

# Family Law Education Reform Project

## Unified Family Court

### ABSTRACT

This discussion guide addresses the benefit of a Unified Family Court system that is designed to address not only the legal problems of the families, but also the underlying problems that necessitated legal action in the first place, such as the personal problems of the family members and their psychological disputes

### ABOUT THE AUTHOR

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Judge Kreeger has served as a family court judge since January 1993. She served on the Florida Supreme Court's Steering Committee on Children and Families in the Courts and chaired the Pro Se and Case Management Sub-committees of that Steering Committee. She served as a member of the Supreme Court Committee on Privacy and Court Records, and chaired the Committee on Access to Court Records. She presently chairs the Florida Courts Technology Commission, which makes recommendations to the Florida Supreme Court about policy issues that emerge as Florida courts transition into receiving and maintaining court records electronically.

Judge Kreeger has organized and taught numerous portions of continuing judicial education and continuing legal education programs, primarily about aspects of family law and family court process, not only in Florida, but in other states' professional education programs, at the National Judicial College, and internationally. She has authored articles about family law and the conflicts between individual rights of privacy and public rights of access to court records that were published in professional journals and has served as a member of various other legislative, court and organized bar association committees.

Finally, Judge Kreeger presently is a lead judge for a community team that procured a significant grant to design and administer an action plan for children from high conflict families. In addition, the United States State Department designated her as one of four network judges for the United States for judicial communications about children found in the United States who left-behind parents claim were abducted from their home countries.

## Unified Family Courts

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### Why this topic matters

- Traditional court methods are inadequate to address the changed sociological landscape of families.
- The traditional adversary process contributes to the demise of the family unit, and the fragmented judicial system is costly to litigants, inefficient in the use of judicial resources, and may result in the issuance of diverse or even conflicting orders affecting the family.
- Recognizing this landscape, judicial and legal leaders embarked on a series of measures to foster study, discussion, implementation and evaluation of a different process. They realized that “too often courthouse resolutions resolve only the legal conflicts, leaving unaddressed the underlying personal relationship and psychological disputes.”<sup>1</sup>
- Courts that restructure families should identify services and craft solutions that
  - are in the best interests of children,
  - improve family functioning, are appropriate for long-term stability, and
  - minimize the need for subsequent court action.

### Therapeutic jurisprudence: a new paradigm for family courts

- During the 1980's, jurisprudence theorists first wrote of therapeutic jurisprudence, a “philosophy of law which attempts to provide a process and a result which is helpful to all who take part in the court process including litigants, families, communities and professionals.”<sup>2</sup> Justice was to heal, not to hurt.
- Judicial and legal leaders promoted a new family court system, a specialized court which would address all related issues of a family, whether criminal or status offenses, parental and support issues, domestic violence, adoption, and abused, neglected and abandoned children. Such a court, which came to be known as a “unified family court”, would interface with community resources to identify and address the social service needs of the family, at the same time as it would address their legal issues.<sup>3</sup>
- 38 states now have statewide family courts, family courts in selected areas of the state, or pilot or planned family courts.<sup>4</sup>

### What lawyers should know to practice in the new family court paradigm

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<sup>1</sup> Judge Kreeger has served as a Circuit Judge in the 11<sup>th</sup> Judicial Circuit (Miami-Dade County) for 16 years, during most of what she has been assigned to the Family Division of that court. She is also a lead judge for a community team that procured a significant grant to design and administer an action plan for children from high conflict families.

- Traditional law school curriculum teaches substantive family law issues, mediation as a form of alternative dispute resolution, and basic adversarial legal procedure. However it does not include other fields of knowledge that are essential for family law practitioners who will work within this new paradigm. These include:
  - Child development and family systems theory, and their significance in formulating appropriate parenting plans<sup>5</sup>
  - Mental health and substance abuse issues and their impact on families
  - Cultural beliefs and practices and how they affect familial relationships
  - The adverse effect of high conflict family law litigation on children;
  - Parental alienation vs. parental estrangement
  - Child abuse and child sexual abuse
  - Basic accounting principles (e.g. understanding balance sheets and tax returns, basic business valuation principles, lifestyle analysis)
  - Family violence and its impact on families<sup>6</sup>
  - Types of government and community resources that fractured families need
  - Government and community resources that are available in the community to address the needs of fractured families
  - Beyond mediation: other forms of alternative dispute resolution
  - The use of experts in family law cases, including mental health professionals, accountants, valuation experts, parenting coordinators,<sup>7</sup> child advocates
  - The Bounds of Advocacy, an aspirational ethics code for family lawyers developed by the American Academy of Matrimonial Lawyers
  - Parenting classes which many family courts require that parents complete when they are involved in family law litigation.

### **Additional skills that family lawyers need**

- The traditional advocacy skills of lawyers who participate in the traditional adversarial process.
- The role of the lawyer as counselor becomes more significant in this practice area, because the client is usually in a highly emotional state during the legal process.
- Fractured families are frequently involved in multiple legal processes in addition to their domestic relations cases, such as child protection, juvenile crime, family violence, foreclosure of a family home, tort or business litigation, bankruptcy, and immigration. The issues in those cases frequently overlap with the issues in their domestic relations cases. Thus even the lawyer who specializes in family law needs enough knowledge of other practice areas to understand how they interface with family law litigation.
- Ethical issues that arise (a) when the lawyer's duty of advocacy to his/her client clashes with the best interests of minor children; and (b) when the other party is self represented.<sup>8</sup>

- Ethical issues that arise with forensic experts whose opinions are sought in family law cases.

### **Building a unified family court presents decisions for judicial planners**

- The types of cases that will be included in the unified family court.
- The training and education that judges and their staff will be required to have.
- Building technology systems that enable judges and their staff to:
  - identify related cases involving family members and to access judicial determinations in those cases
  - collect criminal history of each family member
  - process cases in a timely manner
  - account for timely disposition of cases
  - gather statistical data that can be used to demonstrate funding needs for family court
  - conduct video conference hearings when appropriate
- The staff and services that will be housed within that court.
- Services that the court will provide for self represented parties to family law cases to assist them in gaining access to the court system.
- How multiple cases concerning a family will be consolidated or coordinated.
- The means by which the court maintains the confidentiality of the court records and proceedings that are legally confidential and at the same time gives appropriate access to the court records and proceedings that are legally public.
- What measures the court will take to facilitate the access of self represented litigants to family courts. (At least 65% of people who are parties to family court litigation represent themselves).
- Case flow models for each family law case, using principles of differentiated case management.
- Use of specialized treatment courts and programs, such as drug courts, mental health courts, job search programs.

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**ENDNOTES:**

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