Judicial Objectivity Crucial in All Courts

By Georgene Kaleina

Consider the scenario of a woman embroiled in a divorce case against her abusive husband. While in the middle of this emotional minefield, the woman’s teenage son is arrested for possession of marijuana and the husband is brought up on a domestic violence charge.

In a traditional and more fragmented court system, all three of these cases might end up before different judges in different courtrooms within a jurisdiction.

Under a Unified Family Court (UFC) model, however, these cases conceivably could come before one judge under the one-judge, one family model.

One concern regarding the UFC model is whether multiple family members appearing repeatedly before one particular judge could result in that judge losing objectivity regarding the case. A benchmark of the American judicial system is that a judge hears all evidence before rendering an impartial decision. But how does a judge maintain objectivity and avoid possibly jeopardizing a person’s constitutional right to a fair and impartial adjudication if the same family keeps appearing before the judge?

Several judges across the country agree that objectivity is a paramount issue. They note, however, that familiarity with the family actually helps judges make more informed and appropriate decisions regarding the family.

The New Jersey Unified Family Court: 1984 to 2007

Taking Stock and Planning for the Future

By Harry T. Cassidy

Over the last twenty-five years, the New Jersey court system has taken many steps to develop into a unified system with the ability to deal with family problems in a holistic manner.

The New Jersey system now is taking a close look at the progress of the Family Court Division and where it will go in the coming years. The division’s managers and presiding judges have formed a joint committee to develop a road map to recommend to state leaders a plan for the future of the court and to provide guidance on how to confront the significant challenges that accompany the implementation of a Unified Family Court in New Jersey.

In the nearly two and a half decades of its existence, the Family Division evolution occurred structurally as well as philosophically. In November 1983, New Jersey voters approved a constitutional amendment, abolishing the Juvenile and Domestic Relations (J&DR) Court and creating a unified Family Part (commonly known as Family Division) in the Superior Court of the state. This step merged the Superior Court actions of divorce and adoption with the J&DR case types of non-marital custody, parenting time, support and paternity (all comprising non-dissolution), juvenile delinquency, and all actions brought by the child welfare agency to protect allegedly abused or neglected children. Statewide management reforms were implemented in 1984 and 1985 after the constitutionally mandated Family Division became a reality. This unified jurisdiction and management structure of the court created the framework for a unified Family Division.
Unified Family Courts: Helping and Healing Families with Substance Abuse Problems

By Gloria Danziger

The newborn baby’s toxicology screening came back just days before Christmas with heartbreaking results—positive for marijuana use. Those results would tug on the heartstring of any human being and Maryland Judge David Young was no exception.

Young, of the Baltimore City Circuit Court, presided over a shelter care hearing for the newborn baby in that week before Christmas. He immediately ordered the baby’s mother to enter the Baltimore City Family Division’s family drug treatment recovery court, where she would receive the treatment and support necessary to recover from her addiction, take care of her child, and become a productive member of her community.

Fifteen years ago, before the establishment of Baltimore City’s Family Division, Young’s only viable option may have been to remove the baby from his mother.

“The Unified Family Court concept lends itself to the therapeutic justice approach” that is embodied by the family drug treatment recovery court, said Young, who co-chairs the Maryland Drug Court Commission’s Family Dependency Treatment Court subcommittee. As courts and communities increasingly consider a Unified Family Court (UFC) model, “they become aware of a UFC’s power to intervene early and often in the lives of families and children struggling with substance abuse and addiction,” Young added.

Until the early 1990s, the situation was very different. The vast majority of courts responded to cases of substance abuse and addiction by imposing a range of penalties that did little, if anything, to address the reasons underlying drug dependency. As drug-related cases flooded courts at every level throughout the country in the 1990s, the criminal justice system gradually realized that courts could, and should, intervene more effectively in the cycle of substance abuse and addiction.

In sharp contrast to the criminal justice system, there were few programs designed specifically for families and children coping with substance abuse and addiction in the family justice system. Nonetheless, the impact of drug abuse on these families was indisputable. The facts painted a bleak picture. According to Congressional testimony in 2005 by the Child Welfare League of America:

- Substance abuse was a factor in up to two-thirds of cases of children with substantiated reports of abuse and neglect and in two-thirds of cases of children in foster care.
- Children whose parents used drugs or alcohol were three times more likely to be abused and four times more likely to suffer from neglect.
- Children from families with substance abuse problems tended to come to the attention of child welfare agencies younger than other children, were more likely than other children to be placed in out-of-home care, and, once in out-of-home care, were likely to remain there longer.
- Drug abuse continues as a major factor in juvenile court cases. As many as four out of five of the more than two million teens in the juvenile justice system have drug or alcohol problems, according to the Robert Wood Johnson Foundation. Many of them come from abusive or neglectful families.

“That’s where Unified Family Courts can really help,” said Edward Jurith, general counsel for the Office of National Drug Control Policy. “It is critical for family courts to screen and intervene for substance abuse behavior early in a young person’s drug using career. The earlier that you can break the cycle of drug use, the greater the odds are that you can prevent later dependency and addiction.”

The UFC model implicitly recognizes that it is in the best interests of a child, a parent or relative, and the community at large to address both the legal and non-legal issues that underlie a family’s legal problems.

Jurith explained that Unified Family Courts derive tremendous strength from integrating a public health model of drug dependency into the courtroom. “While see next page
the legal community has made great progress in providing treatment to adults through drug court programs, it is important for the entire justice system to become familiar with the characteristics and signs of drug abuse so that the courts can deliver proper interventions,” he added.

Given the chronic nature of addiction and substance abuse—with relapse frequently occurring on the road to recovery—families often need court intervention to assist them with medical, social, psychological, and other needs associated with recovery.

Randall Kessler, chair of the American Bar Association’s Standing Committee on Substance Abuse and a family law attorney in Atlanta, Georgia, explains the lawyer’s role in a UFC in a case where a litigant has a substance abuse problem: “As an attorney, I recommend to my client to seek help and I make sure that it’s for therapeutic reasons. I work hard to reassure my client that the reason for my recommendation is his or her best interest—his or her own health and future as a productive member of society, as well as the well-being of the client’s own children and family.” In Atlanta’s family court, for example, a staff psychologist works with families in court to identify substance abuse problems and makes recommendations and referrals for treatment.

The incorporation of a public health approach to substance abuse and addiction enables a Unified Family Court “to treat the disease of addiction as opposed to starting from a premise that this is a bad person,” Young explained. “If an individual agrees to participate in his or her recovery, there is ongoing contact between the parent and child, as opposed to placing the child in foster care. It is a collaboration in which everyone is focused on one objective: to see the parent recover.”

The roles of judges and attorneys in this setting differ significantly from their more traditional counterparts. “In this setting, my role is to be part of the treatment regiment, and my responsibility is to acknowledge even the smallest accomplishments and successes of a parent in recovery,” Young said.

A Unified Family Court’s emphasis in cases involving substance abuse or addiction is on early intervention, a less adversarial approach to adjudication, and case coordination that focuses on treatment and other services.

“‘This approach translates into a powerful network of services, follow-up care, judicial leadership, staff expertise, and other means of holistically addressing substance abuse and addiction,’” Kessler said.

There are many strategies that a family court can develop and implement to strengthen its handling of cases involving substance abuse or addiction. The following are just a few that have been adopted by courts around the country:

▸ Provide referrals for medical services, parenting classes, and gender-specific counseling and/or self-help groups.
▸ Make space available in the courthouse for Alcoholics Anonymous, Narcotics Anonymous, Association for Children of Alcoholics, and other self-help and support groups.
▸ Train and make available staff and counselors who are knowledgeable about the particular issues confronting parents and children in recovery.
▸ Make available supervised visitation for families where one or both parent(s) are in recovery.
▸ Help to educate the family by providing easily accessible information, pamphlets, brochures, and other publications explaining issues relevant to addiction and substance abuse, including information on the nature of addiction, local support and self-help groups, parenting classes, job skills training, local health clinics, and other sources of information.
▸ Develop and implement programs that help juveniles who have been expelled from school for substance abuse.

Share Your Innovative Programs

BY JEANNIE ENGLE

We want your stories! Court reform can be a long and arduous process. Share your experiences building your Unified Family Court.

Does your jurisdiction have a unique program of which you are particularly proud? Have you implemented an innovative program that has succeeded beyond your expectations? Are there programs you wish you could implement but are lacking the funding or resources to do so? What advice would you give a jurisdiction that is considering whether to implement a Unified Family Court?

One of the goals of this newsletter is to link recipients to a network of established Unified Family Courts and to provide information to those jurisdictions that are contemplating creating a Unified Family Court or are in the beginning stages of establishing the court.

Share your stories: what works, what does not. Since experience often is the best teacher, share yours!

We will publish your responses and may highlight your court in a future article. Submit your responses to the editor at: cfc@ubalt.edu.
Judicial Objectivity Paramount in Every Case

from page 1

Judge Michael Broderick, of the District Family Court-First Circuit, Honolulu, Hawaii, says that among his peers “there is a general sense that the question (of objectivity) itself suggests that family court judges are not able to do what their colleagues in other courts do all the time.”

Broderick maintains that family court judges are as capable of compartmentalizing and not using information they have from a prior trial as their counterparts in the criminal and civil divisions.

“What I personally have found is that I build a rapport and trust with the family in one court matter and they are more open to my disposition in another case,” Broderick says. “It’s not a blank page. They know me and, hopefully, it’s a positive knowing. They are more open and receptive to a disposition because of their prior experience.”

Judge Susan B. Carbon of the Concord Family Division in New Hampshire, adds: “Anytime people come to court, they are under enormous stress. If you are a familiar face, they calm down because they have seen you before. That may mitigate the stress. It’s not just a new face every time you walk in.”

Objectivity is crucial for all judges, regardless of the court division over which they preside, Carbon notes. “You are required to consider the evidence that is appropriate to that case,” she adds. “In a UFC, where one judge may hear different pieces of a family’s life, the judge has to be careful that he or she is considering information that is relevant or admissible to that particular case.”

Carbon cautions that the public might be concerned that a judge knows more about a family than is apparent from the court record. “But that is a virtue of Unified Family Courts. You are aware of the family. You have the context to place what is occurring. You know more about them and you can fashion orders that will be more helpful to them, or make suggestions for resources or services for the family.”

Judge Audrey J.S. Carrion, who is in charge of Baltimore City Circuit Court’s Family Division domestic docket, agrees: “Judicial objectivity should be paramount in every case. But I see tremendous advantages, particularly in family matters, to have a judge who is familiar with the family. It’s important we know what the intricacies are in that family to serve the family. You are not the stranger who reads the file the night before. You have hands-on experience in what the case is all about.”

Carrion understands that some might argue that a judge too familiar with a family would anticipate the family’s reactions. “But I personally believe every single situation needs to be approached with a new set of eyes. I find judges take that responsibility very seriously and our judges receive extensive training.”

Judge Howard I. Lipsey of the Rhode Island Family Court in Providence, Rhode Island, said there are enough checks and balances in the court system to protect against such bias, including lawyers for the parties, social workers, the Department of Children, Youth and Families and the appellate courts.

“I don’t see a problem with objectivity,” he said. “Does that mean something crazy can’t happen? Of course it can. But that’s why you have all of these people involved. There are competing interests the judge has to sort out to make appropriate decisions. It’s not like the judge has free reign to do whatever he wants to. There are many interests that have to be addressed.”

And what if a family feels trapped with the wrong judge?

While all the judges agreed that the recusal of a judge for judicial bias is the exception rather than the rule, Carrion noted that families could raise concerns with the administrative judges. “We review the tapes and make a determination on whether there is any perceived failure to be objective. Does it happen? Of course it does, but I believe that is the exception rather than the rule.”

“A judge does have to be very open to the possibility that he cannot be objective, recognizing that is a very rare instance,” Broderick added. “It’s a rare case where recusal is appropriate.”

Broderick, who asked his colleagues about this issue, said the consensus among his counterparts was that such recusals were very rare. One judge, who had been on the bench for fifteen years, was recused twice. Another eighteen-year veteran of the bench had it happen only three times, Broderick said.

Broderick recalled a case where he terminated parental rights to a child because of a mother’s drug addiction. The mother gave birth to second child a year later and the state sought to remove that child too. The mother asked Broderick to recuse himself, saying he could not be objective because of what happened with her first child. Broderick denied the motion and ordered the second child to remain in foster care. About fifteen months later, he returned the second child to the parent—a decision that had nothing to do with the recusal motion. “The conduct that gave rise to the termination of parental rights of the first child no longer existed with second child,” Broderick said. “The drug addiction had ended.”

Carbon said a judge should be recused if there is bias. “But if someone is just unhappy with your decision…for instance, you felt the children were in danger, that’s your job to remove them from the home…you don’t recuse yourself if you’re doing your job. You recuse yourself if you’re not doing your job.”

Above: Judge Audrey J.S. Carrion, Baltimore City Circuit Court, Maryland. Right: Judge Howard I. Lipsey, Rhode Island Family Court, Providence, Rhode Island.
In 1998, the New Jersey Supreme Court challenged the Family Division to develop a model statewide structure and a best practice approach to case processing. Since then, the Division has achieved remarkable results in the reduction of cases in backlog.

The Family Division of the Superior Court in New Jersey includes approximately 125 judges and 1,700 staff in twenty-one New Jersey counties organized into fifteen judicial districts (vicinages).

Attempts to develop a uniform staffing structure to support the unified court framework consumed the energy of managers in the initial ten years of the implementation of the unified Family Division. It was not easy to develop a proposal to implement in both small and large vicinages, single-county and multiple-county vicinages. Development of a uniform staffing structure was complicated further by variations in the resources available, variations in the proportion of the many case types, the differences in local legal cultures, and the approach to cases in each county. Many proposals were set forth by the central office, and options that provided for “one judge, one team, one family” were initiated in several vicinages in the state. It was not until the passage of the Judicial Unification Act in 1995, which provided for state funding of all judiciary personnel costs with a three-year phase-in from county to state funding, that the New Jersey judiciary was able to equalize resources across counties.

N.J. SUPREME COURT CHALLENGES FAMILY DIVISION

In 1998, the New Jersey Supreme Court challenged the Family Division to develop a model statewide structure and a best practice approach to case processing which provided for uniform case processing standards and time guidelines. In July 1999, the Judicial Council approved the plan submitted by the Conference of Presiding Family Part Judges. The structure included multi-docket teams consisting of professionals and support staff organized around case processing and the work of a judge or judges in related dockets. Teams were formed to handle the juvenile and family crisis dockets, divorce and non-dissolution dockets, filings by the child welfare agency, and domestic violence cases.

Management efforts since 1999 have focused on implementation of this structure statewide by developing, publishing, and revising case processing manuals in each docket area and refining best practices to reduce case backlog. (Backlog is defined as cases that exceed the time guidelines established for case resolution.)

Since 1999, the Family Division achieved remarkable results in the reduction of cases in backlog. For example, backlog in divorce cases was reduced by 60% from 1999 to 2003, and 49% from 2003 to 2007, for an overall reduction of backlog cases of 80% (from 3,773 to 767). Similar results were achieved for all other family cases.

As New Jersey completes the twenty-third year of its unified family court, the Family Division managers and presiding judges now are joining forces to create a roadmap for the future to provide guidance on how to confront the significant challenges that accompany the implementation of the concept of a unified Family Division in New Jersey.

DIFFICULT TO AVOID SPECIALIZATION

The committee acknowledges the many challenges to a unified approach. With the passage of time, the tendency of actors in a system as complicated as the Family Division is to lean toward specialization, to divide cases based upon legal issues, and to conduct business in a manner that is easier for the system, rather than seeing the litigants as a families who come to court in a holistic manner. This is particularly difficult to avoid, as many of the “partner agencies” are specialists in such areas as child support, child welfare, delinquency, and/or domestic violence. Partners in the organized bar tend to focus on the divorce docket to the relative exclusion of other case types. The constant need to adjust to tight budgets also seems to push the system to rely on the development of specific routines focused on the immediate problem, not the overall best solution to a family’s issues.

The New Jersey judiciary also is faced with many other challenges, such as requiring professional assessments and treatment options without the resources or authority to fully develop or control such programs, the rising cost of litigation, and the needs of an increasing number of unrepresented litigants. The state is presented with the various “problem solving” court models, such as drug courts and domestic violence courts, and it needs to identify how such models would best complement New Jersey’s family court.

CORE PRINCIPLES OF THE UNIFIED COURT

The judiciary also is seeking to identify the most appropriate responses to the co-occurrence of such problems as: child abuse and domestic violence; delinquency and family crisis; and domestic violence and divorce.
Unified Family Court Connection: 
An Invitation to Discuss Family Justice System Reform

Please send us your ideas, comments, and program highlights. We also urge you to write reflection pieces about issues your jurisdiction is facing or addressing.

By Barbara A. Babb

As the Unified Family Court Connection publishes its second issue, we encourage judges, court administrators and personnel, attorneys, bar leaders, and legislators from around the country to join the dialogue about ways to continue to improve the administration of family justice.

The response to the Unified Family Court Connection's inaugural newsletter has been extremely positive and encouraging. We thank you for all of the e-mails, calls and letters in support of the newsletter's mission to strengthen and expand the discussion about and implementation of Unified Family Courts.

The University of Baltimore School of Law's Center for Families, Children and the Courts (CFCC), a recognized national leader in the effort to reform family justice systems, is producing this newsletter through funding from Maryland's Administrative Office of the Courts. It is the only newsletter in the country devoted exclusively to issues involving Unified Family Courts, a court system aimed at providing helpful and all-encompassing resolutions tailored to meet an individual family's legal, personal, emotional and social needs.

CFCC strives to become a national clearinghouse for information about Unified Family Court developments and a facilitator for the ongoing exchange of ideas among all stakeholders interested in continuing to improve the administration of family justice.

Our hope is that this newsletter is one means to provide you with the information necessary to initiate or to enhance your jurisdiction's family justice system reform efforts. We invite and encourage you to participate in the conversation about family justice reform. Please send us your ideas, comments, and program highlights. We also urge you to write reflection pieces about issues your jurisdiction is facing or addressing.

As Judge Marcella Holland, of the Baltimore City Circuit Court in Maryland, has said: "With Unified Family Courts, the job is to keep preaching about it. We have to keep working diligently to get every state to have some form of a family court."

Please help us make this a reality by contributing your voice.

The New Jersey Unified Family Court: 1984 to 2007

In order to develop this plan, a joint committee of judges and managers has identified core principles of the unified court, including:

- To provide customer service: the coordination of a family case based upon the history and needs of the family, rather than the expectations of the system.
- To develop staff in the Family Division, including a personnel system that supports the recruitment, training and advancement of staff committed to the court that can lead into the future.
- To fully engage and collaborate with the larger community and internally with other parts of the court to provide sufficient services to families across the state.
- To identify and develop technology to support this vision.

The goal of the joint committee is to develop a statement of principles and concepts to recommend to the Judicial Council and Supreme Court that can be applied now and in the future to guide development.

The joint committee now is reaching out to other states with existing Unified Family Court programs to determine how other states have addressed such questions. No doubt, despite New Jersey's experience, the state has much to gain from collaboration with other jurisdictions.

We look forward to this dialogue and invite all who may be interested to contact us.

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Acknowledgement:
The author would like to thank the members of the joint Manager/Presiding Judges Committee for their review of and helpful suggestions for this article. The views expressed should not be considered the policy of the New Jersey Judiciary.

Biographic note:
Harry T. Cassidy was appointed in May 2002 as the Assistant Director of the Family Practice Division within the Office of Trial Court Services at the New Jersey Administrative Office of the Courts. He joined the Judiciary as a probation officer in Burlington County in 1975 and was appointed as Burlington County’s Family Division manager in 1985. He remained in that role until he came to the Judiciary Central Office in 1999 as a Chief in the Family Practice Division.
Court Services Catalogue Becomes Useful Tool for Judges and Attorneys

By Judith D. Moran

Judges and lawyers who practice in New York City's family courts are able to access a complete reference guide to court-located family services—thanks to the significant efforts of the New York City Bar Association's Committee on Family Court and Family Law.

Responding to an identified need for better and more complete information about court services, the committee embarked on a year-long project in 2005 to catalogue what is available to help families going through the New York City family courts.

New York City's family courts, located in each of the City's five boroughs, annually serve several thousand litigants. Most of those litigants are poor and, in addition to their need for a forum to resolve legal issues, require other services, as well. In an effort to meet those needs, the court system provides a variety of on-site services, situated throughout the large buildings in which these courts exist. The sheer size of these physical structures (one building consists of eleven floors) compounds the difficulty of determining what services are available and how to find them.

The provision of on-site services is not unique to the New York City Family Court system. Drawing from comparable litigant populations, family courts across the nation similarly are responding with an array of in-house services to address the panoply of problems common to their constituents. These services may include childcare facilities, a location for supervised visitation or the exchange of children for visitation with a non-custodial parent, personnel to provide mental health evaluations and evaluations for substance abuse services, and assistance for domestic violence victims in preparing court documents.

RELEVING A BURDEN ON FAMILIES

The advantage of having family services on-site is that it relieves families, particularly those who use public transportation, from the burden of having to travel to multiple locations in order to comply with court orders or otherwise meet their needs for assistance. In turn, judges and court personnel are in a better position to properly coordinate and oversee service delivery when providers are court based.

The impetus for the bar committee's project was, in part, the result of anecdotal reports from family court lawyers, judges and court personnel regarding the need for more complete details about the existing services within the large courthouse structures. Accurate contact information and program descriptions were often difficult to obtain. Furthermore, the committee's overall mission, to advance the practice of family law and the work of the family courts, was consistent with the undertaking.

Gathering the data that later was compiled and organized borough-by-borough was achieved via distribution of a Family Court Project Questionnaire. The survey instrument was designed to garner in-depth facts about the services provided, including: contact information, hours of operation, location, eligibility requirements, scope of assistance, and staff qualifications and training. The questionnaire was sent to each courthouse service provider, the names of which were supplied to the committee by the clerks of court in each borough. In order to confirm the accuracy of the information and to ensure that all services in each courthouse were accounted for, small groups of committee members fanned out among the different courthouses to personally investigate the courthouse environs. In so doing, they not only confirmed what was gleaned from the known survey participants, but they also uncovered on-site services that had been unknown, in some cases because signage was absent or inaccurate.

The completed surveys formed the basis for developing the service provider catalogue. The results of the committee members' endeavors were published in a bound volume that was duplicated and sent to each family court judge in the system. To enable lawyers and judges to utilize the information, the report was placed online on the Bar Association's web site: http://www.nycbar.org/pdf/report/FamilyCourt_CourtServicesReport.pdf.

The report illustrated a burgeoning trend—the next wave of family court reform as some commentators noted—to assess family court performance. This trend was addressed at a May 2007 conference entitled “Summit on Unified Family Courts: Serving Children and Families Efficiently, Effectively and Responsibly.” The American Bar Association and the University of Baltimore Law School's Center for Families, Children and the Courts co-sponsored the conference, held in Baltimore.

The New York City Bar Committee's report is an example of a relatively uncomplicated methodology to determine an aspect of family court functionality. It has proven to be a useful tool in aiding judges and lawyers identify and facilitate access to court-based services in the family courts of New York City.

Judith Moran has worked on family court reform initiatives in Maryland and in New York. She is a consultant to the University of Baltimore School of Law’s Center for Families, Children and the Courts. She holds a B.S. in Nursing from Georgetown University, an M.A. in Counseling from the University of North Florida and a J.D. from the University of Baltimore School of Law.
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ASK THE EDITOR:
Unified Family Courts cover a myriad of issues, problems and innovations. If you have questions you would like us to address, please send them to us and we will try to answer them in upcoming editions of the United Family Court Connection.

We value your opinions and your comments! We look forward to hearing from you.

FEEDBACK:
Judith Hamilton and Candy McCall never met, but they shared one life-altering thing in common—neither ever imagined their marriages would end in divorce. Candy described her divorce as one of the worse things she has ever gone through. "I was left devastated," she said. "We had been married for 14 years and we had 10 wonderful years together. We just never imagined it would end this way." Judith, on the other hand, entered into divorce with the expectation of a "peaceful" divorce. "Go through it and come out the other side," she said. "That's what you do." But when Hamilton and Candy McCall never, but they shared one life—Unified Family Courts.