



*Judge Karen Adam on the bench at the Pima County Superior Court. Others pictured are not involved in an actual court proceeding.*

*Photography by Jacob Chinn.*

# One Family, Five Courts, One Judge: Consolidating Cases in Non-Unified Family Courts

By Judge Karen S. Adam

**A**ccording to my calendar, Jack Jones v. Diane Jones was a routine divorce case with children. One of twenty cases on my calendar that day, it was set for 15 minutes. Because neither party was represented by counsel, I started the hearing by setting the stage and framing the issues. I explained that in order to get the information I needed to complete the dissolution of their marriage, I would ask questions of each of them, and presumably, when the hearing was over, they would be divorced.

By my second question, it was clear that this was not a routine divorce. Rather, this was an unusually complex case: the probate division had ordered Diane into mental health treatment; the juvenile court had made Jack's parents permanent guardians of their children; Jack and his parents had orders of protection against Diane because of domestic violence; the civil division was handling their mortgage default; and the couple was considering bankruptcy. The allotted 15 minutes was not enough time to sort through the issues, much less resolve them.

The Jones [not their real names] case, which came to court in 2001, prompted me to approach family law cases differently. My experience as a Pima County (Arizona) Superior Court Commissioner and Judge has involved stints on the family, juvenile, probate, and

criminal benches. Over my 23 years on the bench, I have come to understand that families in trouble rarely have just one single contact with the legal system. And, I have come to fervently believe that the best resolution for the family, the court, and the community will occur only if some judicial officer is willing to dig into the files, ask probing questions, and consolidate disparate legal issues, involving potentially five or six different courts, into one proceeding. Although it is a challenge, the extra effort will save the families money, the court personnel time, and the judges endless headaches from partially handled cases. Most importantly, these efforts will produce better outcomes for all involved.

The Jones case illustrates the issues facing family law judges across the country. In 2010, litigants are utilizing the judicial system



to solve a larger number of family problems, and they are doing so with fewer resources at their disposal. They are not able to hire attorneys, custody evaluators, or mediators, and look to the courts for access to those services. If they are not entitled to court-appointed counsel, they represent themselves.

Many family law cases involve other legal problems, resulting in multiple hearings in multiple courts, a process that is expensive, time-consuming, and ineffective. This multi-layered process is confusing for the litigants, attorneys, and judges, and can result in incomplete or contradictory orders. Enforcement of those orders is incredibly difficult, as there may be overlapping jurisdictions between and among the various courts.

#### **Non-Unified Courts Are Not the Best Forum for Complex Family Cases**

Unfortunately, most courts, including mine, are not structured to allow the most efficient resolution for families with multiple legal problems. Most large, general jurisdiction courts in the United States separate cases by subject matter into criminal, civil, family, juvenile, and probate benches. These benches operate independently in a “silo” model. Except in unified family courts, the judge is responsible solely for the issues brought before him or her in a case relating to that bench’s subject matter.<sup>1</sup> For example, if Diane Jones had been criminally charged with violating Jack’s order of protection, the criminal judge would handle that case from arraignment to sentencing, without knowing about or having the ability to deal with the ongoing custody dispute. Given the overlapping jurisdictional problems, it is easy to see why judges unknowingly issue incomplete or contradictory orders—they simply do not have all the information they need to make an informed decision.

There are some systemic advantages to the silo model. Handling cases by type rather than by family can be both efficient and productive. Cases can start and proceed along a well-worn path for that department because there are a limited number of ways to resolve the issues, all narrowly defined and closely regulated.<sup>2</sup> Case-specific processing allows judges to become experts in an area of the law, and

that expertise is invaluable. Familiarity and repetition increases judicial efficiency; however, these “silo” judges operate with blinders on because the system is not designed to allow judges to handle cases other than those within their assignment. Deviating from these specialized procedures and expected timelines is done at the judge’s peril.

These so-called benefits of the totally separate bench model do not begin to outweigh the harm that may result to a family attempting to negotiate that system. Unlike the courts, families do not live their lives in silos. Instead, all of the issues in their lives are inter-related: dealing with one issue necessarily involves dealing with as many as a dozen more. This dissonance between a family’s reality and the standard court model is one reason why consumers are frustrated with the justice system. People go to court for help in dealing with difficult problems in their lives and get caught in a system that can frequently exacerbate rather than mitigate those problems. Court administrators and judges do not intentionally try to trap helpless litigants. The current system simply cannot adequately respond to the influx of litigants with complex family issues who do not have the resources to secure representation and other supportive services.

#### **A Non-Unified Court Adversely Impacts Legal Representation and Support Services**

The silo effect is not limited to courts: it also applies to court-appointed legal representation and access to services, which are directly related to case type. Whether a litigant is entitled to court-appointed counsel depends on constitutional or statutory law. General litigants do not have a right to court-appointed counsel in civil proceedings and must either retain counsel or represent themselves.<sup>3</sup> Hiring counsel can be very expensive, especially if there are multiple cases in multiple courts. Even if a litigant can hire counsel or have a lawyer appointed, the lawyer’s representation is often limited to the case for which he or she was retained and not the full range of legal issues that may be pending. Our criminal defendant, Diane, for example, would get no help from her public

defender in the family law matter. Similarly, Diane's attorney in the juvenile court case probably could not help in either the criminal or family cases.

It is not surprising that the number of self-represented litigants has increased dramatically, and not just in juvenile, probate, and family law cases where litigants have long been representing themselves.<sup>4</sup> The national economic downturn has led to a large increase in the number of debt-related civil cases. Although the number of case filings has leveled out, the amount of work required to process those cases has increased dramatically. More hearings are contested, even in routine garnishment and foreclosure actions. Most involve self-represented litigants, and managing cases without attorneys simply takes more time.

Even in the cases where self-representation has been the norm rather than the exception, the issues have become more complex. Litigants are going it alone in custody cases involving domestic violence, high conflict, substance abuse, and mental illness. They are representing themselves in termination of parental rights cases and in contested guardianships. Judges are generally well versed in the basics of self-represented litigation:

being fair and impartial while giving litigants an opportunity to present their case. There are more nuanced issues with self-representation, however. A self-represented litigant may not recognize potentially related cases and issues and bring them to the judge's attention. In fact, absent a lawyer who recognizes the interrelated nature of various cases, the job of identifying and consolidating other related legal matters falls squarely on the judge.

In addition, families who cannot afford to retain counsel are often unable to obtain other support services, such as counseling, financial advice, or visitation supervision. The family law judge who looks to the community to help these families will find the same silos as in the courthouse. So, even if the judge is able to pull together all of the family's related issues and cases, there may be no way to coordinate appropriate services. Like the court, agency contracts are case-type dependent. A family dealing with a child's significant emotional problems will not be eligible for help from an agency that contracts solely with the child welfare agency. Similarly, if visitation supervision is needed, a family involved in juvenile court will not be able to access the visitation supervision program used by the family court.

Much of the silo effect in the service provider network is directly related to the court system: probation departments contract for substance abuse treatment services for clients on probation; the probate court contracts with social workers to perform guardianship evaluations; and the juvenile court contracts with an agency to provide counseling services for minors in a diversion program. If a family law litigant is not on probation, does not have a probate case, and his child was not arrested for a delinquent offense, those same services are unavailable to the litigant or to the family law judge trying to manage the case.

#### Why a Unified Approach to Family Law Cases Makes Sense

It may seem that the Jones case presents the judge with an

impossible situation, or one impossible to resolve satisfactorily. But it is possible.

Once I figured out that the case was not an uncomplicated divorce, I stopped in my tracks. I could have simply granted the divorce and let the family deal with the fall-out of the other cases. Instead, I informed the parents that I would not divorce them at that time, explaining that if all of the cases were consolidated, I could enter more complete and fully informed orders that would take into account all of the cases and issues. They agreed, and I re-set the hearing and ordered the children's guardians to appear. I also appointed an attorney to represent the children because having at least one attorney at the table would be a tremendous benefit. After all seven of the Jones' files were delivered to my chambers (which included the divorce action; Diane's mental health case and the guardianship, both from the probate court; both orders of protection cases; the pending civil foreclosure case; and a closed juvenile dependency case), I carefully reviewed them and contacted each of the assigned judges for permission to consolidate. Not surprisingly, none of the judges objected!

The files were replete with valuable information. Diane's mental health file contained the names of her ongoing caseworker and her court-appointed attorney, as well as information about her diagnosis, treatment plan, and required medication. The closed juvenile case file described the dismissal of the dependency action in favor of the grandparents' guardianship because Jack had been unwilling to divorce Diane. The civil foreclosure action was inactive because the lender was willing to allow the family more time to catch up on back payments. Jack and his parents had secured their orders of protection before Diane had been court-ordered for treatment because the child welfare agency had directed Jack to obtain the order or risk having the children removed.

Although Jack had gotten the order to comply with the demands of the child welfare agency, he never enforced it or stopped his relationship with Diane.

This treasure trove of information helped me define the myriad issues in the divorce, as well as the related and nuanced issues. For example, Diane's mental health raised concerns about her competency to enter into a settlement agreement. Her abusive treatment of Jack had to be addressed as part of the custody determination. The grandparents/guardians' relationship with Jack and Diane raised the question of how much parental contact they had with their children. Additionally, the recently closed dependency action heightened my concern for the children's safety and emotional well-being. Finally, the uncertainty about the foreclosure of the house just added stress to an already anxious family.

With all of this new information and with notice to the affected parties, I had many more files on my desk and people in the courtroom than at the initial 15-minute hearing. Now, in addition to the parents, the guardians, and the children's attorney, Diane's mental health attorney and her caseworker were present. Again, I framed the issues but included all the additional and related issues identified by reviewing the collateral files. After asking whether

In fact, absent a lawyer who recognizes the interrelated nature of various cases, the job of identifying and consolidating other related legal matters falls squarely on the judge.

# Pima County Model Court Juvenile Family Law Workgroup Paternity or Dissolution Protocols

*Note: In all cases involving two files, separate minute entries must be generated for the family law case (SP or D) to avoid breach of confidentiality issues.*

## A. Paternity/No Open SP Case

1. Paternity is established by:
  - a. Acknowledgment/affidavit/clerk order
  - b. Judicial order in open court
  - c. DNA testing
2. File opened at clerk of court, juvenile court.
3. Proof of paternity (one of a, b, or c above) filed.
4. Enter order directing clerk to send cert. copy of order to Office of Vital Records P.O. Box 3887 Phoenix, AZ 85030-3887 which shall establish a new birth certificate pursuant to § 36-326 (child born in AZ)
5. Assigned juvenile judicial officer advised of SP # and cases consolidated for hearings at next court hearing.
6. Petition to establish custody, parenting time and child support not necessary if parties resolve those issues through agreement.
7. Stipulation and judicial order for custody and parenting time may be filed to conclude juvenile and family law actions.
8. Child support determined and order entered unless IVD. If IVD, case referred to IVD judicial officer and DCSE.
9. If no further appearance by parent after paternity established, court shall enter order affirming legal custody in other parent per A.R.S. § 25-803(D).
10. Cases un-consolidated when dependency dismissed.

## B. Paternity/Open SP Case

1. Advise juvenile judicial officer of case # and assigned family law judicial officer.
2. Cases consolidated for hearings and juvenile judicial officer advises assigned family law judicial officer.
3. Custody previously established by Court order: Follow procedure outlined in Local Rule 8.6 for simultaneous juvenile and family law proceedings.
4. No custody order/father involved: Stipulation and order for custody and parenting time.
5. No custody order/one parent not involved: Court shall enter order affirming legal custody in other parent per A.R.S. § 25-803(D).
6. For child support issues, follow child support protocols.
7. Cases un-consolidated when dependency dismissed.

## C. Dissolution/No Open D Case

1. File opened in Superior Court with petition for dissolution.
2. Advise juvenile judicial officer of case # and assigned family law judge.
3. Cases consolidated for hearings and juvenile judicial officer advises assigned family law judicial officer.
4. Follow procedure outlined in Local Rule 8.6 for simultaneous juvenile and family law proceedings.
5. Property issues and dissolution of marriage can be handled by assigned family law judge while dependency pending or by referral from juvenile judicial officer when custody/parenting time resolved.
6. Cases un-consolidated when dependency dismissed.

## D. Dissolution/Open D Case

1. Advise juvenile judicial officer of case # for consolidation of hearings.
2. Follow procedure outlined in Local Rule 8.6 for simultaneous juvenile and family law proceedings.
3. For child support issues, follow child support protocols.
4. Cases un-consolidated when dependency dismissed.

there was anything I had missed, the children's attorney suggested that the parents, guardians, and children participate in mediation to resolve the remaining parenting time issues. She advised me that the children were doing well in their placement, in school, and with their peers. I then asked specific questions to determine whether the children were showing any signs of trauma from being exposed to both their parents' high-conflict relationship and domestic violence.

The grandparents, as guardians, told me that they were willing to work on a plan to return the children to their son once the dissolution was final. They also agreed to help the parents catch up on the back mortgage payments to stop the foreclosure action. In fact, they and Jack asked me to dismiss the orders of protection after Diane's caseworker and mental health attorney discussed her compliance with treatment. I continued the hearing so that the parties could mediate the visitation issue. At the final hearing, the parents and guardians produced an agreement about custody and parenting time. I spoke with each parent individually and determined that they were fully aware of the terms of the agreement and believed them to be in the best interest of the children. Diane and her caseworker assured me that she was fully compliant with her medication regimen and capable of entering into the agreement. The children's attorney also agreed that the terms were in her clients' best interest. With the agreement in place, I signed the dissolution of marriage and set a review hearing in 90 days.

At the review hearing, it was evident that everything was going well. The guardians and I were confident that the children could be safely placed in Jack's custody. To be on the safe side, I set one final review hearing to ensure that both parents were complying with the parenting time agreement. Since then, they have not returned to court.

## What You Can Do in Your Court

Judicial leadership is critical to any judicial system reform, and it begins with judges overseeing their own caseloads. A judge-controlled calendar or one-family-one-judge system provides the best platform for this process. However, a judge can make a difference in a case, even if she sees it just once as it wends its way toward resolution.

The key is to identify all the critical issues facing the family. Before starting any hearing, make sure that you and the litigants are on the same page—literally and figuratively. Review the pleadings before and after you take the bench to clarify what issues must be resolved. This is critical when dealing with self-represented litigants, but also is very helpful with lawyers.<sup>9</sup> Once you have identified the critical issues in the case, categorize and rank them in order of immediacy. For example, a mother may need expedited temporary orders to secure funds to keep the household running while the property issues are being resolved. A father may need an emergency order allowing him to make medical decisions for the child while in his care. A child may be acting out and need immediate behavioral health intervention.

Next, determine whether any of the critical issues you identified have resulted in court action in any other court. Start by asking the litigants if there are cases in other courts that involve the same issues as in the case before you. If there are other cases, let them know that you want to gather those cases in one place with one judge so that all the family issues can be resolved at once. Even if your court rules allow you to consolidate cases on your own motion, it is wise to engage the litigants in the decision. Make it very clear that you are not going on an independent fishing expedition

Judicial buy-in is critical to judicial leadership. You need to convince your fellow family law judges that unifying cases is good for everyone: the system, the families, and the judge.

to find information to use against either one.<sup>6</sup> If they agree, begin by checking your own court database and other statewide databases. Getting local or statewide information about litigants is generally fairly easy. Obtaining that same information from other states is much more difficult, but worth exploring. You may eliminate the need to later vacate a duplicative or invalid order in a case where the issues have already been litigated.

If there are other cases pending in your courthouse, and if it is manageable and appropriate, order them consolidated, at least until the major issues are resolved. Logical consolidations include domestic violence orders of protection and juvenile court matters with family law cases; related criminal matters such as domestic violence and custodial interference; and, if you are being very creative, cases related to the family assets. If Jack's parents sue Diane to recover money loaned to purchase the family home, you should decide that issue. You'll find that most judges are happy to relinquish authority to you, especially when you suggest that the alternative is for them to handle the family law matter.

#### How to Involve the Greater Bench and Bar in a Unified Approach to Family Law Cases

Once you are comfortable with your personal unified family court practices, share them with your bench. Start by talking with your presiding judge. If your court is large and you are not the only family law judicial officer, talk to your fellow family law judges. Judicial buy-in is critical to judicial leadership. You need to convince your fellow family law judges that unifying cases is good for everyone: the system, the families, and the judge. Once you have the family law bench on board, invite judges from other benches to the table. When the other judges are comfortable with the idea, get the other stakeholders involved: lawyers, service providers, the law librarian, court staff, child welfare, public officials, and interested community members. We used this process in Pima County in 2007 to find better ways to serve families with related juvenile and family law cases. Our Juvenile-Family Law Workgroup was comprised of family and juvenile lawyers and judicial officers, mediators, court staff, and agency representatives, including child support.

Once you reach an agreement on sharing cases and information, when appropriate, codify those agreements with practice protocols. The protocols should detail how to identify cases that should be consolidated, as well as the procedures for doing so. Our Juvenile-Family Law Workgroup developed Family Law and Child Support Protocols for juvenile court judges and lawyers (for example, see sidebar, p. 20). They are clear and simple, and are available to the public on our court Web site.<sup>7</sup>

The next step is to cross-train the bench and bar. Invite other interested judges and lawyers so that you have a sizeable group of

informed and educated supporters. Then, even if a particular judge or attorney is not fond of the process and will not take the initiative to use the protocols, someone else in the courtroom may raise the issue so related cases and issues can get resolved.

Finally, ensure that your collaborators and stakeholders in the community know and understand the unified court notion. If the family and juvenile benches have agreed to utilize each other's visit supervision services, the agencies contracted to provide visit supervisors need to know that and may need to modify their intake procedures. Juvenile court mediators may need to learn about family law issues. Juvenile probation officers may need to be trained to ask different or additional questions at intake if, for example, they suspect that a child comes from a family in which there has been domestic violence.

An administrative order or rule of procedure may be necessary to effect system change. We did just that in Pima County. When we completed the Family Law Protocols, we worked with the family law bench to craft an additional local rule of practice for consolidating cases that involve both juvenile law and family law issues. The language from that local rule has been incorporated in the statewide Arizona Rules of Family Law Procedure.<sup>8</sup>

The families who come to us for help deserve the very best system of justice we can deliver. No one is in a better position to determine what that justice system should look like than the judges who deal with families. Whether deciding to handle all of one family's issues in one court or addressing legislative reform to create a statewide unified court, judicial leadership is critical to meaningful change in managing family law cases.

#### ABOUT THE AUTHOR:

**Judge Karen S. Adam** serves on the Pima County Juvenile Court bench in Tucson, Ariz., where she presides over the Family Drug Court. She is a member of NCJFCJ's Board of Trustees and teaches frequently on topics concerning juvenile and family law and self-represented litigants.

#### END NOTES

<sup>1</sup> Although the unified family court model is gaining momentum nationally, there are few fully integrated family courts. Many individual courts handle some but not all of a family's issues. Babb, Barbara A. (2008). Reevaluating where we stand: A comprehensive survey of America's family justice systems. *Family Court Review*, 46, 230.

<sup>2</sup> Each state compiles and monitors the Case Processing Time Standards (CPTS) established by the American Bar Association and reports that data to the National Center for State Courts. The CPTS are strict and difficult to attain. If a judge takes the time to gather related cases for resolution, she could negatively impact her court's data.

<sup>3</sup> At its August 2010 meeting, the American Bar Association House of Delegates adopted the ABA Model Access Act as Modified, a model statute for implementing a civil right to counsel.

<sup>4</sup> Report on the Survey of Judges on the Impact of the Economic Downturn on Representation in the Courts (Preliminary), ABA Coalition for Justice, July 12, 2010.

<sup>5</sup> Visit [www.selfhelpsupport.org](http://www.selfhelpsupport.org) for information and resources on dealing with self-represented litigation. The National Bench-guide is particularly helpful. See also [www.ajs.org](http://www.ajs.org), at the pro se forum.

<sup>6</sup> This process is wholly distinguishable from the Hampden, Massachusetts Family Court Protocols which were recently invalidated as violative of due process. There, judges deciding custody matters would receive *ex parte* information about the parents from the child welfare system. The parents did not have access to that information. *Brantley v. Hampden Division of the Probate and Family Court Department and Others*, 929 N.E. 2d 272 (Mass. 2010).

<sup>7</sup> <http://www.pjcc.pima.gov/judicial/judicial.htm>

<sup>8</sup> Simultaneous Dependency and Custody Proceedings, Rule 5.1, Arizona Rules of Family Law Procedure.