times working at cross purposes and competing over limited public funding and, as a result, unintentionally limiting what can be accomplished.

In doing so, it is critical to recognize the vital role that our family courts must be able to continue to play by providing a forum for the timely and appropriate resolution of any family law dispute, regardless of complexity or the finances of the parties, within appropriate legal parameters. Equally importantly, family courts must continue to be able to support the ongoing evolution of family law, so that the law can continue to develop to meet the needs of modern families, which then guides parties going forward as they resolve their family law disputes with or without court intervention. None of these goals can be met without proper resourcing.

In closing, properly functioning family courts remain essential for those who choose to resolve their disputes both within and outside of the court system, and their ongoing resourcing needs should not and cannot be ignored. To borrow from Professor Barbara Babb:

FAMILY COURTS ARE HERE TO STAY, SO LET'S IMPROVE THEM

“[W]hile the challenges of a contemporary . . . family court docket may be fierce, we can unquestionably find ways to meet them and do better. I am simply unwilling to adopt a despairing and defeatist attitude the “nothing works” or—put another way -“everything stinks,” but don’t change a thing.” (Barbara A. Babb, *Family Courts are Here to Stay, So Let’s Improve Them*, 52 Family Court Review 642 (2014), quoting Judith S. Kaye, *Delivering Justice Today: A Problem-Solving Approach*, 22 Yale Law and Policy Review 125, 147 (2004).



The Honorable George Czutrin was appointed Senior Justice of the Family Court, Superior Court of Justice in Toronto, Canada, on December 7, 2013. He is a member of the Family Law Rules Committee, Council of Regional Senior Judges and several subcommittees of the council, including the modernization committee whose mandate includes advocacy for technology in the courts to assist parties, counsel and judges. He is an advocate for unified family courts, family justice, family court innovation, and access to family justice.



Tami Moscoe, Senior Family Counsel, provides advice to the Chief Justice and Senior Family Justice on all issues relating to family law, family court processes and the unified family court. Moscoe also advises on improvements to the Family Law Rules and potential family justice innovations, working closely with representatives of the Ministry, the family law bar and other stakeholders.

California Courts Change to Meet Evolving Needs of Families

BY JULIA F. WEBER

“In light of the volume of cases faced by trial courts, we understand their efforts to streamline family law procedures. But family law litigants should not be subjected to second-class status or deprived of access to justice. Litigants with other civil claims are entitled to resolve their disputes in the usual adversary trial proceeding governed by the rules of evidence established by statute. It is at least as important that courts employ fair proceedings when the stakes involve a judgment providing for custody in the best interest of a child and governing a parent’s future involvement in his or her child’s life, dividing all of a family’s assets, or determining levels of spousal and child support. The same judicial resources and safeguards should be committed to a family law trial as are committed to other civil proceedings.”

— *Elkins v. Superior Court*, 41 Cal.4th 1337, 1368, 163 P.3d 160 (2007).

While California’s courts consistently have responded to legislative, cultural, and budgetary changes over many decades, the state Supreme Court’s decision in *Elkins v. Superior Court* in 2007 marked a turning point for family court reform efforts.

Soon after the case was decided, the California Judicial Council appointed the Elkins Family Law Task Force to develop recommendations addressing the issues raised in the case and by other stakeholders. In April 2010, the Task Force issued its final report with over 200 recommendations addressing family law and court reform. Subsequently, the Judicial Council appointed the Elkins Family Law Implementation Task Force to support robust implementation and to identify resources for courts to most effectively handle this too often under-resourced area.

Coming on the heels of the state’s Unified Courts for Families effort to improve coordination for family-related cases, the period immediately following the *Elkins* decision, and the years since, reflect significant changes in how California’s courts handle family law matters.

Serving a statewide population of over 39 million, California’s court system is the largest in the U.S. At the trial court level, each of the state’s 58 counties has at least one Superior Court location. Judges are elected locally or appointed by the governor and later stand for election and are assigned by the presiding judge in each court to calendars (for example, family, dependency, criminal, civil, etc.). At least one commissioner is employed by each court. Family law dockets include dissolution (divorce); parenting time/child custody and support; and domestic violence restraining orders—matters that fall under the state’s family law code.

While the courts are funded at the state level and the judicial council promulgates forms, rules, and policies statewide, courts organize their calendars and provide services as they determine locally so there is some variation in approaches. The judicial council staff and leadership play a key role statewide in helping the courts implement promising practices to increase public trust and confidence in the courts and provide access to justice, due process and fairness.

PROCEDURE

California family court cases have been impacted both by the *Elkins* decision and related policy changes supporting live testimony rather than requiring family law litigants to proceed only based on the papers that have been filed. This change and implementation of case management represent two significant reforms. As of 2013, family courts have used the “family centered case resolution” process which supports early settlement, quicker trial dates, and reduced litigation expenses. Courts manage cases through one or more status conferences at which the parties, attorneys and a judicial officer will discuss a “case resolution plan.” The ability of the court to set family law case management conferences has allowed the courts to manage cases more effectively and to move cases along more efficiently.

In recent years, one of the challenges throughout the branch has been finding resources for court reporters. As a result, some courts pulled back on providing reporters in cases where they were not required, including family law. In 2018, however, the California Supreme Court clarified that reporters need to be provided even in cases where litigants have limited means. The decision led to more (albeit, limited) statewide funding, enabling local courts to increase the availability of court reporters in family courts, reflecting a significant court reform statewide.

CHILDREN, PARENTS, AND DOMESTIC VIOLENCE

Child custody proceedings have been informed in recent years by several significant changes, including expectations for children’s participation in family law matters. Although children do not participate in most family cases, in those situations where a child wishes to testify, there is now legislative support for hearing from that child about their custody preferences, where it may be in their best interest to testify.

When this situation arises, the local court department responsible for providing mandatory children custody mediation (“Family Court Services, or FCS) might meet with a child and, in some courts, provide information to the judge about the child’s desire to testify. In conjunction with this change and over the last few years, California has rolled out Families Change, a website adapted from British Columbia’s version providing resources and information for separating and divorcing families, teens, and kids. The site includes a free online parenting course with sections relevant to families anywhere and another on dealing with finances during and after separation. Both are available in Spanish and English.

As is true nationally, domestic violence matters continue to be a significant part of the family court docket. Civil restraining order calendars are heavily impacted and include a variety of cases that fall under the expanded Family Code definition of domestic violence. Coordination across case types here, especially with cases involving children, is key—and now required by statewide rule of court. Additionally, in 2014, the

Council adopted a rule of court requiring that review hearings be set in domestic violence family law cases where a restrained party has been found to own or have access to firearms. This approach provides an innovative way to increase the likelihood that firearms will be removed from homes where family violence may create an increased risk for lethality or severe injury, not only to family members but also the public at large.

FUTURES AND INNOVATION GRANTS

Other judicial branch efforts have been significant for family courts in recent years. The Futures Commission worked between 2014 and 2017 “to study and recommend to the Chief Justice initiatives to effectively and efficiently serve California’s diverse and dynamic population by enhancing access to justice.” The Commission’s recommendation regarding child custody focused on the benefits of providing confidential mediation for parents and offering tiered services where, if parents cannot reach agreement, they can be referred within the court to other approaches. These may include a trained mediator/investigator who provides the court with information in writing or through oral testimony to help craft a parenting plan or conduct a child custody evaluation. The reforms successfully have streamlined cases, offered more opportunities for confidential case resolution, and supported access to judicial decision-making where needed.

Last year, the branch budget more than doubled the amount earmarked for self-help services, from \$11 million to \$30 million to help courts assist the many family law litigants appearing without attorneys. Additionally, the state’s Budget Act of 2016 allocated \$25 million to the branch to promote court innovations and efficiencies through a grant program; \$8 million was allocated for family, juvenile and self-help services. The judicial council provided a report to the legislature in September 2018 describing in part the following projects, reflecting just some of the innovative work underway in the superior courts:

- Butte implemented remote video-conferencing technology in 13 rural courts to support self-help programs that can be used collaboratively by sharing self-help resources between participating courts. The website, sharpcourts.org, was launched, and online registration for workshops is available.
- San Bernardino is using video-conferencing for child custody cases where counseling is recommended to address geographic challenges and to offer a safer option for high-conflict and domestic violence situations. As of the last report, the court has hosted over 76 successful sessions with a satisfaction rate from participants of 81 percent.
- Santa Barbara developed “instant family law orders” to enhance the way a copy of the court’s orders are produced—now provided within minutes of the conclusion of the proceedings, enabling parties to leave with a clearer understanding of the orders.
- San Mateo Superior Court developed updated web-based video and written content for family law, domestic violence restraining orders, and other areas and implemented a “self-prep and file” website.

Additionally, family courts are benefiting from the development of the Language Access Toolkit and implementation of the branch’s Language Access Plan. Fifty-one of California’s 58 trial courts now pro-

vide interpreters for critical civil cases, including domestic violence, child custody, and elder abuse.

While resources for such a large and complex system are still limited, California's courts, with support from judicial leadership and subject-matter expert staff at the judicial council, continue to move forward with their commitment to serve families. The coming years will bring new and different challenges; however, the investment in good policy development and technology, the ability to bring creativity and innovation to court reform efforts, and the guidance from the *Elkins* decision recognizing the importance of family law proceedings will serve the courts well as they continue to respond to the changing legislative landscape and the needs of today's families.



Julia F. Weber, JD, MSW is a consultant, speaker, and mediator and teaches domestic violence law at Golden Gate University School of Law. From 1999-2017, she worked at California's Judicial Council and served as co-counsel to the Family & Juvenile Law Advisory Committee.

Nebraska Considers Unified Family Court Pilot

BY BARBARA A. BABB AND GLORIA H. DANZIGER

As in many court systems across the country, cases involving children and families are among the most numerous and complex matters that the Nebraska court system adjudicates.

In Fiscal Year 2018 (FY 2018, beginning July 1, 2017, and ending June 30, 2018), 54 percent of the adult cases opened in Nebraska District Courts were domestic relations (family law) cases. Other adult case types opened in the District Courts during this time period were criminal (31 percent), regular civil (15 percent) and appellate action (less than one percent). (Source: *Nebraska Judicial Branch Annual Caseload Report for Fiscal Year 2018*)

NEBRASKA'S LEGAL LANDSCAPE

In Nebraska, several courts have the power to hear family law cases. In Douglas County, which includes Omaha and is the state's most populous county, the district court, county court and separate juvenile court all hear issues involving children and families.

In FY 2018, Douglas County's caseload mirrored statewide percentages, as 53 percent of adult cases opened in district court were domestic relations matters. In the separate juvenile court, 2,386 juvenile cases were opened in FY 2018, three to four times greater than in the other two separate juvenile courts.

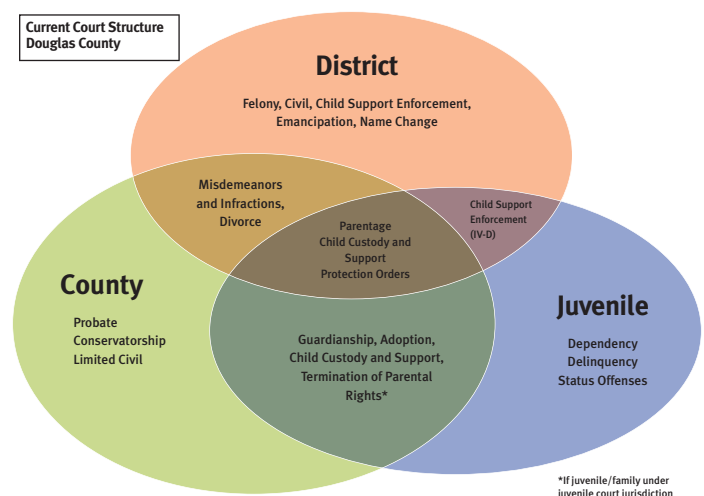
The diagram below depicts family law subject-matter jurisdiction among the courts in Douglas County. Although the district court has concurrent jurisdiction with the county court in domestic relations cases, with the exception of protection orders (equally divided between district and county courts), the district court determines domestic relations cases in Douglas County. The county court hears probate, guardianship, conservatorship and adoption cases. When the Douglas County Separate Juvenile Court has declared a child a ward of the court because the juvenile has committed a crime, is a victim of abuse or neglect or is a status offender, the separate juvenile court also has jurisdiction over that juvenile for purposes of termination of parental rights proceedings, adoption or guardianship proceedings, paternity or custody determinations, child support and protection orders.

THE DILEMMA FOR DOUGLAS COUNTY'S CHILDREN AND FAMILIES

Douglas County children and families face numerous challenges due to the several courts handling various family law matters. The courts also face challenges because litigants often have related cases in other courtrooms or jurisdictions. For example, parties with a child custody case in the district court also may have related matters in the county court, such as a domestic violence restraining order or a criminal case involving the same or related individuals.

Litigants typically view the courts and various judicial officers as a single entity within a centralized location and assume that the decision maker has the information and facts necessary to reach a fair resolution and to make appropriate court orders. This assumption often leads families to believe that there is shared communication between and among different courts. In Douglas County, though, the district, county and separate juvenile courts have their own case management systems, which makes coordination challenging. This can result in the issuance of conflicting or duplicative orders. From the perspective of the families involved in multiple proceedings, the lack of communication may require them to choose which court orders they are to follow, as well as which court appearances to keep when they are scheduled to appear in multiple places at the same time.

In addition to different judges and separate case management systems, Douglas County families often are involved with multiple court-connected services, such as conciliation and/or family media-



tion services in domestic relation cases, the Court Appointed Special Advocate (CASA) program in juvenile dependency cases and services for self-represented litigants. There also are court-ordered, court-referred, and/or community-based services, including: mental health services, substance abuse treatment, batterers' intervention, parent education, child custody evaluation, co-parenting counseling, domestic violence shelters, supervised visitation programs, and drug-testing facilities. A lack of court coordination and information sharing can lead to a multitude of problems for both the court and the families, as they attempt to interact with the mandated or recommended services.

THE ASSIGNMENT: TO ANSWER THE QUESTION, "WHAT CAN BE DONE?"

Nebraska first considered the unified family court model in the late-1980s, when a senator introduced legislation, later indefinitely postponed, to create a comprehensive family court system. In late 2015, the Nebraska Supreme Court created a new Family Court Subcommittee within the Nebraska Supreme Court Commission on Children in the Courts to study the family court concept.

In June 2016, a group of individuals led by the Nebraska Court Improvement Project (CIP) asked the University of Baltimore School of Law Sayra and Neil Meyerhoff Center for Families, Children and the Courts (CFCC) to study and design a unified family court pilot project in Douglas County, Nebraska. In Summer 2017, the Sherwood Foundation awarded CIP a grant for this purpose. In close collaboration with the CIP team, CFCC developed a work plan to undertake the project, and CFCC began its work in Fall 2017.

Over the next twelve months, CFCC led an intensive effort to assess the feasibility of developing and implementing a unified family court pilot project in Douglas County. The work plan included the following activities:

- **Review of Current Court Operations.** CFCC reviewed the current Douglas County Separate Juvenile, District and County Courts' structures and operations, including their case management systems, resource allocation, forms and written procedures, and data collection.
- **Initial Site Visits and Stakeholder Engagement in Douglas County.** In February 2018, CFCC conducted a comprehensive, three-day site visit to Nebraska that included court observations; an educational session about unified family courts; individual meetings with Nebraska Chief Justice Michael Heavican and Supreme Court Administrator Corey Steel, Senator Tony Vargas, and Senator Justin Wayne; and three informal listening sessions with stakeholders.
- **Survey.** Following its site visit, CFCC, in collaboration with CIP, developed a survey designed to identify present and significant practices and opinions related to court handling of matters involving Douglas County's children and families. The survey also included questions about support for and views regarding a unified family court pilot project in Douglas County.
- **Unified Family Court Forum and Judges' Reception.** In August 2018, the CFCC team convened "A Forum on the Douglas County Unified Family Court Pilot" in Omaha, attended by more than 150

judges, court staff, attorneys, and service providers. Chief Judge Michael Heavican opened the Forum by delivering remarks that strongly supported family justice system reform. A presentation on unified family courts followed his address. The day concluded with eight breakout discussion sessions designed to enable attendees to air their experiences, views, and concerns about court structure, including conversations to address the following questions:

- What could a Douglas County Unified Family Court Pilot Project accomplish that presently is not being accomplished?
- What would be the greatest challenges to developing and implementing a Douglas County Unified Family Court Pilot Project?
- If a Douglas County Unified Family Court Pilot Project were to move forward, what do you see as the system goals?
- What would be the five highest priority service needs for children and families in court in Douglas County? Should the court supply these services or should the court refer families to the community for these?
- Who would absolutely have to be in agreement with the concept of a Douglas County Unified Family Court Pilot Project in Douglas County in order to promote its development and implementation?

- **Site Visit by Nebraska Team to Baltimore and Annapolis.** In late August 2018, a team of Douglas County representatives visited with Maryland court system leaders in Baltimore and Annapolis to learn about Maryland's Family Division's structure and operation. The group met with judges, court administrators, service providers, Maryland Court of Appeals Chief Judge Mary Ellen Barbera, and State Court Administrator Pamela Harris.

REPORT AND RECOMMENDATIONS TO CREATE AND IMPLEMENT A UNIFIED FAMILY COURT PILOT IN DOUGLAS COUNTY

CFCC has concluded its study of the Douglas County family and juvenile court system and has submitted a report that focuses on a series of recommendations for the development and implementation of a unified family court pilot project. In addition to general recommendations, CFCC has offered more specific short- and long-term suggestions regarding court structure, case management and coordination, strategies to enhance due process protections and fairness, court services and referrals, and judicial and court staff education and training. Chief Justice Heavican, State Court Administrator Steele, and the Family Court Subcommittee leadership now are considering CFCC's report and recommendations.

Change can be good, but it also can be difficult. We are confident, however, that Nebraska officials have a clear view of what change can mean. As one Nebraska team member has said during the Maryland site visit, the main question is, "How do we better serve children and families? To me, court structure is a means to that end."

For more information about this project or CFCC's consulting and technical assistance, please Barbara Babb at 410.837.5661 or bbabb@ubalt.edu.



Barbara A. Babb is an associate professor of law and the founder and director of the Sayra and Neil Meyerhoff Center for Families, Children and the Courts at the University of Baltimore School of Law. She has written, spoken, and

consulted extensively at the state, national, and international levels about court and law reform projects. **Gloria H. Danziger** was CFCC Senior Fellow at the time of this project.

Caring for Families in Court: A New Book about Family Justice System Reform

BY BARBARA A. BABB AND JUDITH D. MORAN

Twenty years ago, we collaborated to write a law review article entitled *Substance Abuse, Families and the Courts: The Creation of a Caring Justice System*. It was the first time we discussed the idea that family courts, among their many undertakings, must operate with a caring agenda.

Over the years, the concept has crystallized as a result of our extensive involvement with the family justice system. We have represented family law litigants, have participated in family court administration, have advocated for and facilitated family justice system reform initiatives, have taught family law courses in law school, and have written articles about many aspects of family justice system reform. We also have worked in professions exposing us to families and children in need during our careers as a high school teacher, a social science researcher, a nurse, and a counselor. We have seen families struggle, and we understand that meeting their needs is a complicated affair.

Our newly published book, *Caring for Families in Court: An Essential Approach to Family Justice*, is the culmination of these experiences. In it, we aim to consolidate the sum-total of what we have learned, along with what we believe is a vital new perspective on how family courts and those who work within them must approach their work. We contend that caring must be the animating principle of decision-making in family courts.

Notions of care and caring are concepts that date to ancient philosophers—the idea that we owe a duty to care for and to care about one another. The care movement has evolved, leading to its application in politics, medicine, and law. We contend that care is an essential ingredient in order to realize an approach to justice for families that is holistic and effective.

Our expectations for a more comprehensive view of family justice stem from the premise that each family is unique and that the problems that lead families to seek help from the courts are distinct. Laws governing families address their legal difficulties, but the application of the law to the facts of each family’s life requires a nuanced perspective that considers the family’s particular circumstances, or the family’s story. Further, legal relief is not the sole solution to most family law cases. Many nonlegal issues come into play, such as economic hardship, substance use, and mental health difficulties. The court must understand through the family’s narrative the totality of its circumstances to facilitate caring and to address whatever issues require resolution in order to allow the family to function effectively. Much like hospital emergency rooms, family courts deal with people in crisis. In these instances, caring for and about litigants must supplement the traditional mechanisms for processing cases and rendering decisions.

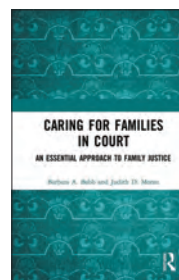
We also maintain that the work of the family justice system must interest the entire community. It is in this arena that families and children function, and the effects of the family court process can impact a family’s participation in community affairs and institutions. With this ecological model in mind, court outcomes can become the best of what is possible under the law for families and children.

Caring for Families in Court provides an overview of our conceptual paradigm that combines theoretical principles of unified family courts, the ecology of human development, therapeutic jurisprudence, the ethic of care, and narrative. The book presents a comprehensive exploration of these concepts and the rationale for their relevance to our proposal to make an ethic of care a driving force in family justice. We also illustrate our vision for applying these constructs to the operation of the family justice system—the manner in which court actors interact with litigants, how lawyers represent their clients, how judges consider their decisions, how the physical structures that house family courts are designed and maintained, and how certain court policies and practices can promote their vision.

Finally, as we understand that some readers may reasonably approach our reform agenda with apprehension, believing that family court systems are so beleaguered that they are beyond repair, we offer a ray of hope. The book contains in its final chapter an overview of the innovative approaches that some courts have adopted, demonstrating

that reforms undergirded by care are possible.

We have written this book to appeal to a wide range of individuals - judges, lawyers, court personnel, services providers, legal educators, and policymakers, among others - and as a call to action to create a family justice system founded on principles of justice AND care. Caring is required if courts are to respond effectively to families’ needs.



Barbara B. Babb and Judith D. Moran are the co-authors of *Caring for Families in Court: An Essential Approach to Family Justice*. For more information about the book, see <https://routledge.com/Caring-for-Families-in-Court-An-Essential-Approach-to-Family-Justice/Babb-Moran/p/book/9781138684119>



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University of Baltimore School of Law
1420 N. Charles Street
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“CFC has been a key partner in promoting family court reform in our state. Its work helps courts and their community partners remain focused on how our work can benefit families.”

Pamela Cardullo Ortiz

Director
Access to Justice Department
Administrative Office of the Courts
Maryland Judicial Center



VOICE BOX

THE SAYRA AND NEIL MEYERHOFF
CENTER FOR FAMILIES, CHILDREN AND THE COURTS

University of Baltimore School of Law
1420 North Charles Street
Baltimore, Maryland 21201
Telephone: 410-837-5615
Fax: 410-837-5737
E-Mail: cfcc@ubalt.edu
Website: <http://law.ubalt.edu/centers/cfcc>

Barbara Babb, Associate Professor of Law and Director
Auburn Associates, Inc., Design/Production

ASK THE EDITOR: Unified Family Courts cover a myriad of issues, problems and innovations. If you have questions you would like us to address, or if you want to contribute to the newsletter, please send your suggestions to us. We will try to include them in upcoming editions of the *Unified Family Court Connection*. Send your questions or contributions to: cfcc@ubalt.edu.

FEEDBACK: We value your opinions and your comments! We look forward to hearing from you at cfcc@ubalt.edu.

MAILING LIST: If you want to be added to our mailing list for the newsletter or know of others who would like to receive the *Unified Family Court Connection*, please send your request (with names and addresses) to: cfcc@ubalt.edu.

