



THE SUPREME COURT OF MINNESOTA
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TO: Representative Michael Paymar
Chair, House Public Safety Finance Division

Senator Leo Foley
Chair, Senate Judiciary Budget Division

Representative Joe Mullery
Chair, House Civil Justice Committee

Senator Mee Moua
Chair, Senate Judiciary Committee

FROM: Sue K. Dosal, State Court Administrator *SKD*

RE: Plan to Conduct a Comprehensive Family Law Study

Minn. Laws 2008, Chapter 299, section 26 directs the State Court Administrator to “report on a plan to conduct a multidisciplinary, comprehensive study on family law...”.

Attached you will find a report delineating the necessary components of an exhaustive examination of the family law procedures and substantive law and of resources for children and families to determine what improvements are necessary to mitigate the conflict and acrimony associated with family law cases.

Please contact me if you have questions.

Plan to Conduct Family Law Study

Prepared by Minnesota State Court Administrator's Office
pursuant to Minn. Laws 2008, Chapter 299, section 26
March 10, 2009

Introduction

Minn. Laws 2008, Chapter 299, section 26 directed the State Court Administrator to "...report on a plan to conduct a multidisciplinary, comprehensive study on family law...". This report is in response to the directive.

Over the past two decades the Minnesota Legislature has implemented statutes and created study groups aimed at reducing conflict in dissolution, annulment, legal separation and paternity proceedings in order to foster collaborative parenting arrangements. The Legislature has enacted statutory methods for enforcing visitation orders, methods of aiding in child access, as well as sanctions and remedies for violation of visitation orders. It has mandated participation in parenting programs and has sought to utilize language in the statutes that is less stigmatic, is less likely to foster conflict, and more accurately describes parenting responsibilities through substitution of the term "parenting time" for visitation throughout the statutes. Most recently, in 2007 it overhauled the method used to calculate child support, adopting an "incomes shares method".

At the same time the Legislature has directed the State Court Administrator's Office to examine various aspects of the area of family law:

- 1995 – Supreme Court Advisory Task Force on Visitation and Child Support
- 1998 – Supreme Court Advisory Task Force on Parental Cooperation
- 2008 – State Court Administration Workgroup on Presumption of Joint Physical Custody.
- 2008 – Develop plan for comprehensive study on family law.

In spite of these efforts, the family law arena continues to be plagued by emotional trauma, acrimony and extended, unresolved parental conflict. There is growing interest to conduct an exhaustive examination of the family law procedures and substantive law and of resources for children and families in these cases to determine what improvements are necessary to mitigate the conflict and acrimony associated with family law cases.

Requirements

There are several factors that are essential to a meaningful review of the family law process. Each is noted below:

1. Leadership

It is important that any effort made to study the system be recognized and supported by leadership from all three branches of government. This support should be exercised through active participation by leaders, or their designees, of the Executive Branch, the Legislature and the Judicial Branch.

2. Establishment of trust among interest groups

In spite of efforts made by the Legislature and the Judicial Branch in the past, most efforts to examine the family law area are plagued with feelings of mistrust between the interest groups involved. This mistrust hampers discussions and the ability to reach consensus on the issues being examined. Open and inclusive work must be done so that everyone interested gains confidence that their concerns are understood and the public discussion moves right away to a vision of the best system for all concerned.

Based on our previous experience with numerous task force efforts, rather than starting immediately with the appointment of Task Force members, a smaller Steering Committee should be tasked with the responsibility to carefully identify the major problems and issues that must be addressed and to decide how to select the task force that will follow-up on the Steering Committee's work and be sufficiently inclusive, representative, and yet workable in terms of size. Enabling legislation should specify the required representation for the steering committee and Task Force.

When the Task Force is formed it should identify and expressly commit to a series of values for the group, such as candor, inclusivity, good faith, and recognition that more wisdom is available to an open, respectful process than by any single individual. The Task Force should also agree, up front, to the process to be used to resolve conflicts. Again, based on past experience, especially in the contentious family law area, it is strongly recommended that a neutral facilitator be used to guide Task Force deliberations.

3. Meaningful data

Many of the past legislative and study group efforts to examine various aspects of family law were hampered by the lack of detailed data concerning family law process outcomes. For example, the 2008 State Court Administrator's Workgroup on Presumptive Joint Custody would have benefitted from research data on the frequency of sole and joint physical custody settlements and awards and the frequency of modification and enforcement proceedings associated with the sole and joint physical custody outcomes. However, such information is not currently collected. The lack of empirical data has arisen in many of the legislative attempts at changing family law and with many of the study groups. It is imperative that any comprehensive review of the family system include data collection efforts.

4. Sufficient funding

A comprehensive look at Minnesota's family law arena cannot be undertaken without sufficient resources. Staff will be needed to perform legal and subject matter research, and perform meeting management functions. In addition research staff will be necessary to accomplish the necessary data collection needs. It is unlikely that any current entity has sufficient staff to undertake this effort without additional resources. In addition to primary staff, such an undertaking should consider the use of national experts and the use of a neutral facilitator to conduct meetings.

The Study

A comprehensive look at the family law arena should be accomplished in two distinct phases:

Phase I – 6 months in duration

Committee staff, working with the steering committee, will undertake a literature search, identify national and international resources, and through a series of focus groups around the state identify:

- The issues, pertaining to, but not limited to, the following areas: court processes and procedures; substantive law pertaining to family law, and existing resources available to children, parents, and families;
- Initiatives in other states and countries that have addressed these issues; and
- Potential data collection needs.

The steering committee would be responsible for determining how Task Force members will be selected within the categories specified in the enabling legislation.

Phase II – 18 months in duration

The Task Force is established and additional research and data collection is identified and executed. The work undertaken by the steering committee to gather information, propose data collection efforts and the overall task force plan would be reviewed and revised as appropriate by the full task force. Monthly meetings and public hearings are integral to carry out the plan.

Subject matter experts will be brought in to present information on family law reform. For example, the Institute for the Advancement of the American Legal System, located in Denver Colorado, is focusing this year on developing a new family law model incorporating the best ideas from around the world. Family law experts in Minnesota would like to explore a working relationship between the Institute and any Family Law Task Force created.

Research staff will be responsible for designing and executing data collection efforts. Once data needs are identified, the research staff will use appropriate techniques, e.g. case file reviews; literature reviews; and surveys to judges, court personnel, customers and family law “partners” to collect the data.

Public hearings will solicit citizen and stakeholder perspectives and suggestions. The Task Force, aided by a neutral facilitator, will examine the issues, the research performed, and input from outside experts and the public.

The culmination of Task Force deliberations will result in a series of recommendations to appropriate entities, e.g. executive, legislative and judicial branches and county government.

The Cost

Effective execution of a comprehensive examination of the family law arena is dependent on sufficient funding for the staff, outside experts, and the facilitator. Prior efforts of similar scope include Minnesota’s Racial Fairness in the Courts Task Force which cost \$350,000 for a two year study in 1991-1993. Ten years ago, the Commission on Families in the Colorado Courts, with a considerably narrower focus, cost nearly \$300,000.

The estimated cost of this study is \$549,356 and is detailed below. It is also anticipated that existing staff in the organization where the study is housed will spend at least .25 FTE time for the two year life of the study managing staff and assisting in staffing duties. This cost is not included in the estimate below.

Expense	Amount
One full time staff attorney for 24 mos. – primary study staff	\$172,000
One full time research analyst II for 24 mos.	\$195,356
One full time research analyst I for 12 mos.	\$75,000
Administrative support @.5 FTE for 24 mos.	\$60,000
Subject Matter Experts	\$5,000
Facilitator – contracted professional facilitator for 12 meetings	\$10,000
Meeting expenses – Includes parking permits, meeting supplies.	\$27,000
Travel – Staff and Task Force	\$5,000
Estimated Cost	\$549,356

The family law arena is plagued by emotional trauma and acrimony. This proposal would support a global examination of the family law arena with the goal of designing a new system that will, to the extent possible, mitigate the current levels of conflict associated with family law cases and provide appropriate legal and government agency intervention and support to parents and children. It is believed by many that reform of this system is long overdue and that this critical investment will yield much better outcomes at less cost to litigants and taxpayers in the future.