Domestic Case Process Improvement Subcommittee

Report and Recommendations to the
Standing Committee on Children and Family Law

Judge Douglas Thomas, Chair

6/9/2017

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Introduction

"One overarching change that we have made in our court system over the past twenty years is that rather than simply being guided by tradition (that is, by the notion that we ought to simply keep doing what we have always done), we have tried to see our court system responsibility as judges in a different way. Instead of being guided by tradition, anecdote, or "gut instinct", we are guided by research, data, and evidence about what works. This new evidence-based way of approaching our jobs as judges and of discharging our obligations as a court system permeates every aspect of what we do. We have earnestly sought to make all of our services and administrative and judicial practices, including sentencing, evidence based and results oriented."

State of the Judiciary,
Chief Justice Matthew Durrant,
January 23, 2017

The Domestic Case Process Improvement Subcommittee (the "Subcommittee") has sought to complete its charge from the Judicial Council using the evidence-based approach Chief Justice Durrant articulated in his most recent State of the Judiciary address. Domestic cases are perhaps the most contentious of all cases that come to a court system and those involved have strong feelings about what is working and what is not working. They also have strong feelings about solutions to problems that may exist in processing these types of cases. Rather than engage in a debate of competing opinions and views, the Subcommittee has chosen to rely on research and data when making recommendations not only to the Standing Committee on Children and Family Law (SCCFL) but eventually to the Judicial Council.

Consequently, the Subcommittee considered previous studies regarding domestic issues, data from the Courts' information system, surveys administered to judges, commissioners, and attorneys, surveys administered to self- represented parties, national best practice models, and brainstorming by a group of experienced and committed family law practitioners. The Subcommittee evaluated the data and research rather than working off of individual agendas. The recommendations will create a more efficient system of processing domestic cases and allow parties' issues to be heard and equitably resolved.

Formation of the Subcommittee

The Judicial Council charged its SCCFL to conduct a thorough review of existing domestic case processing statutes, rules, and practices and to determine if there are alternatives or improvements that should be implemented. At the direction of the Judicial Council, the Standing Committee established a subcommittee on Domestic Case Process Improvement to accomplish this charge. The request focused solely on district court domestic cases and specifically omitted juvenile delinquency and child welfare proceedings. The Subcommittee was instructed to:

- Examine programs in place in other jurisdictions that are aimed at simplifying process, reducing the adversarial nature of domestic proceedings, protecting children of divorcing parents, and reducing time and costs for litigants in order to determine what constitutes "best practices" in the adjudication of domestic disputes.
- Conduct an inventory of current practices and programs and assess both their effectiveness and the extent to which they are consistent with best practices in the field.
- Compile and examine data on the management of domestic cases, including case processing performance indicators, so as to identify promising practices that should be more broadly replicated.
- Conduct the study so as to take into account the individual perspectives of children, litigants, victims, self-represented litigants, attorneys, judges, commissioners, advocates and service providers.
- Examine programs and services, such as OCAP, Self-Help Center, and forms to determine if additional or improved services are needed.
- Examine the commissioner process and determine if efficiencies are possible in their interaction with district court judges.
- Formulate proposed solutions to problems identified, including attendant resource requirements, statute and rule changes.

The Management Committee of the Judicial Council was tasked with naming the membership of the Subcommittee, although the Council approved a list of those stakeholders who should be represented. The Management Committee solicited assistance from the SCCFL and the Family Law Section of the Bar. There were many qualified candidates who expressed an interest in serving on the Subcommittee. The following individuals were appointed to the Subcommittee:

- Judge Douglas Thomas, 7th District, Chair
- Judge Elizabeth Hruby-Mills, 3rd District
- Commissioner Patrick Casey, 3rd District
- Commissioner Catherine Conklin, 2nd District
- Stacey Snyder, Director, Office of Guardian ad Litem
- Rick Schwermer, State Court Administrator
- Mark Brasher, Deputy Director, Department of Human Services
- Mary Jane Ciccarello, Director, Self Help Center
- William Downes, Mediator
- Stewart Ralphs, Executive Director, Legal Aid Society of Salt Lake
- Douglas Adair, Attorney, Adair Law Firm, P.C.
- Martin Olsen, Attorney, Olsen and Olsen, Attorneys & Counselors at Law
- Ali Thomas, LCSW, Child Custody Consultant
- Liisa Hancock, Attorney, Utah State Bar Commission representative
- Senator Todd Weiler, Legislative representative and attorney

Staff assigned by the Administrative Office of the Courts:

- Ray Wahl, Deputy State Court Administrator
- Clayson Quigley, District Court Program Administrator

The Judicial Council's initial charge anticipated a final report in July 2017. With that condensed time frame in mind, the Subcommittee first met on April 22, 2016 and adopted an aggressive monthly meeting schedule to accommodate the reporting requirement *(Attachment A)*. As the Subcommittee's work progressed, necessary modifications were made to the schedule to accommodate the schedule of presenters. Typically, subcommittee meetings lasted for three hours, but a considerable amount of work occurred outside of meetings. During the brainstorming portion of subcommittee meetings, Nini Rich, Director of the Alternative Dispute Resolution Office of the Utah State Courts, and William Downes, a mediator and subcommittee member, helped facilitate discussions.

Historical Perspective

Family Law Task Force Report, 1994

In May of 1992, the Judicial Council formed a task force at the request of the Juvenile Court, which was left unaffected by the proposed consolidation of the District and Circuit Courts. The Juvenile Court requested that the future organization and jurisdiction of the courts be questioned, recommendations be developed, and any legislation and rules be drafted to implement changes. The Final Report on Justice in the 21st Century stated that "A long term goal of court organization should be the full integration of juvenile court jurisdiction with the district court…."

The Task Force Report, published in December of 1994, contained over 70 recommendations. Although the report did not recommend the unification of the district and juvenile courts or reorganizing the juvenile court as a department of the district court, it did recommend the formation of a family department within the district court. As reported by Tim Shea, the former Appellate Court Administrator, who then staffed the Family Law Task Force, the task force focused on structural rather than process changes. He also observed that substantial changes in domestic case processing have occurred since the task force delivered its report in December of 1994. The Judicial Council ultimately deferred any action on the report until after court consolidation was completed.

Standing Committee on Children and Family Law

After much debate and discussion, the Judicial Council created a SCCFL in 2000. The original charge of the committee included:

- Improve communications between the District and Juvenile Courts (Rule 100)
- Mandate mediation in divorce cases
- Appoint a private Guardian ad Litem in contested custody cases
- Improve the quality and timeliness of custody evaluations
- Permit a proffered statement of the case in lieu of or as a supplement to testimony

Members of the Committee included district and juvenile court judges, commissioners, human service representatives, family law practitioners, legislators, mediators, child custody evaluators and other interested parties. In its infancy, the Standing Committee worked on such issues as child protective orders, access to juvenile court hearings, the role of the special master, warrants for removal and Rule 4-903 (who may perform child custody evaluations). In the ensuing years, the Standing Committee worked on the following:

- Parent coordinator rule
- Right to a hearing following the denial of an ex-parte protective order
- Revisions to Utah Code §§ 78B-6-105 and 78B-6-138 (adoptions)
- Shortening the custody evaluation time
- Revisions to the protective order statute
- Changes to Rules 101 and 109
- Further changes to Rule 4-903
- Changes to Rule 108

Family Law Practitioner Meeting with Rep. Lowry Snow

Relevant to the formation of the Subcommittee was a meeting that involved Representative Lowry Snow in 2015. A paper was presented to Rep. Snow that was entitled "The Time has Come for a Family Court in Utah." That paper is included in the appendix of this report. The report stated: "We should create a family court, with an emphasis on therapeutic justice, perhaps starting in counties of the first and second class, to replace the Commissioner system." A court representative was present during the meeting and shared information with the Judicial Council about the meeting. The resulting action of the Council was to create this subcommittee. This action was supported by both the SCCFL and the Utah State Bar. In addition, the Utah State Bar offered its assistance in staffing the Subcommittee as well as surveying members of the Family Law Section of the Bar.

Areas Omitted From Study

The Subcommittee consciously elected to omit three areas from its study. First, cohabitant abuse cases were deemed beyond the scope of the charge from by the Judicial Council. Strict statutory timelines for hearings ensure that such cases are promptly heard and disposed. The subcommittee also believed that domestic violence issues associated with those cases are more appropriately studied separate from domestic relations processes.

Second, the Subcommittee avoided any attempt to create a formula for calculating alimony. The Executive Committee of the Family Law Section recently attempted to design such a formula but found it virtually impossible to obtain any consensus. The survey results indicated some support for an alimony calculator. However, the lack of agreement among members of the bar regarding an acceptable formula led the Subcommittee to conclude that its efforts would be better spent on other issues.

Third, the Subcommittee elected to avoid getting bogged down in the details of the numerous types of domestic cases that collectively comprise only 3 percent of all domestic cases (e.g., grandparent

visitation, separate maintenance, UIFSA, adjudication of marriage). Rather, the Subcommittee focused on divorce, custody and support, and paternity cases[1] which comprise 97 percent of all domestic relations cases.

Analysis of Statewide Court Data

The Subcommittee received substantial data and information regarding the state-wide characteristics of domestic cases disposed in calendar year 2015. The data focused on: (1) the length of time to complete various types of domestic cases; (2) the number of court hearings in those cases; (3) the extent to which litigants were represented; and (4) the nature of post-decree modifications.

The data reveals that it currently takes a very significant length of time to resolve domestic cases in Utah. As expected, the length of time varies depending on the complexity and number of hearings but appears excessive at virtually every level. Viewing the total of all cases, the majority are uncontested. Seventy-two percent of divorce petitions, 52 percent of custody and support cases and 42 percent of paternity actions are resolved by default or stipulation. The most salient data regarding all cases is summarized in Tables 1 and 2 below.

Table 1. Avg. Number of Days to Disposition by Case Type & Event

	Divorce	Custody & Support	Paternity
Uncontested	134	159	173
Answer Filed	335	341	452
Temporary Orders	474	468	533
Objections to Comm. Rulings	545	595	759
Bench Trial	650	657	728
Custody Evaluation	797	749	851

Table 1 shows that it takes an average of four and a half months to resolve an uncontested divorce case. If the parties need to obtain temporary orders but then reach a resolution in their divorce, they can expect a delay of nearly 16 months. If they need a bench trial to resolve their divorce issues, the average time rises to a year and ten months. For those unfortunate enough to have contested custody issues requiring a custody evaluation, their average wait time will be nearly 27 months in a divorce case. This latter statistic was especially troubling to the Subcommittee because children are kept in an ongoing boiling cauldron of emotion as the parties jockey for position in their custody case, evidenced by the average 13 court hearings associated with such cases (*Table 2*). Custody and support and paternity cases generally required even more time than divorces to complete.

[1] Recent legislation changed the terminology of these cases from "paternity" to "parentage". The facts and figures gathered for review by the Subcommittee used data entered prior to the effective legislative change. In the interest of accuracy, this report will refer to these cases as they are represented in the data and use the term "paternity" throughout the report.

Table 2 provides additional information regarding the number of hearings associated with lengthy cases. As the number of hearings rise in a case, the Subcommittee presumes that attorney fees and discovery costs also increase. Although the Subcommittee received no specific data regarding such fees or costs, it did hear anecdotal information that cases involving custody evaluations that go to trial typically result in attorney fees of $25,000 to $30,000 per party (not including the costs of the evaluation). This range appears to be valid in light of the number of average hearings associated with such cases.

Table 2. Avg. Number of Hearings by Case Type & Event

	Divorce	Custody & Support	Paternity
Temporary Orders	5	4	4
Objections to Comm. Rulings	8	14	6
Orders to Show Cause	5	5	5
Custody Evaluation	13	18	10

Representation by counsel varied across divorce, custody and support, and paternity cases. In excess of 50 percent of all divorce cases are initially filed by self-represented litigants. However, this percentage drops as the cases proceed to disposition. As of disposition, 44 percent of divorces, 36 percent of custody and support cases, and 21 percent of paternity cases involve at least one self-represented party. Initially, the Subcommittee was concerned that the difference between the number of self-represented litigants at filing and disposition could be caused by self-represented litigants' inability to prosecute their cases. However, the data revealed that the rates of dismissal for cases filed by attorneys and cases filed by self-represented litigants were approximately the same. The Subcommittee concludes that the increase in attorney involvement likely occurs as the opposing party is served and chooses to be represented by counsel. This in turn leads the filing party to obtain counsel. In any event, this data reveals that a very significant number of litigants are currently representing themselves in Utah's domestic relations cases.

The Subcommittee also looked at data regarding petitions to modify. Such cases generally took significantly less time to resolve. This result was expected considering the narrow issues and high legal threshold typically associated with these petitions. The average times from filing to disposition for such petitions were 135 days for divorces, 158 days for custody and support cases and 170 days for paternity cases.

Survey of Attorneys, Judges, and Commissioners

Methodology and Participation

The Subcommittee began its research by surveying attorneys, commissioners, and judges. The Family Law Section of the Utah State Bar distributed the survey to all of its members. The

Administrative Office of the Courts administered the survey to all district judges and commissioners. The survey results are attached to this Report.

The survey had good participation from the target audience. There were 240 total participants. Approximately 77 percent were attorneys, 19 percent were district court judges, and 4 percent were district court commissioners. Participants in each category represented all of Utah's eight judicial districts except commissioners, who were represented in each of those districts where commissioners hear cases.

The survey was divided into three sections. The first section asked questions regarding if and how various resources were used, including informal trials, mediation, custody evaluations, etc. The second section concerned satisfaction and perceptions concerning the current family law system in Utah. The third section focused on identifying the strengths and weaknesses of specific rules, statutes and practices. All respondents were asked additional demographic factors to assist in analysis of the data.

Resources and Tools

In this section of the survey attorneys were asked if they have ever used or participated in a variety of resources identified by the Subcommittee. Respondents who had utilized these resources were then asked to rate their "helpfulness" on a scale from one to five. Attorneys showed a greater satisfaction with resources that promoted early intervention and case resolution, particularly mediation. The attorneys indicated that they preferred such tools because they facilitated an early case resolution while reducing overall costs and allowing their clients a voice in the process.

Conversely, attorneys disfavored other resources such as custody evaluations and noted that these tools become costly and tend to delay the process further.

Feedback Regarding Current System and Procedures

Respondents were asked to rate a number of statements from one to five, one being "Disagree" and five being "Agree." Respondents who practiced in a district where commissioners hear domestic cases were asked a series of questions specifically regarding commissioners. The participants rated statements regarding the timeliness of the domestic case process, satisfaction with the process, and the knowledge and expertise of the judicial officers.

The responses indicated strong overall satisfaction with the current commissioner system. Table 3 below illustrates that 75 percent of attorneys believe that the commissioner system works well while only 17 percent disagreed and the remaining 8 percent neutral. Judges and commissioners were more uniform in their approval of the commissioner system

Table 3. "I believe that the commissioner system works well" - Responses

Respondent Type	Agree	Somewhat Agree	Neither Agree nor Disagree	Somewhat Disagree	Disagree
Attorney	*28%*	*47%*	*8%*	*12%*	*5%*
Judge	*71%*	*26%*	*0%*	*3%*	*0%*
Commissioner	*44%*	*56%*	*0%*	*0%*	*0%*
Total	***36%***	***44%***	***7%***	***10%***	***4%***

The responses in Table 3 were consistent with answers to other survey questions. For example, 28 attorneys listed the commissioner system as the top item when referring to what currently works well. Conversely, 17 respondents listed the commissioner system as not working well. Commissioners also received the highest score regarding knowledge and expertise in family matters. In general, the participants showed confidence in all judicial officers and expressed a strong preference for mediation. However, respondents agreed that the system is too adversarial, takes too long, and costs too much.

There were no major differences in attorneys' confidence in the relative knowledge and expertise of commissioners and judges. However, respondents felt that they are able to have a hearing before a commissioner in a more reasonable amount of time than before a judge. Respondents did not feel that the judges' lack of involvement at the beginning of the case had any effect on their ability to make an appropriate ruling in later proceedings.

Rules, Statutes and Practices

Participants were asked if there were a rule, statute, or practice they could change what would it be and why. The responses varied greatly. Some attorneys were able to offer specific rules and statutes they would like to see changed whereas others referred to general ideas or philosophies regarding the rules and statutes. Where specific rules and statutes were identified, the responses were associated with them for the purpose of analysis.

Regarding statutory changes, attorneys expressed the need for better direction with alimony (Utah Code § 30-3-5), relocation (Utah Code § 30-3-37), and parent time (Utah Code § 30-3-35 and § 30-3-35.5). With regard to alimony, the attorneys specifically asked for a calculator or formula to help them advise their clients. As for the relocation and parent time statutes, many expressed frustration with the ambiguity and complexity of these statutes. Additionally, respondents expressed frustration with the 90-day waiting period (Utah Code § 30-3-18) and the unnecessary delay it causes in many cases.

Regarding court rules, participants expressed a number of concerns with delay caused by the processes outlined in Utah Rules of Civil Procedure 101 and 108 as well as the delay and costs incurred due to custody evaluations (Utah Code of Judicial Administration 4-903). The offered suggestions focused mostly on re-examining the deadlines and scheduling periods outlined in Rule 101. Many participants felt that the Rule's mandatory scheduling time frames create unnecessary delays and lack the flexibility needed to allow the process to move more quickly.

Survey participants who expressed a desire for change indicated that better case management is needed. Participants indicated a variety of philosophies and methods of case management. However, the participants consistently mentioned measures such as early intervention and better scheduling practices to make better use of time and have meaningful interactions with the courts.

Less than 9 percent of all attorney surveys made any reference to a family court. While some of those advocating for this change were adamant in expressing their views, the Subcommittee elected not to pursue that recommendation. The Subcommittee made this decision in light of the relatively small number of those advocating for a family court when compared with those who appear to be pleased with the commissioner system. Further, the Subcommittee invited the Executive Committee of the Family Law Section of the Utah State Bar to survey other states and present us with data of a more effective system in handling family law cases. No data was ever presented to the Subcommittee by the state bar showing states with a more effective system, including any states that may have a dedicated family court.

Survey of Self Represented Litigants

The Subcommittee obtained information about the experiences of self-represented parties in domestic cases to examine how such parties are affected by current court processes and to explore how those processes may be improved. Between May and June 2016, surveys gathering information from self-represented parties as well as from a wide variety of legal and community services providers who help self-represented parties were developed, distributed, and analyzed.

Step One: Development and Testing of Surveys

The surveys concerning the experiences of self-represented parties in domestic cases were developed by Mary Jane Ciccarello (Self-Help Center Director and member of the Subcommittee); Jessica Van Buren (State Law Library Director), and Susan Vogel (Self-Help Center Senior Staff Attorney bilingual in English and Spanish). Susan handled the distribution and collection of the surveys as well as the face-to-face surveys.

Self-represented party surveys:

The self-represented party surveys were translated into Spanish choosing terminology commonly used by people of Mexican descent who make up 75-80 percent of the Spanish-speaking population in Utah. The surveys were tested for a week by taking in-person surveys in English and Spanish in the State Law Library to see if the questions elicited a complete range of experiences. The surveys were then modified to correct any deficiencies.

Additionally face-to-face surveys, in English and Spanish, were conducted which allowed for open-ended answers and a greater depth of response.

Provider surveys:

The Self-Help Center further developed surveys for providers of services based on its experience working with self-represented parties and its experience training and overseeing non-lawyers in assisting self-represented parties through the Self-Help Center and the Law Library.

Step Two: Outreach for Surveys

The survey sought responses from a wide range of self-represented parties and providers, both in terms of geography and the setting in which they were receiving or providing help. To that end, the help of the courts and organizations in the community were enlisted.

Community centers: Surveys (paper or online links, as participants requested) were sent to a number of community-based organizations. These included: the Moab Valley Multicultural Center, Centro de la Familia de Utah, Catholic Community Services, and the Consulate of Mexico in Salt Lake City.

Legal clinics: Legal clinics, including the Legal Aid Society of Salt Lake, Utah Legal Services, Timpanogos Legal Clinic, St. Vincent de Paul Center Legal Clinic, and The Utah Pride Center's Rainbow Clinic, were contacted to help provide feedback in collecting both self-represented party and provider surveys. The clinics were visited in person to explain the surveys and provided with both paper surveys and online links. In addition, a representative spent three evenings attending the Family Law Clinic in Salt Lake City and the Timpanogos Legal Clinic in Provo to capture face-to-face surveys with self-represented parties and providers.

Court: Self-represented surveys were emailed to court clerks throughout Utah requesting their participation. Staff of the State Law Library and Self Help Center also distributed surveys on paper and via emailed links. Court personnel also were asked to complete the provider survey.

Step Three: Collection of Surveys

Self-represented party and provider surveys:

Direct on-site contact proved to be the most effective way to obtain completed surveys – handing them to people, asking them to fill them out, and collecting them. The majority of people approached in this manner were happy to participate. The only refusals occurred when people were approached at the end of their legal consultation and needed to leave. The Subcommittee received the following completed surveys:

- Self-represented parties in English = **171**
- Self-represented parties in Spanish = **16**
- Providers = **37**

Face-to-face surveys

At several different locations and times, participants were given the option of completing either a written or a face-to-face survey. Most chose the written survey. The participants who chose the face-

to-face option tended to fall in one of three groups: (1) those who could not read well enough to complete a paper survey; (2) those who were very frustrated with the system; or (3) those with very complicated cases. These participants often had much to share, so these surveys frequently took substantial time. Nine face-to-face surveys were completed.

Step Four: Compilation and Analysis of Surveys

The main themes contained in the survey responses were: (1) frustration regarding the complexity of legal processes including confusing paperwork; (2) frustration over how long things take; and (3) sincere gratitude for the help that self-represented parties get from the resources they are provided.

Self-represented parties did not distinguish between appearing before a commissioner or judge and tended to view all hearings as simply being in court before a judge who made a decision.

The survey responses indicated that self-represented parties view required paperwork as very complicated and the legal terminology in documents as very confusing. This applied to both native English speakers and those for whom English is a second or subsequent language. Spanish speakers believed that they faced greater barriers with the language and some said they felt unwelcome when dealing with court personnel.

The parties getting help from volunteer lawyers and law students at the legal clinics were enthusiastic about having those resources. Those getting help at the Law Library and the Legal Aid Clinics in the courthouses in Salt Lake City and West Jordan were also extremely grateful and enthusiastic about the help they receive from staff. Self-represented litigants also were appreciative of the help they received from court staff. They did complain, however, that they often received conflicting information from different people at the courthouse.

Appendix: Survey Responses (attached to this report)

- Three charts showing the services used by self-represented parties
- Self-represented party survey responses in English
- Self-represented party survey responses in Spanish
- Provider survey responses
- Face-to-face survey responses in English and Spanish

Additional Research

In addition to the surveys, the Subcommittee reviewed the results of a State Justice Institute study published in 2016 (“Serving Self-Represented Litigants Remotely: A Resource Guide”) in which Utah was one of eight participating states.

SJI Study Results:

As part of the SJI study, the Self-Help Center reviewed 50 divorce cases initiated between July 1 and December 30, 2014 using the court online assistance program (OCAP) to generate court forms, in which both parties were self-represented. As of June 2015, 38 of these cases (76 percent)

had final divorce decrees. Six cases (12 percent) were still pending. One of the cases was dismissed at the request of the parties. Five cases (10 percent) were dismissed by the court for procedural reasons. Of the cases resolved by June 2015, 89 percent of them had been completed successfully. On average, these cases were decided within 3 months.

The Self-Help Center next reviewed 50 divorce cases filed in Utah in which a self-represented party contacted the Self-Help Center between January 1 and October 31, 2015. The data were collected in November 2015. Utah has a 90 day waiting period between filing of a divorce petition and entry of a final decree, unless waived for extraordinary circumstances. Twenty-nine of these cases (58 percent) had a final divorce decree at the time of data collection. Twelve of the cases (24 percent) remained open at that point. Three (6 percent) were dismissed at the request of the parties and six (12 percent) were dismissed by the court for procedural reasons. On average, these cases were decided within 5.5 months.

Of the 100 self-represented divorce cases studied, the vast majority of litigants used OCAP, managed everything on their own, and never appeared before a judicial officer.

Technical Assistance from the National Center of State Courts

The Subcommittee reached out to national organizations to consider national trends in best practices for domestic relations cases. On September 23, 2016, Dr. Tom Clarke and Alicia Davis from the National Center for State Courts presented detailed information that can be found in the Appendices attached to this report. The presenters had worked in several states to develop best practices, including Colorado and Alaska. They also provided information from Ohio, Nebraska, Connecticut, and Arizona together with experience from their own practices. The following is a summary of their conclusions:

1) Best practices in these states all included early intervention and case triage.
2) While states use different titles, many that have implemented best practices use “family court facilitators” to improve services for those who are involved in a domestic matter.
3) Several states have developed triage methods to determine the complexity of the domestic matter and to consider issues such as conflict/cooperation between parties, domestic violence issues, mental health and substance abuse issues, and the complexity of the case.
4) Several states, including Minnesota, Alaska and Nebraska, have evaluated their processes and found that their methodologies have resulted in reduced expenses to parties, shorter time to disposition, and fewer post judgment activities.

On December 22, 2016, the Subcommittee held a video conference with Stacey Marz, Director of Self Help Resources for the Alaska State Courts. Ms. Marz described a program where cases were triaged[2] in situations where at least one party was self-represented. Alaska utilizes court staff attorneys

[2] Triage refers to a more aggressive form of case management which identifies possible obstacles and needs for a case as early as possible based on a number of predetermined factors. Cases are set on a track best suited to overcome challenges and prevent unnecessary intervention that might otherwise slow the progress of that case.

who work in the Family Law Self Help Center to triage cases, which was settlement oriented. Alaska also spent a considerable amount of time improving the forms used by litigants. Ms. Marz reported large savings in judicial time and lower rates of post-decree modifications.

Commissioner Conklin, a subcommittee member, provided information regarding the Arizona courts' approach to domestic matters. She obtained this information from a domestic judge in Arizona. Arizona places cases into three tracks, according to the complexity of the case. Complexity relates to money and custody issues. Arizona uses domestic case managers to conduct "resolution management conferences." The focus of the conferences is on the early resolution of the case, and judges are involved in scheduling issues of cases. The settlement process includes lawyers, mediators, and judges.

Brainstorming Process

After thoroughly reviewing the survey data from all surveys, the data regarding domestic cases, and national trends of best practices in domestic cases, the Subcommittee began methodically embarking on a brainstorming process to suggest solutions to issues that were highlighted by its investigation. The Subcommittee sought assistance from two skilled facilitators, William Downes, a Subcommittee member, and Nini Rich, the Director of the Utah State Courts Alternative Dispute Resolution Office. This process led to fruitful discussions on how to improve domestic case processing. These discussions encompassed six meetings.

The discussions were broken up into two major areas, one for the self-represented litigants and the other for situations where attorneys were representing at least one of the parties. Attempts were made to convert discussions into flow charts, which were then reviewed by the Subcommittee. These discussions resulted in a number of recommendations to the Standing Committee and the Judicial Council. To suggest that there was unanimity on all recommendations in the report would be an overstatement. However, all recommendations had a high degree of agreement within the Subcommittee.

Conclusions and Recommendations

One of the driving forces behind the formation of the Subcommittee was the sentiment that the current structure is inadequate to meet the needs of domestic cases. The evidence suggests, however, that this is not the case. The vast majority of survey responses supported the current structure utilizing both commissioners and judges. There are areas where the domestic case process could be improved, and these are identified in the following recommendations. These improvements can be made using the existing court structure.

Conclusion 1: **Active case management will improve the court's ability to resolve and dispose of domestic cases.**

Recommendation: **Domestic Case Managers should triage, track, and administer divorce and paternity cases.**

As required by case numbers, case managers should be reassigned or acquired for training in specific management of domestic cases. The Domestic Case Manager (DCM) will have various responsibilities in the course of guiding, tracking, and assisting in the resolution of domestic cases. The specific responsibilities of a DCM will vary between districts based on the volume of domestic cases and the needs of each particular district. However, the following should be included as core duties for every DCM.

A. Initial Screening

When an answer is filed, the case will be screened by the DCM within two business days for scheduling either a status conference or a case management conference. The status conference is an informal, off-the-record meeting with the DCM. A case management conference is a formal hearing before the judge or commissioner.

In the initial screening, the DCM is to review the pleadings and other court records and, if possible, identify issues including, but not limited to the need for an interpreter, allegations of domestic violence, and other cases involving the parties in juvenile court or other jurisdictions.

If any of the following apply, the DCM will schedule a case management conference before a judicial officer rather than a status conference:

i. Both parties are represented by counsel;
ii. There are domestic violence issues such that the parties should not be in close proximity unless in court;
iii. Jurisdiction issues need to be resolved by a judicial officer before the case can proceed; or
iv. One or both parties have filed a motion for temporary orders.

Whichever type of conference is deemed appropriate, it should be set no more than 30 days after the answer is filed. Notice of the conference will be generated by the DCM and will contain a warning that if either party fails to appear his or her pleadings may be stricken and default entered. This initial triage will take the place of the court-generated notice of discovery deadlines, as those deadlines will now be fixed at an initial conference.

B. Status Conferences

Status conferences should be set at intervals of 20-30 minutes. The DCM should meet with the parties (even if one is represented by counsel) and assist them in identifying the disputed issues. If

the parties can reach an agreement, the DCM should ensure that the agreement is entered on the record.

If the parties do not reach an agreement, the DCM should provide information on required disclosures and discuss mediation options. At the end of the status conference, the DCM should schedule the case for a pre-trial conference. The pre-trial conference should be set no later than 60 days after the status conference. The DCM should provide the parties with an order containing the date of the pre-trial conference, requiring mediation, and detailing the documents that need to be filed.

C. Case Tracking

The DCM should be responsible for tracking the progress of domestic cases.

D. Other Possible Duties

In the Second District, which commenced the DCM pilot program several years ago, one of the DCM's roles is to act as a facilitator in settlement conferences that take place at the courthouse. The DCM in the Second District has been highly successful in resolving cases, and she is utilized in this manner both by self-represented litigants and attorneys whose clients may be financially restricted in their mediation options.

While the DCM settlement conference has been of great utility for the Second District, it may not be feasible or desirable for other districts. The Third District, for example, has the benefit of Utah Dispute Resolution (UDR) for low or no-cost mediations. While following the general structure in this recommendation, each district should determine the best way to utilize the services of a DCM.

Conclusion 2: Parties who are self-represented require additional resources and guidance to navigate the system.

The Subcommittee carefully considered the need to assist self-represented litigants and tried to balance this need with the court's ability to offer resources and any perception of unfairness. The Subcommittee concluded that cases involving self-represented litigants require slightly different management that would maximize their access to available resources and assist them in reaching swift and equitable resolutions. The recommendations herein are designed to provide assistance at the junctures of the case where self-represented litigants are most likely to become bogged down, as well as provide oversight by the courts.

Recommendation: Cases filed by self-represented litigants should be identified at the time of filing for specialized case management.

A. Provision of Additional Information

Cases filed by self-represented litigants should be flagged by the court's computer system for follow-up in 60 days. At that point, one of two actions should be taken depending on what has occurred in the interim:

i. If there is no return of service, a system-generated letter will be sent to the petitioner containing information regarding the requirement of service and identifying resources for assistance.
ii. If there is a return of service, but no answer has been filed, a system-generated letter will be sent to the petitioner containing information regarding the default process and identifying resources for assistance.

All courthouses should provide Self-Help Center business cards (available in English and Spanish) to direct self-represented litigants to further help and referrals. In addition, all court staff should direct patrons to the court website at www.utcourts.gov. (Please note that the information contained in the flyers and pamphlets expires quickly. The State Law Library strives to ensure that all legal clinic and other information are up to date).

B. Court-prepared Notices of Hearings

Once initial service has been accomplished, notices of any hearings should be generated by the court in cases with self-represented litigants, as they are often unaware of this requirement.

C. Self-represented Pretrial Conferences

In districts with adequate volume and resources, pre-trial conferences for self-represented litigants should take place on a self-represented calendar with a commissioner. Self-represented calendars are currently utilized with great success in the Third and Fourth Districts. For these calendars, a commissioner sets aside a half-day block of time. Four or five cases with self-represented litigants on at least one side will be scheduled per calendar. Volunteer attorneys are on hand to assist the parties in negotiating a solution. If the parties are successful, they go into court and put the agreement on the record. With the parties' agreement, the commissioner may assist in resolving some issues. Representatives from the Self Help Center are also present to help prepare the final orders. If the parties are unsuccessful in reaching an agreement, the commissioner certifies the case for trial.

Success of a self-represented calendar is dependent on the availability of volunteer attorneys, Self Help Center staff, and even interpreters. Rural districts may not be able to offer these resources. It is possible that Licensed Paralegal Practitioners may be able to assist with order preparation if there is a settlement. However, if the case is certified for trial, the court will prepare a pre-trial order and either schedule the trial or forward the pre-trial order to the appropriate judge for scheduling.

D. Informal Trials

Self-represented litigants should be encouraged to utilize the informal trial process, and Rule 4-904 should be amended to permit an informal trial on all issues. An informal trial permits the parties to tell the court their side directly, without the formal use of direct or cross-examination. The rules of evidence are waived, so each side can submit whatever evidence they desire. The current rule contemplates informal trials on custody issues, but informal trials may be appropriate on other issues as well. By comparison, Oregon's informal trial rule applies to all issues in domestic cases.

E. Final Orders

When a final agreement or ruling is made, the minute entry will reflect the specific provisions. The minute entry will be printed and given to the parties at the conclusion of the hearing so that it can be used as an outline to aid in preparation of the final order.

Self-represented parties are often unaware of when a final decree has been entered by the court and do not understand their obligation to provide notice of entry of judgment to the opposing party. OCAP should include a Notice of Judgment form that should be filed with the final documents. Once the decree is entered, the court should send out the Notice to both parties. A sample notice form is attached to this report.

The evidence considered by the Subcommittee strongly suggests that it is more efficient for the court to retain control of the process of domestic cases. The schedule can be set with counsels' input, but a tighter rein needs to be kept to ensure that cases are promptly resolved. The following recommendations are designed to reach that goal.

Conclusion 3: **The court should take a more active role in administering cases where both parties are represented by counsel.**

Recommendation: **Counsel should participate with the court in a case management conference at the outset of the case.**

Cases that do not qualify for status conference with the DCM should be scheduled immediately for a case management conference with the judge or commissioner. If a motion for temporary orders has been filed, the case management conference should be scheduled at the same time as the motion hearing.

The purpose of the case management conference is to identify the disputed issues in the case and determine what discovery is necessary for the case to be ready for trial. Domestic cases vary in complexity. Under Rule 26, all domestic cases are treated as Tier 2, but there are cases that can (and should) be moved directly to trial, while there are others that may require more time.

At the case management conference, the court should discuss the issues with counsel and the parties and allow them to put any agreements on the record. For resolution of disputed issues, the case should be assigned to one of three tracks.

Track 1: This delineation is appropriate for cases involving custody disputes. At the case management conference, the court and counsel will address whether a custody evaluation is necessary, and, if so, the form of the evaluation, with the court making rulings as necessary. The court will prepare and issue the resulting order appointing an evaluator and schedule the case for either pre-trial or a custody evaluation settlement conference.

Track 2: Assignment to this track occurs when the case involves complex issues that require extraordinary discovery, such as valuation of a business. With input from counsel, the court should set a discovery schedule and schedule the case for pre-trial.

Track 3: This category entails the majority of cases, cases with straightforward issues that do not require experts or complex discovery. These cases will be certified directly for trial. If the parties have not yet mediated, mediation will be required before the trial takes place, but any such failure should not delay the scheduling of the trial.

In addition to motions brought pursuant to Rule 101, oral motions may be presented under Rule 7 if the court and the parties agree that the issue does not require briefing and can be addressed within the allotted hearing time.

Recommendation: From the filing of the answer until disposition, there always should be a hearing scheduled to prevent stagnation.

The parties should always have their next hearing set on the court's calendar. It is unfortunate, but sometimes cases do not get attention from counsel (or the parties) unless there is a hearing scheduled.

Recommendation: Orders should be produced at the end of every hearing so the parties have immediate written record.

Absent exigent circumstances, an order memorializing the result will be prepared and disseminated at the end of every hearing. The order will contain the scheduling dates, mediation deadline, discovery deadlines, and the rulings on any motions. Form orders should be prepared by the court to expedite this process. At the court's discretion, counsel may be asked to prepare a more detailed order at a later date.

Conclusion 4: **Different tools should be utilized to more efficiently evaluate and resolve custody disputes.**

Recommendation: **Custody evaluations should be ordered only when the parties request it or when the court makes specific findings that extraordinary circumstances exist that warrant an evaluation. In either case, the court must find by clear and convincing evidence that there is a present ability to pay for the evaluation.**

Cases involving custody evaluations generally take more time than any other type of domestic case, with an average time to disposition of 797 days. Thus far, the court's management of these cases has been a one-size-fits-all model with only one variable: whether or not the parties have a custody evaluation. There is only one standard format for custody evaluations, which is guided by C.J.A. Rule 4-903, the evaluators' training, and ethical requirements. Consequently, cases in which custody is disputed take the longest and cost the most. It should never be presumed that a custody evaluation is the best way to manage a custody dispute.

Custody cases should be triaged based on the nature of the custody dispute. With counsel's input, at the case management conference the court should determine whether a custody evaluation is needed and, if so, what form the evaluation should take.

Case Type A – Mediation-Based Custody Consultation:

Most custody disputes will fall into this category. These are the cases where both parties are relatively good parents who simply cannot agree on a custody schedule. If all parties agree to seek input from an experienced evaluator, and the court finds that they can afford it, the case would be referred for a mediation-based custody consultation. This procedure entails consultation with a custody evaluator acting as a consultant who meets with the parents and the children and then attends mediation with the parties to give them suggestions on an appropriate resolution. The cost of this procedure is generally $1,500, or $750 per party, and typically takes 30-60 days. At the case management conference, the court would set the case for a pre-trial conference in 90 days. If the case does not settle, it can be certified for trial.

For some attorneys, the downside of a mediation-based custody consultation is that the professional's role is that of a consultant rather than a traditional evaluator. Therefore, the consultant cannot give a recommendation to the court or act as a witness at trial. However, these are the cases where an evaluation would offer little to the court that could not be provided with testimony at trial. These are also the cases that are the most likely to settle once the parties receive some input from a neutral third party. Even if there is no settlement, the parties' interests would better be served by getting the case to trial quickly and less expensively.

If all parties do not agree to engage in a mediation-based custody consultation, the parties may choose to participate in a full custody evaluation if they can afford it; otherwise the case will be certified directly for trial.

Case Type B – Full Custody Evaluation:

This category is for high-conflict cases, including those with claims of estrangement or alienation. These are the cases that would benefit most from a full, traditional Rule 4-903 custody evaluation for two reasons. First, the evaluator needs the ability to conduct a complete investigation (possibly including psychological evaluations) to give the parties meaningful feedback. Second, this type of case is difficult for the court at trial because the testimony often is inconsistent or in conflict, requiring the judge to make credibility assessments and resolve factual disputes without the benefit of professional input.

In this situation, the parties would be ordered to participate in a Rule 4-903 custody evaluation at the case management conference. The evaluation only would be required if at least one of the parties requests it and it is demonstrated by clear and convincing evidence that the parties presently can afford the cost. The difficulties associated with ordering an evaluation when no party requests it (and perhaps are jointly opposed to it) are self-evident. The parties are denied the ability to have their case decided based on the evidence they choose to present. If the parties refuse to comply with the order, the only practical remedy available to the court is to indefinitely delay resolution or dismiss the case. By definition, the court is placed in an adversarial position against the parties. If such an order is jointly appealed by all parties, it is unclear who would defend the court's order in appellate proceedings.

The Subcommittee, therefore, recommends that the court only be allowed to order a custody evaluation when not requested if the court makes specific findings of extraordinary circumstances that warrant such an order and further finds by clear and convincing evidence that the parties have a present ability to pay for it. This position constitutes a compromise among committee members and attempts to recognize the possibility that very rare circumstances may exist that would justify ordering an evaluation against the wishes of all of the parties.

The judge or commissioner would schedule the case for a settlement conference pursuant to Rule 4-903 at 120 days after the case management conference. The parties would be encouraged to bring a mediator to the Rule 4-903 conference. If the date chosen is not feasible on the evaluator's schedule, the evaluator can let the court know when he/she accepts the appointment. If the parties and the evaluator agree that a Rule 4-903 conference would not be a good use of the parties' resources, the date set for the Rule 4-903 conference can instead be used as a pre-trial conference.

The appointment order would include the parties' personal information so that the evaluator can begin in a timely manner. Counsel should have spoken to the selected evaluator in advance to ensure that the evaluator is available and to verify the fee. The order should require that the evaluator's fee be paid within two weeks of appointment. If the fee is not timely paid, the case immediately would be certified for trial. If the evaluation is not completed by the time set for the settlement conference, the case would be certified for trial. If the parties do not settle at the settlement conference, the case would be certified for trial.

Case Type C – Limited Scope Investigation:

This type of case entails a safety issue for the children, usually as a result of demonstrated mental illness, substance use, abuse, or neglect. There is little benefit to a full Rule 4-903 custody evaluation in these cases due to the immediacy of the need for possible treatment interventions. Instead, a private Guardian ad Litem may be appointed to represent the children and argue the evidence on their behalf at trial. The court may also consider appointing a limited scope evaluator pursuant to Rule 4-902. For example, a limited scope evaluator could evaluate a party's demonstrated mental illness and recommend any measures that need to be taken to protect the children while allowing them to have a meaningful relationship with that parent. Often, children who find themselves in these situations will experience extended isolation from the offending parent. This may not be helpful to the reunification process and may cause further delay in expediting the recommended measures for treatment. Currently, Rule 4-902 does not permit a limited scope evaluator to make an actual recommendation. The rule contemplates the evaluator will merely present factual findings. An amendment to the rule should be considered.

If a limited scope evaluator is appointed at the case management conference, the case should be set for pre-trial conference at the 90-day mark. If not, the case should be certified for trial directly.

Case Type D – Relocation:

These are the relocation cases. Management of this type of case is often driven by the time-frame of the relocation. Often, these cases must be tried on an expedited basis that does not allow for any type of custody evaluation. If there is time for an evaluation and the parties request one, the court could consider two options:

(1) If the relocating party intends to move regardless of whether the children move also, the parties should be encouraged to participate in a Rule 4-903 custody evaluation that would address the standard criteria as well as the relocation risk factors. The conditions and procedures utilized for Case Type B would be followed.

(2) If the relocating party will not move without the children, a limited scope investigation examining only the relocation risk factors could be ordered pursuant to Rule 4-902. The case would be set for pre-trial 90 days after the case management conference.

In either eventuality, the court may also consider appointing a private Guardian ad Litem to represent the interests of the children.

Domestic Violence Issues

Management of custody cases in which there has been domestic violence depends on the type of domestic violence. If the domestic violence occurred on a one-time basis, caused by the parties' frustration at the end of the relationship, the course of the case should not be affected. If the domestic violence is recurring or severe, the court should classify the case as Type C and consider appointing a private Guardian ad Litem and/or a limited scope evaluator.

Conclusion 5: Uniformity between the districts will enable parties and attorneys to more successfully navigate the court system.

Recommendation: Every district should use the same checklists for finalizing cases.

The various courts use different checklists for the documents that are required to finalize a parentage or divorce case. These discrepancies often create barriers for parties attempting to get a final order and for those who are providing assistance. Standardized checklists should be utilized in every court throughout the state. Some sample checklists are attached to this Report.

Recommendation: All districts should impose the same or similar consequences for parties who fail or refuse to take the divorce education classes.

Although the court may waive the requirement of the divorce education classes, there is no guidance as to when classes should be waived and what consequence (if any) should result from failure to take the class. As a means of removing this barrier, courts may consider using this language:

The party who has not taken the classes may not seek affirmative relief from the court in this case until the required courses have been completed. This order survives the entry of the final decree.

OCAP should include this language as an option on the form Order on a Request to Waive Divorce Education Classes. A sample order is attached to this report.

Recommendation: All districts should consider the utility of judicial settlement conferences.

One tool that was consistently referenced in survey responses was the judicial settlement conference, in which a type of mediation takes place before trial with a judge not assigned to the case. This type of settlement conference is generally more directive than facilitative and enables the parties to get some idea of how their case would be viewed at trial. This kind of "reality check" is highly valuable in reaching settlements. Because of the difference in availability of judges and need for such conferences between districts, each district should consider independently whether this tool is feasible.

Conclusion 6: Modification and/or elimination of some statutes would improve domestic case processes.

Despite annual modification of Utah's statutes, there are some that have remained on the books for decades without practical purpose or benefit. There is also one statute that, while well-meaning, has become an enormous stumbling block in the process. This committee recognizes that it is the Legislature's sole prerogative to determine public policy. However, in the interest of improving the process of domestic cases, the following recommendation is respectfully submitted.

Recommendation: Utah Code § 30-3-12 – § 30-3-15.1, § 30-3-15.4, and § 30-3-18 should be repealed.

This group of statutes was enacted in 1969. The idea, apparently, was that each district court would establish a separate family department. One of the functions of the family court department is to provide counseling for the family at the expense of the county in which the court is located. This never occurred. No district or county has established a family court department, and there are no court-appointed counselors to assist families. Unfortunately, court patrons continue to request the services described in these statutes.

The most frequently recurring provision is the petition for conciliation, authorized in Utah Code § 30-3-16.2. Either spouse may file a petition with the court requesting the court's assistance in determining whether the marriage can be reconciled. The court is then to refer the parties to the domestic relations counselors. (Utah Code § 30-3-16.4) If a petition for conciliation is filed, the case cannot be tried nor may a default be entered for 60 days. (Utah Code § 30-3-16.7) This has become the underlying purpose for filing a petition for conciliation – it has become a stalling tactic used by attorneys who hope to avoid the entry of orders that would negatively affect their clients, such as alimony and child support.

Also troubling is Utah Code § 30-3-17. This statute gives the court authority to counsel either spouse. The Code of Judicial Ethics absolutely prohibits such counseling. The court may also *require* the parties to file a petition for conciliation under this statute.

The final statute that should be considered for amendment or repeal is Utah Code § 30-3-18, the mandatory waiting period. This statute was most recently amended in 2012 and prohibits any hearing for entry of a decree until 90 days after the case was filed. The court may allow an exception if there are extraordinary circumstances.

The Subcommittee appreciates there is an important interest in maintaining healthy families. However, once a petition for divorce has been filed the family in question no longer falls into this category. Further, forcing a couple to remain married once they have decided to divorce often causes more harm because it prolongs the dissolution process and delays the entry of necessary final orders.

Additional difficulty is caused because of the different standards applied in deciding when extraordinary circumstances exist. Some judges feel that this is a high standard that can rarely, if ever, be met. Others are more lenient and may conclude that almost any articulable reason would qualify. While there will never be absolute uniformity as long as judges are humans rather than robots, in this area the discrepancies make it extremely problematic for those who are endeavoring to assist parties in navigating the system.

Final Summary

The process of getting a final order in a domestic case takes too long, costs too much money, and is too complicated. However, information obtained from the surveys of attorneys and judges, the review of best practices in other jurisdictions, and the other data examined by the Subcommittee did not support a need to change the existing court structure. Rather, that information strongly suggests a need to improve the courts' processes by adopting a more pro-active, differentiated approach to the management of domestic cases.

The necessary improvements are within reach and include:

1. Providing understandable and timely information to self-represented litigants about forms, processes, and time frames. This will require more resources and guidance for self-represented parties to navigate the system.
2. Utilizing domestic case managers to improve case management both for those parties who are self-represented and those who are represented by counsel. This includes early intervention in cases, triage of cases based on their complexity, and using status and case management conferences to move cases along more quickly.
3. Employing a broader variety of tools to efficiently evaluate and resolve custody disputes.
4. Encouraging more uniformity in domestic case processing.
5. Modifying or eliminating some of the statutes and rules that unnecessarily delay resolution of cases.

After the Judicial Council reviews the report, the Subcommittee recommends the report be reviewed with the Board of District Court Judges and the Family Law Section of the Bar. Effective implementation of the recommended changes is critical. The Subcommittee recommends that the

Council assign the implementation of these changes to the Standing Committee on Children and Family Law. Finally, the Subcommittee strongly recommends an evaluation process to determine the effectiveness of the proposed solutions.

While these changes may represent a "cultural shift" in how domestic cases are processed, the evidence examined by the Subcommittee strongly supports the improvements recommended in this Report.