

# Family Court: A Public-Private Partnership to Serve Families in Transition

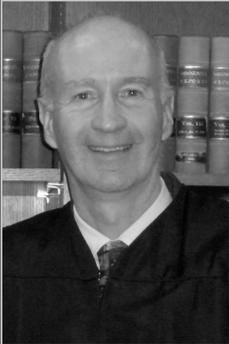
This article presents three views of the paradigm shift that has transformed the Family Court of Minnesota's fourth judicial district during this past decade. Long-time family court referee David Piper describes the evolution of the referee role as an integral component of the early case management model. Judge Tanja Manrique provides an overview of the bench and family bar partnership that has enabled implementation of the model by ensuring access to innovative alternative dispute resolution services. Law clerk Rebecca Vandenberg concludes with reflections on the importance of new lawyers honing their interdisciplinary skills to effectively serve families in the transition.

## EVOLVING THE ROLE OF THE REFEREE TO ENABLE SYSTEMIC REFORM

Nearly a decade ago, the stakeholders of the family court system in this judicial district became convinced that the traditional construct of the adversarial court system does not serve most families well. Key stakeholders set out to create a new paradigm, the essence of which is reflected by the title of this article. Practitioners unfamiliar with family law may be somewhat taken aback by the notion of a partnership as applied to the court system.

Their views of family court may be informed by the occasional high-asset, high-conflict case reported by the media. The truth is that the full modicum of due process available via formal adjudication at trial is contrary to what the majority of family court litigants want or need. They are seeking an immediate order for protection, an affordable divorce, resolution of nuanced child custody or parental access disputes, a prompt order for child support, or a durable order for spousal maintenance. In other words, by the time most citizens deem it necessary to bring their personal circumstances to our doors, they are in crisis. More times than not, their finances are in shambles and retaining counsel is not a viable option. Average citizens are acutely aware of the fact that prolonged litigation will not necessarily leave them with the perspective that justice has been served.

The family court experience is not only fraught with intensity because of the very personal nature of the controversies, it also can be daunting for citizens to have so many professionals suddenly involved in their lives—professionals necessary for custody evaluation and therapeutic services, domestic abuse victim advocacy, chemical health services, guardian ad litem representation, financial planning, and child support enforcement, for example. Of course, the citizens expect the involvement of the court, presumptively a judge. In this family court, however, we have judges and referees. Citizens and practitioners new to family court likely wonder about the difference between the two and why their case has been assigned to one or the other. So, before addressing

		
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<p>Hon. Tanja Manrique is the presiding judge of the family court in the Fourth District and the lead judge on the statewide Early Case Management/ Early Neutral Evaluation initiative.</p>	<p>Mr. Piper has been a family law referee at the Hennepin County Family Justice Center for almost nine years.</p>	<p>Ms. Vandenberg is a law clerk to Referee David L. Piper. She has been clerking with Referee Piper since December of 2008.</p>

the evolution of the referee role, a bit of background bears noting.

The authority for the referee role emanates from the Minnesota Constitution and statute. “The judicial power of the state is vested in a supreme court, a court of appeals, if established by the legislature, a district court and such other courts, judicial officers, and commissioners with jurisdiction inferior to the district court as the legislature may establish.”<sup>1</sup> The appointment authority for family court referees in this jurisdiction is set forth at Minnesota Statute 484.65, subd. 1. Once appointed by the presiding judge of the family court and approved by the bench, family court referees serve at the pleasure of the judges of this district. Subdivision 8 (2) defines the referee job description as to “hear and report all matters within the jurisdiction of the district court judge, family court division, as may be directed to the referee by said judge.” The scope of our statutory authority specifically includes issuance of “temporary and interim orders, and final orders for judgment.” See the recent decision in *Witzke v. Mesabi Rehabilitation Services*, 768 N.W.2d 127 (Minn. App. 2009) for a thorough history and summary of the authority and role of judicial officers.

Prior to 2001, referees adjudicated a wide range of case types, but not always from case filing to final adjudication. Specifically, the referees were assigned to order for protection calendars, child support payment and contempt calendars, parentage cases, postdecree motions, and temporary relief hearings in dissolution cases. Dissolutions were particularly time-intensive for the parties, the court, and counsel, yet the cases were not blocked to a judge until after a temporary relief hearing by a referee or a settlement hearing. The first hearing before the judge of record generally occurred several months after filing. The inherent systemic shortcoming was that the delay fostered ongoing conflict such that the parties usually were entrenched and primed for litigation by the time of that hearing. In the words of family court Referee Susan Cochrane, “The lawyers and litigants often controlled the process, the parties were polarized, and there was minimal oversight.” Not only was such a system unlikely to produce optimal results for children and families, it engendered contentiousness within the bar.

And, from the standpoint of many judicial officers, assignment to family court was not preferred.

The first stage of evolution began in 2001. Judge Charles A. Porter, in his capacity as family court presiding judge, instituted case blocking to judicial teams. Each team was comprised of a judge and a referee. Each judicial team had discretion to determine a case management model for its blocked caseload. Some teams decided to rotate assignment of cases in their entirety. This was a monumental change for the referees as they became responsible for managing all stages of blocked cases from the first hearing through trial, and also post-decree modification proceedings. On teams organized as such, the referees and the judges were allocated nearly the same scope of case management authority.<sup>2</sup>

It is fair to say that bench morale on judge/referee teams improved. Each of the referees specialized in family law prior to joining the bench. In other words, they were well suited to manage cases across the full spectrum of family court procedure. Referees appreciated the added scope of responsibility. And, many judges preferred managing cases from beginning to end, in contrast to the former system where they were assigned the cases at the stage where trial often was inevitable. Case management reports verified that the case blocking protocol was yielding efficiencies. It did not take long before the family bench determined that teaming judicial officers was unnecessary. Referees and judges were placed on one assignment wheel for new case filings. With that decision, the equalization of workload across the bench was established as the norm for the family court in this district.

At about the same time, Judge James T. Swenson was immersed in work with bar leadership and the Hennepin County Division of Family Court Services (FCS) to ascertain best practices from around the country. The goal of that workgroup was to enhance the qualitative outcomes of the family court experience for children and families. A key conclusion was that case management procedures should be implemented soon after filing. In the wake of workload equalization, it followed that referees would be full participants

in the dialogue about implementing a case management model based upon best practices. Referee Susan Cochrane, for example, was an early proponent of requiring an Initial Case Management Conference soon after every dissolution filing.

As former family law practitioners, the referees have continued to build upon their bar association connections to leverage efforts in ways that support systemic reform. For example, Referee Timothy Mulrooney worked closely with the HCBA family law section to create an Unbundled Legal Services project. The project has been operational for just over a year. At last count, 48 attorneys have provided pro bono services in nearly 70 cases where citizens were interested in accessing an ADR process, but were reluctant to do so pro se. That program is a fine example of the bench and bar synergies that have enhanced the options for families in transition, and it is also indicative of just how far the role of the family court referee has evolved in this district. Referees are expected to not only manage assigned cases, but also to engage with stakeholder organizations to advance our public-private partnership.

The solid working rapport of the judges and referees was reinforced during the summer of 2008 when the current presiding judge appointed Referee Kevin McGrath to serve as the Lead Referee. Suffice it to say that other courts with referees are not all structured with such an inclusive perspective. Perhaps it can be said that the perspective reflects an acknowledgement of the complexity of this family court system. As indicated at the outset of this article, family law is substantively broad and experiencing the family court system can be daunting for litigants. It is not surprising that family court is regarded by many as the most challenging specialty court assignment. The current referee complement is cognizant of the fact that part and parcel of being entrusted with egalitarian responsibility for the caseload and a role in court management includes the expectation that we will serve as the institutional memory for family court.

As different members of the bench rotate onto family court several times each year, the referees are available as an in-house resource. Under the current bench bylaws, the standard term for a judge assigned to family court is two years. Although some judges elect to

remain longer, most do not. We welcome opportunities to share our perspectives about the nuances of family law, the lessons learned over years of implementing the early case management model, and the tide of emergency filings presented on a daily basis at the Family Justice Center. This past year, Lead Referee McGrath led the effort to more formally structure new judge orientation by coordinating bench and bar expertise into a week-long training program. That training is supplemented by monthly meetings, organized by Referee Tsippi Wray, where judges and referees gather informally to brainstorm, strategize, and build collegiality. Most family court judicial officers attend the "First Wednesday" meetings, which have become a lively and anticipated forum.

The referees of the family court appreciate that they have been entrusted with an expanded role over the past decade, and they are dedicated to working in continued partnership with the bench and bar to continue refining the family law system to better serve the children and families of this district.

## **INTEGRATING CASE MANAGEMENT AND ACCESS TO JUSTICE**

The new paradigm at the Family Justice Center is built upon an interdisciplinary shift in expectations about how cases are managed by the court, counsel, and service providers. The case management system in use today was informed by thorough research, but inspired in particular by one passage in a white paper reviewed by Judge Swenson earlier this decade:

Courts handling family cases, much like a hospital trauma center, need to be structured to respond to families in crisis. In family cases the role of the judge—and therefore the court system—as adjudicator is compatible with being a convener, mediator, facilitator, service provider, and case manager. None of these roles is at odds with the compelling importance of judges making appropriate decisions under the law.<sup>3</sup>

Restructuring our family court to make the white paper recommendations a reality could not have been achieved merely by bench directive. When Judge Swenson was appointed as the family court presiding judge, he embarked on a concerted effort to reframe the dialogue between the bench and bar. Over time, consensus emerged that the adversarial court process is not well-suited to the resolution of family cases because it exacerbates the sense for citizens already in crisis that they have lost control over what means most to them: their children, their property, and their resources. Furthermore, the inherent shortcomings of the standard litigation process are magnified by the volume of family court filings. More than 10,000 cases are adjudicated annually by the 14 judicial officers at the Family Justice Center. Thousands of cases each year involve pro se litigants; more than 1,500 citizens each month seek assistance at the Self-Help Center at the family courthouse. The challenge of ensuring access to justice for all is compounded by the fact that every year the need for interpreter services increases. Against such a complex and busy backdrop, it is vital for the court to partner with stakeholders to achieve any real change.

The primary purpose of this article is to acknowledge that the bar, FCS, private sector service providers, and the bench have succeeded in building a new construct for the family court in this district. It is now expected that cases will be managed consistent with our Early Case Management (ECM) model. Implementation of that model continues to be enhanced by a myriad of services and alternative dispute resolution options offered by court stakeholders. Before describing the web of innovative services available to litigants, it may be useful to summarize the ECM model for readers unfamiliar with family court.

## **EARLY CASE MANAGEMENT MODEL**

ECM is a five-pronged model that requires intensive judicial involvement very early in the litigation to tailor a case management plan and, in many cases, facilitate an expedited settlement:

**Initial Case Management Conference (ICMC).** Within 3 weeks of case filing, the parties and counsel appear before the blocked judge of record for an ICMC. Service of formal discovery or motions is prohibited in advance of the hearing, which helps to maintain a level field and ensure that parties are not unduly entrenched before the judge has the opportunity to address them.

**Preliminary Data Sheets.** To assist the judge in preparing for the ICMC, the parties submit two page Preliminary Data Sheets providing basic information about the case, such as whether custody is at issue and an outline of financial matters. Related cases are identified to flag particularly important issues, such as domestic abuse. The documents are deemed informal submissions and are not to be made part of the record.

**The Judicial "Pitch."** The purpose of the ICMC is to focus on the major issues in dispute and craft a tailored case plan to resolve the case as efficiently as possible. The role of the judge is to speak candidly about the options available. Parties are made to understand that if they elect standard litigation, the process may require nearly a year and thousands of dollars in attorney, expert, and evaluation fees. For cases involving custody, the judge conveys that there is overwhelming research supporting the proposition that children fare better when parents negotiate. When parties become aware of these realities, most will candidly express preference for an expedited path to resolution.

**Stipulated, Tailored Case Management Plans.** After the pitch, the judge engages the parties and attorneys to develop a stipulated case management plan tailored to the specific issues of the case. Judges are mindful of whether each case might be ripe for settlement at the ICMC. It is surprising how often the case can be settled after the judge inquires whether the parties are highly motivated to resolve their case in just one hearing. The ICMC dialogue addresses the benefits of stipulating to use neutral experts. It is now uncommon to have a "battle of the experts" in this family court. Many parents elect referral to Social Early Neutral Evaluation (SENE) to

address custody and parenting time issues, and Financial Early Neutral Evaluation (FENE) to address marital estate issues. Highly motivated parents may elect referral to both programs, with the understanding that success at each will result in case resolution within 90 days of the ICMC. It is critically important for the judge to emphasize that ENE is a voluntary, confidential, expedited ADR process. ENE is not the appropriate form of ADR for every case. When ENE is selected, discovery is suspended except to the extent it is deemed necessary by the ENE evaluator. Even when parties do not elect referral to ENE, they usually stipulate to retain a neutral expert to complete full evaluations. Another aspect of the ICMC is to encourage stipulations as to temporary financial issues, a practice that has become the norm. Finally, the tailored case management plan addresses discovery. Informal discovery has become the preferred mode of exchange in most dissolution, custody, and support proceedings. Subsequent discovery disputes usually are resolved via telephone conference; discovery motion practice is nearly extinct.

**Ensuring Continued Case Management.**

The ICMC ends with the scheduling of the next court contact within 30-120 days. Options include a telephone conference, letter submission as to progress made on discovery or other stipulations, or a court review hearing. For ECM to yield settlements, the court must be accessible to triage case plan implementation disputes that arise during the first 30-120 days after the ICMC.<sup>4</sup>

Does ECM constitute an effective new construct for family court? The average time to disposition for dissolution actions in this court is now 5.7 months—the most expeditious within the Branch. And, many citizens are opting into the ENE programs. More than 3,000 cases have been referred to SENE at FCS during the past six years. In 2009, FCS received over 500 referrals. The overall settlement rate for the SENE program is 74 percent and most cases resolve within 30 days of the ICMC. Recently, the Hennepin County Board of Commissioners recognized as an "Innovative Highlight" the bench and FCS partnership on ECM/SENE within the full scope of services provided to citizens in this county. Earlier this year,



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the Ash Institute of the Kennedy School of Government at Harvard University designated the SENE program as a "Top 50" innovation in government for 2009, out of 600 applicants. The FENE program is equally as successful. The overall settlement rate is 68 percent, the average time expended per case is less than six hours, the average time to resolution is 58 days from the ICMC, and the average total cost is less than \$1,000 per case. Two years ago, the County Board also recognized the FENE program as an "Innovative Highlight."

These statistical measurements and recognitions tell only part of the story. From case filing to final disposition, the services developed in concert with the bar are integral to ensuring the quality of the court experience.

The HCBA and Volunteer Lawyers Network (VLN) are important partners with the court's Self-Help Center. Individuals proceeding pro se may be referred to the VLN's family law assistance program or the VLN Spanish language telephone hotline.

Recently, a new service was added at the Self-Help Center to offer free, negotiation skills building workshops to pro se individuals. The workshops are the direct result of a grant awarded by the MSBA to Jim Hilbert, the executive director of the Center for Negotiation & Justice at the William Mitchell College of Law.

For many years, the court has been able to offer an in-house settlement program. Each week, Rule 114 qualified practitioners serve as settlement referees, resolving financial and marital estate issues. Last fall, the scope of services was expanded to include a Spanish language calendar managed by a bilingual family law practitioner.

The Financial ENE program was established by seasoned family law practitioners who provide their expertise on a reduced-rate, sliding fee scale. The gravitas of the evaluative opinions they provide is a key component of the program's success. Their candid, credible, prompt work provides the reality check and impetus for settlements in cases where the parties are mutually interested in avoiding the full purview of contested litigation.

This past year, a Moderated Settlement Conference program was offered to the court by the American Academy of Matrimonial Lawyers—Minnesota chapter. Academy members volunteered their time, at no-charge, to provide three-hour conferences on particularly complex and protracted cases that were slated for trial. This late-stage ADR program was remarkably successful, yielding partial or full settlements in approximately 80 percent of the cases.

The Unbundled Legal Services program, described in the first part of this article, was developed last year by the HCBA family law section. The program expands access to the ADR initiatives noted herein for citizens who are interested in pursuing prompt resolution of their cases, but are nonetheless reluctant to do so without counsel.

A new initiative is just taking shape to enhance services to victims of domestic violence. Attorneys and paralegals are meeting with advocacy organizations and court representatives to form new partnerships. One goal is to maximize the availability of legal services at agencies

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throughout the county so that victims have the choice of whether to seek assistance at the Domestic Abuse Service Center in Minneapolis or remain in their suburban communities at agencies located closer to home. To support that goal, the family court bench and two suburban agencies recently began a pilot project whereby petitions for orders for protection may be fax-filed from the agencies, with guaranteed same-day processing by the bench. Careful coordination of efforts is, of course, a priority. To that end, the advocacy agencies and the court recently provided a half-day training program for more than a dozen paralegals and attorneys who are committed to the new initiative.

The importance of continued training for family practitioners has been brought to the forefront this past year through a series of skills-building CLE's organized by bar leaders and Assistant Presiding Judge Jay Quam. The series is designed to provide newer attorneys with the opportunity to observe expert level practitioners in court before a judge at various procedural junctures and events, such as motion practice or

cross-examination. The newer attorneys deconstruct their observations and then take their turn at bar.

Although the work of improving the administration of justice must always be ongoing, from time to time it is fair to stop and recognize when substantial progress has been achieved. Now is one such moment for the family court system in this judicial district. Thanks to a long-standing public/private partnership, the paradigm has shifted. The stereotype of unduly contentious, protracted, unaffordable family court litigation is no longer the norm. In this district, the bench and bar have firmly committed to providing better outcomes for families in transition by adhering to the Early Case Management model and expanding access to legal services and alternative dispute resolution options.

## STEPPING INTO SERVICE AS A NEW FAMILY LAW PRACTITIONER

Attorneys are trained with awareness that

effective representation is a learned art. Yet the temptation is great at the conclusion of law school to strike out with zeal to make a difference in the world and, in the process, mistake eagerness with expertise. For new practitioners contemplating a career in family law, it is imperative to be mindful of how much there is to learn. Family law is an interdisciplinary practice area. Law school is merely the beginning, and, even though clinical opportunities abound and are encouraged, few recent graduates are truly ready to "hang out a shingle" and effectively represent clients in complex family crises.

Fortunately, as described in this article, the family court system has evolved in this district and the changes have included attention to the reality that training opportunities must be readily available for practitioners. Ongoing education must focus on practical skills building, not merely continuing education about changes in the law. Through the eyes of this new lawyer and law clerk in family court, the most effective lawyers are reflective, creative, and attuned to the very personal dynamics that differ from family to family. Those lawyers are also the ones

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who continually step forward to offer their time and talent to advance the expertise and professionalism of the family bar as a whole.

There are ample opportunities for new lawyers to gain the experience they need to effectively represent clients in family court. And, the need for service is great, because the majority of family court cases involve at least one pro se party. Whether new practitioners are committed to specializing in family law or not, they should consider fulfilling their pro bono obligations by working on behalf of clients needing representation on family law issues.

One such opportunity has already been mentioned in this article: the CLE skills building program offered by Judge Quam and seasoned practitioners through the HCBA. For a new practitioner, the program is dynamic and challenging. The experience

is multi-faceted, as participants (1) observe talented lawyers demonstrate their skills; (2) hear the views of judicial officers in response to the demonstrations; (3) practice their skills in a mock courtroom setting; and (4) receive performance feedback from the judicial officers and experienced practitioners.

Another opportunity that deserves mention is the free training provided by the VLN for practitioners who register to provide pro bono services through the VLN family law program. The training is offered several times a year.

A third resource for attorneys with fewer than 10 years of experience is to join the Bush League, an informal organization of committed family law practitioners who aspire to develop the highest level of expertise. The organization sponsors meet-and-greet social events, along with substantive training by seasoned practitioners.

One of the unique challenges of practicing in family court is, of course, the interdisciplinary nature of the substantive law. Family lawyers must operate with knowledge of topics as broad as child development, psychology, chemical dependency, and domestic violence. This past year, a Minnesota chapter of the Association of Family and Conciliations Courts (AFCC) was formed. AFCC is recognized nationally as a leader in providing educational opportunities for family law practitioners. New attorneys can look forward to the local chapter as an emerging resource for training opportunities in the years to come.

Through the eyes of a law clerk, practicing family law in this district presents many opportunities to follow through on the commitment to service so many of us made when we began the journey of entering this profession. There are high expectations for family law practitioners in this district, but there are colleagues and resources readily available to help new lawyers meet the challenges. 

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<sup>1</sup> Minnesota State Constitution, Article VI, Section 1.

<sup>2</sup> Two exceptions from that time have continued to the present. Referees do not preside on the Signing Judge calendar. And, referee orders are subject to confirmation by a family court judge. See the recent decision, *Culver v. Culver*, 771 N.W.2d 547 (Minn. App. 2009), for a detailed account of the interplay between the confirmation requirement and the availability of appellate review of referee orders pursuant to Minn. Stat. §484.65, subd. 9 (2006). More recently, in January of 2009, another caseload assignment distinction was instituted via a pilot project to evaluate process improvement options on mandatory calendars. Currently, the referees are adjudicating the paternity and support calendars, while the judges adjudicate the Order for Protection calendars. Systemic changes emanating from the current project likely will be implemented in 2010.

<sup>3</sup> Conference of State Court Administrators, Position Paper on Effective Management of Family Law Cases (2002), p. 5.

<sup>4</sup> The ECM summary is an excerpt from material presented by the Honorable Tanja K. Manrique and James Goetz, J.D., MSW, MA, *The Minnesota Model of Early Case Management/Early Neutral Evaluation*© at the Association of Family and Conciliation Courts' Regional Training Conference, held November 5-7, 2009, in Reno, Nevada.