

Family Court Improvement Committee

Tuesday, January 13, 2020; 10:00 a.m. – 2:00 p.m.
Conference Rooms 345 A&B
State Courts Building, 1501 W. Washington, Phoenix, AZ 85007

| Time* | Agenda Items | Presenter |
|-------------------|---|---|
| 10:00 a.m. | Call to Order | <i>JUDGE PAUL MCMURDIE, CHAIR</i> |
| 10:05 | Housekeeping | <i>SUSAN PICKARD, STAFF</i> |
| 10:10 | Welcome, Opening Remarks, and Introductions | <i>JUDGE MCMURDIE</i> |
| 10:15 | November 22, 2019 Minutes <input type="checkbox"/> <i>Formal Action Requested</i> | <i>JUDGE MCMURDIE</i> |
| 10:20 | ARFLP Rule 44 and Proof of Service <input type="checkbox"/> <i>Formal Action Requested</i> | <i>JUDGE BRUCE COHEN</i> |
| 10:35 | Avoiding Criminal and Family Court Order Conflicts <input type="checkbox"/> <i>Formal Action Requested</i> | <i>JUDGE BRUCE COHEN</i> |
| 10:55 | Sealing Versus Deeming Confidential <input type="checkbox"/> <i>Formal Action Requested</i> | <i>JUDGE BRUCE COHEN</i> |
| 11:15 | Family Court Judicial Training | <i>JUDGE ELAINE FRIDLUND-HORNE MICHAEL PETERSON</i> |
| 11:45 | Online Dispute Resolution | <i>CATHY CLARICH</i> |
| 12:00 p.m. | Lunch (\$5.00) | |
| 12:30 | Top Issues and Workgroups <input type="checkbox"/> <i>Formal Action Required</i> | <i>JUDGE MCMURDIE</i> |
| 1:45 | Good of the Order/Call to the Public | <i>JUDGE MCMURDIE</i> |
| | Adjournment | |

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| Next Meeting: May 5, 2020 | Remaining 2020 Meeting Dates September 3 October 15 |
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**All times are approximate and subject to change. The committee chair reserves the right to set the order of the agenda. Please contact Susan Pickard, FCIC staff, at (602) 452-3252 with any questions concerning this agenda. Any person with a disability may request a reasonable accommodation, such as auxiliary aids or materials in alternative formats, by contacting Angela Pennington at (602) 452-3547. Requests should be made as early as possible to allow time to arrange the accommodation.*

FAMILY COURT IMPROVEMENT COMMITTEE

Draft Minutes

November 22, 2019 10:00 a.m.
Arizona State Courts Building
Conference Room 119A/B
1501 W. Washington Street, Phoenix, AZ 85007

Present: Judge Paul McMurdie (chair), Brian Bledsoe, Judge Bruce Cohen, Benjamin Deguire, Kellie DiCarlo, Judge R. Erin Farrar, Judge Elaine Fridlund-Horne, Commission Joseph Goldstein, CaSaundra Guadalupe, Danna Lopez, Sabrina Lopez, Patricia Madsen, Tracy McElroy, Jennifer Mihalovich, Judge Michael Peterson, Marla Randall, Janet Sell, Vance Simms, Megan Spielman, Amanda Stanford

Telephonic: Joi Hollis, Ph.D.

Absent/Excused: Judge Scott Rash

Administrative Office of the Courts (AOC) Staff: Theresa Barrett, Angela Pennington, Susan Pickard

Presenters/Guests: David Withey, AOC Chief Counsel; Jennifer Albright AOC Senior Policy Analyst

I. REGULAR BUSINESS

A. Welcome and Opening Remarks

The November 22, 2019, meeting of the Family Court Improvement Committee (FCIC) was called to order at 10:00 a.m. by Judge Paul McMurdie, chair. Judge McMurdie explained the charge of the committee. Susan Pickard went over housekeeping issues. Judge McMurdie then asked the committee to introduce themselves. Judge McMurdie informed the committee that Judge Scott Rash had been nominated for the federal district bench, so his position on the committee will be filled by the new Pima County Presiding Family Law Judge.

B. Approval of Committee Rules for Conducting Business

The rules for conducting business were discussed and voted upon.

- Parameters of a quorum.

Motion: A quorum will be 50% +1 of the committee’s members. **Moved by** Janet Sell. **Seconded by** Joi Hollis, Ph.D. Motion passed unanimously.

- The number needed to approve committee action.

Motion: A simple majority of the members present are required to approve any committee action. **Moved by** Janet Sell. **Seconded by** Joi Hollis, Ph.D. Motion passed unanimously.

- Virtual attendance.

Motion: Committee members will be permitted to appear telephonically. **Moved by** Janet Sell. **Seconded by** Joi Hollis, Ph.D. Motion passed unanimously.

- Proxy policy.

Motion: Committee members may send a proxy one time per year and proxies will have voting rights. **Moved by** Janet Sell. **Seconded by** Patricia Madsen. Motion passed unanimously.

Judge McMurdie informed the committee that meetings would be held quarterly.

II. BUSINESS ITEMS AND POTENTIAL ACTION ITEMS

A. Orientation (Out of order)

Ms. Pickard continued with additional committee information.

- The meeting preparation process and call for agenda items was explained.
- The members were asked if they would like to have meeting materials distributed in print form or electronically.
 - Members will print their own materials.
 - Staff advised they will provide a minimal number of copies at the meeting for members' use and for public attendees.
- The committee web page was reviewed.
 - Staff provided an overview of the information available on the website.
 - The RSVP function on the meeting information page was shown and its use demonstrated.
- Public Interaction.
 - Protocols related to the Call to the Public were explained.
 - Judge McMurdie expounded on the importance of public comments for the committee, sharing that approximately 80% of the litigants in family court cases are self-represented.

B. Open Discussion and Strategic Planning (Out of Order)

Judge McMurdie shared issues submitted by other judges and attorneys for committee consideration and highlighted those he would like to see the committee considered. He then asked the members to share the topics or issues they would like to see further explored. Ideas included:

- Clean up of Title 25, specifically section 409
- Provide assistance for self-represented litigants, increased transparency, a more user friendly system, and unbundled services

- Provide more training for judges to:
 - Increase use of Resolution Management Conferences
 - Improve order consistency
 - Enhance cooperation and collaboration between jurisdictions
- Consider for statewide purposes the summary divorce (summary consent decree) and electronic filing of such being launched in Maricopa
- Decrease litigation and increase parental conferences and mediation
 - Mandatory pre-decree mediation
 - Simplifying court communication with litigants
 - How to balance equitable distribution of services between both parties
- Expand the approved participants of the parent education classes
 - Consider non-traditional families and cases with third party involvement, and provide more resources for litigants
- Explore reforms child support such as:
 - Blanket orders
 - Develop and coordinate strategies to improve the probability for payment
 - Decrease Interest rate on arrears
 - Educate judges regarding available Title IV-D agency's services
 - During the quadrennial review of the child support guidelines consider the impact, if any, of remarriages, and step-parent involvement
- Simplify and modernize statutes
 - State and federal guidelines language should match
- Make forms consistent statewide
- Consider family violence policy, procedure, and processes
 - Minimize the number of judges involved with a family with multiple cases
 - Develop guidelines and protection for attorneys in domestic violence cases
 - Identify resources for high conflict cases
 - Review ARPOP Rule 38 G regarding failure to appear by both parties
- Identify funding and resources for rural counties for testing, mediation, other services

Judge McMurdie noted that the topics would be reviewed, organized into workgroups, and discussed at the January 13, 2020, meeting.

C. Review of ACJA §1-202

David Withey, AOC Chief Counsel, provided an overview of Arizona Code of Judicial Administration, Section 1-202: Public Meetings. He also discussed the policy concerning photography and videography during meetings. A member asked for clarification on the standards of what constitutes a meeting. Mr. Withey replied that it was any gathering or communication including a majority of the members. Mr. Withey also fielded questions about group emails and the rules as they apply to subcommittees and workgroups.

D. Call to the Public

Lori Ford, Arizona Department of Child Safety Oversight Group, and Martin Lynch spoke to the committee. A note from a public member who did not wish to speak was read to the committee

E. Child Support Guidelines Quadrennial Review Subcommittee

Reminding members of the committee's charge to conduct the quadrennial review of the child support guidelines, Judge McMurdie announced that a subcommittee will be established, and that Judge David Gass has agreed to be considered for appointment as chair. Members have not been identified, but the 2018 Interim Committee has provided recommendations. Those wishing to be considered for appointment were asked to contact Ms. Pickard. The establishing administrative order will be signed and the first meeting scheduled shortly. Members can expect monthly meetings. Patricia Madsen recommended a member of her office. Other committee volunteers included: Janet Sell, Vance Simms, CaSaundra Guadalupe, Sabrina Lopez, Jennifer Mihalovich, Judge Bruce Cohen, and Commissioner Joseph Goldstein.

F. Unbundled Services (Out of Order)

Jennifer Albright, AOC Senior Policy Analyst, presented information from the Delivery of Legal Services Task Force. Ms. Albright asked for feedback and recommendations from the Committee regarding limited scope representation, unbundled services, and tiers for legal providers. Points discussed included:

- Consent from client to indicate the client knows and understands, i.e. acknowledgment and disclosures.
- Encourage the use of trigger words for clerks in the forms such as "appearance" and "withdraw" in title of forms.
- Members emphasized the need for the attorney, client, and court to all know and understand the specific purpose of the limited representation for determining the length of time or portions of the case that the attorney would be representing the client.

G. Long Term Order of Protection Collaborative Subcommittee

Judge Bruce Cohen, who is also on the Committee on the Impact of Domestic Violence and the Courts (CIDVC) proposed the formation of a collaborative workgroup with CIDVC to make recommendations on the final report of The Study Committee on Domestic Violence and

Mental Illness in Family Cases; Arizona Rules of Protective Order Procedure, Rule 38(G), and long-term orders of protection.

Motion: To form a collaborative workgroup with CIDVC. **Moved by** Joi Hollis. **Seconded by** Benjamin Deguire. Motion passed unanimously.

Judge McMurdie asked for volunteers. Joi Hollis, Ph.D., Benjamin Deguire, Marla Randall, and Tracy McElroy will serve in addition to Judge Cohen.

H. 2020 Meeting Schedule

Judge McMurdie asked for a consensus on the proposed meeting dates. A couple members of the committee asked to move the January date. Staff checked date and room availability for the committee. The meeting was moved to January 13, 2020.

Motion: To approve the meeting dates with the amended January date. **Moved by** Joi Hollis, Ph.D. **Seconded by** Judge Elaine Fridlund-Horne. Motion passed unanimously.

III. OTHER BUSINESS

A. Announcements/Call to the Public

- Judge McMurdie and staff will inform the committee about upcoming workgroups based on the suggestions made during the open discussion and strategic planning agenda item.
- Judge McMurdie asked that the members review the final report of The Study Committee on Domestic Violence and Mental Illness in Family Cases that was included in the meeting materials at page 29.

B. Next Meeting.

Monday, January 13, 2020; 10:00 a.m. – 3:00 p.m.
Arizona State Courts Building, Conference Room 345 A/B
1501 W. Washington, Phoenix, AZ 85007

The meeting adjourned at 2:00 pm.

FAMILY COURT IMPROVEMENT COMMITTEE

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| Date of Meeting: January 13, 2020 | Type of Action Required: [X] Formal Action/Request [] Information Only [] Other | Subject: A.R.F.L.P. Rule 44 Clarification |
|--|--|--|

PRESENTER(S): Judge Bruce R. Cohen

DISCUSSION: Arizona Rules of Family Law Procedure Rule 44(a)(2)(E) provides that a party applying for a default must attach a copy of the proof of service to the application. This provision has been interpreted in two ways. The first interpretation is strict adherence to the rule vacating the default if the proof of service is not attached to the application even though proof of service was evident within the court file. The second interpretation applies Rule 44 in conjunction with Rule 1 allowing common sense to prevail.

Members of the recent Family Law Rules Task Force concurred that the inclusion of this section into Rule 44 was not intended to make a default application defective on its face if the proof were not attached, but yet service had been clearly effectuated.

The rule should be amended to read that failure to attach the proof of service shall not make the application defective if proof of service is clear from the record. Alternatively, if the prevailing wisdom is that failure to attach makes the application defective, the rule should be clear in that regard.

RECOMMENDED ACTION OR REQUEST (IF ANY): Motion to assign the issue to a workgroup for draft rule change petition.

FAMILY COURT IMPROVEMENT COMMITTEE

| Date of Meeting: | Type of Action Required: | Subject: |
|-------------------------|--|---|
| January 13, 2020 | <input checked="" type="checkbox"/> Formal Action/Request <input type="checkbox"/> Information Only <input type="checkbox"/> Other | Addressing Conflicting Family-Criminal Orders |

PRESENTER(S): Judge Bruce R. Cohen

DISCUSSION: There are a number of circumstances where court orders conflict as to access to children. Notably, this arises in the criminal/family setting where a parent has been charged with or convicted of certain offenses. There are policy issues that distinguish the charged versus convicted parent.

As a term of pre-trial release when the charge involves children generally or a child of a party is an identified victim, the Release Orders, if any, will preclude contact with the victim. Beyond protection of the victim are factors such as preventing an attempt to influence a witness and the like. As a term of probation for a convicted parent, the restriction on contact with a child is more often focused only on the protective element and safety of the child.

In any event, whatever the basis for the criminal case restriction, the terms often come into conflict with an existing parenting order or pending parenting issue. By statute, the family court has jurisdiction to order limitations on parenting time or other conditions that will ensure the safety and well-being of the child (such as ARS Section 25-403.03(E)) without having to preclude all contact between the victim child and the violating parent. Yet release conditions and, more problematically, probation terms may preclude all contact.

I suggest the formation of a joint workgroup composed of members of the criminal justice community (judge, probation, county attorney, etc) with members of the family law community to determine rules or statutes that can at least prioritize the conflicting orders (likely placing the criminal orders above the family orders). It should go on to have a stream-lined method for probation terms to be modified when a family court judge has provided or is prepared to provide replacement terms that would afford a child a similar level of protection.

RECOMMENDED ACTION OR REQUEST (IF ANY): To establish a joint family/criminal law workgroup to determine rules or statutes that will prioritize the conflicting orders and to develop a method for probation terms and family court order reconciliation for the safety of the child.

FAMILY COURT IMPROVEMENT COMMITTEE

| Date of Meeting: | Type of Action Required: | Subject: |
|------------------|--|---|
| January 13, 2020 | <input checked="" type="checkbox"/> Formal Action/Request <input type="checkbox"/> Information Only <input type="checkbox"/> Other | Sealing a File versus Deeming a Record Confidential |

PRESENTER(S): Judge Bruce R. Cohen

DISCUSSION: In Maricopa County, we deal regularly with requests to seal a file. Once a file is sealed, access is only available to the judicial officer and no one else. Since sealing of files is contrary to general public policy, and since so many logistical issues are created when a file is sealed, I am advocating for designating certain records within the file to be deemed confidential rather than sealed. This appears to be authorized by Rule 13(e) of the Arizona Rules of Family Procedure. It reads as follows:

Rule 13. Public Access to Proceedings and Records

- (a) Generally. Family court proceedings are presumptively open to the public. However, subject to the requirements in section (b), the court may close the courtroom and exclude the public to promote amicable settlement of the issues, to protect the best interests of a minor child, or to protect the parties from physical or emotional harm.
- (b) Order to Close the Courtroom. On motion of an interested person or on its own, the court may order the courtroom closed if it finds on the record that:
 - (1) there is a compelling interest in closure that outweighs the public interest in attending a hearing or other proceeding;
 - (2) there are no alternatives to closure that will protect the compelling interest; and
 - (3) the court-ordered closure is no broader than necessary to protect the compelling interest.
- (c) Timing. An interested person must file and serve a motion under this rule not later than two days before the applicable hearing or proceeding. The court on its own or on a party's motion may close the courtroom if unforeseen circumstances arise that require closure.
- (d) Stipulation to Close the Courtroom. A stipulation to close the courtroom does not alone constitute justification for closure.
- (e) Access to Records.
 - (1) *General Restrictions*. The court must maintain and disclose records of family court proceedings in accordance with Rule 123, Rules of the Supreme Court, Rule 7, Arizona Rules of Protective Order Procedure, and Rule 43.1 of these rules.
 - (2) *Court's Authority*. Unless otherwise provided in Rule 123, Rules of the Supreme Court, or Rule 7, Arizona Rules of Protective Order Procedure, the court may find that the confidentiality or privacy interests of the parties, their minor children, or another person outweigh the public interest in disclosure. After making that finding, the court may order that any record of a family court matter be closed or deemed confidential or may otherwise limit access to those records.

The following is from Rule 7 of the Arizona Rules of Probate Procedure and I would like our committee to discuss whether the family rule should be expanded to include at least some of the details set forth in the probate rules. I don't think we need to adopt it all (in its equivalent family law format) but some of it may be value added.

Rule 7. Confidential Documents and Information

A. Definitions.

1. For purposes of this rule, "confidential document" means the following:
 - a. the probate information form filed pursuant to Rule 6 of these rules;
 - b. medical reports and records obtained and filed with the court in connection with proceedings pursuant to A.R.S. §§ 14-5303, -5310, -5401.01, or -5407, or A.R.S. § 36-3206, or in connection with the requirements of A.R. S. § 14-5312.01 and -5312.02;
 - c. Budgets filed pursuant to Rules 30.2 and 30.3 of these rules.
 - d. inventories and appraisements filed pursuant to A.R.S. § 14-5418(A);
 - e. accountings filed pursuant to A.R.S. Title 14;
 - f. a credit report; or
 - g. any other document ordered by the court to be filed or maintained as a confidential document pursuant to this rule.
 2. For purpose of this rule "confidential information" means the following:
 - a. a social security number of a living person;
 - b. any account number for a financial account, unless limited to the last four digits only; or
 - c. any other information determined by the court to be confidential.
 3. For purposes of this rule, "financial account" includes credit card account, debit card account, bank account, brokerage account, insurance policy, and annuity contract.
 4. For purposes of this rule, "redact" means to edit or obscure text in a document to prevent it from being viewed. Redaction must be accomplished in a manner that prevents the reader from identifying the redacted information either physically or electronically.
- B. The clerk of court shall comply with court rules and the Arizona Code of Judicial Administration for the security of electronically filed or transmitted confidential documents and information and the maintenance of confidential documents and information.
- C. A confidential document shall not be maintained as part of the public record of a probate case.
1. In counties in which the clerk of court maintains an authorized electronic court record, the probate information form shall be processed in a manner consistent with the processing of confidential documents in other case types.
 2. A party who files a confidential paper document under this rule shall, when filing the document with the Clerk's Office, place the original document in an envelope that bears the case name and number, the name of the document being filed, the name of the party filing the document, and the phrase "Confidential Document." A separate envelope shall be used for each confidential document.
- D. Other than confidential documents and arrest warrants, documents filed with the court shall not contain confidential information.
- E. Upon motion by any party or upon the court's own motion, the court may order that
1. a document be filed as a confidential document, regardless of whether the document has

- already been filed with the court;
2. confidential information contained in a non-confidential document be redacted, regardless of whether the document has already been filed with the court. The redaction shall be performed by the originator of the document in instances where the document has yet to be filed.
- F. A party who files a motion seeking to have a document or information declared confidential shall
1. provide the title of the document containing the confidential information or requested to be filed as confidential; and
 2. include the approximate date the document was filed; and
 3. state why the information in question should be redacted or the document should be filed as a confidential document.
- G. The clerk of the court shall disclose confidential documents, except for the probate information form described in Rule 6, and confidential information only to the following persons:
1. an attorney or guardian ad litem appointed by the court to represent the person who is the subject of a guardianship or conservatorship proceeding in which the document has been filed;
 2. a party to the probate case in which the document has been filed and such party's attorney, guardian ad litem, or other legal representative;
 3. a person appointed as a court investigator, medical professional, psychologist, registered nurse, or accountant for the probate case in which the document has been filed;
 4. judicial officers, court administrative staff, and other court personnel whose official duties necessitate access to confidential information for processing and managing probate cases;
 5. any person authorized by the court, upon a showing of good cause, to view or obtain a copy of such document or information; and
 6. staff from the Administrative Office of the Courts for the purpose of conducting a compliance audit of a fiduciary or an investigation into alleged misconduct by a licensed fiduciary, pursuant to the Arizona Code of Judicial Administration § 7-201.
- H. The clerk of court shall disclose the probate information form described in Rule 6 only to the following persons:
1. an attorney or guardian ad litem appointed by the court to represent the person who is the subject of a guardianship or conservatorship proceeding in which the document has been filed;
 2. a person appointed as a court investigator for the probate case in which the document has been filed;
 3. judicial officers, court administrative staff, and other court personnel whose official duties necessitate access to confidential information for processing and managing probate cases;
 4. any person authorized by the court, upon a showing of good cause, to view or obtain a copy of such document or information; and
 5. staff from the Administrative Office of the Courts for the purpose of conducting a compliance audit of a fiduciary or an investigation into alleged misconduct by a licensed fiduciary, pursuant to the Arizona Code of Judicial Administration § 7-201.
- I. Nothing in this rule shall prevent a confidential document from being used as an exhibit at

any hearing in the probate case in which such document was filed.

RECOMMENDED ACTION OR REQUEST (IF ANY): Motion to assign this issue to a workgroup for recommendations regarding resolution.

FAMILY COURT IMPROVEMENT COMMITTEE

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| Date of Meeting: January 13, 2020 | Type of Action Required: <input type="checkbox"/> Formal Action/Request <input checked="" type="checkbox"/> Information Only <input type="checkbox"/> Other | Subject: Judicial Training for Family Law Judges |
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PRESENTER(S): Judges Elaine Fridlund-Horne & Michael Peterson

DISCUSSION: How to train judges to conduct effective Resolution Management Conferences to improve outcomes for children and families

RECOMMENDED ACTION OR REQUEST (IF ANY): Input from members of the FCIC on a curriculum for training.

Family Law Training
for Judges

HOW TO IMPROVE OUTCOMES FOR FAMILIES AND CHILDREN

Rule 76. Resolution Management Conference

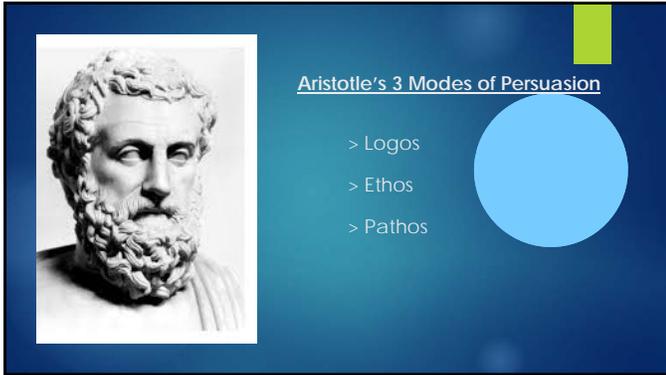
(a) Purpose and Setting. The purpose of a resolution management conference ("RMC") is to facilitate agreements between the parties. The court may, and on a party's request must, set an RMC. ...

(c) Court Action. At the RMC, the court may:

(1) enter binding agreements on the record under Rule 69;

(2) determine the parties' positions on the disputed issues and explore reasonable solutions to facilitate their resolution;

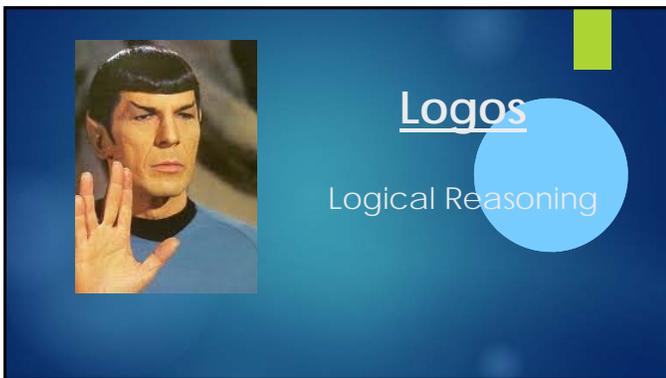
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Aristotle's 3 Modes of Persuasion

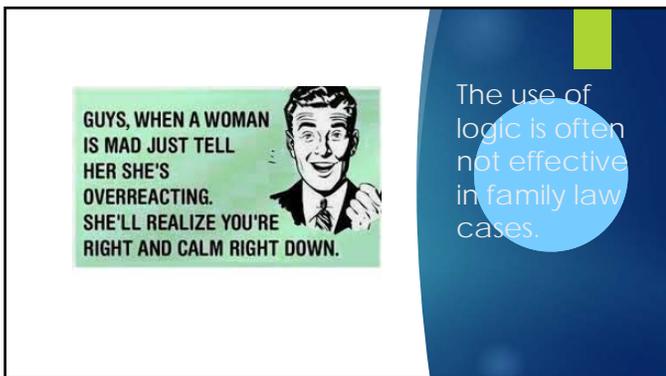
- > Logos
- > Ethos
- > Pathos

This slide features a marble bust of Aristotle on the left. To the right, the title 'Aristotle's 3 Modes of Persuasion' is underlined. Below the title are three bullet points: '> Logos', '> Ethos', and '> Pathos'. A large light blue circle is positioned to the right of the text, and a small green square is in the top right corner of the slide.



Logos
Logical Reasoning

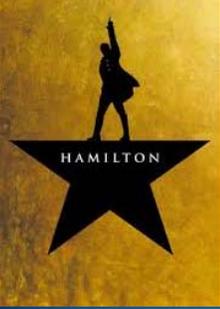
This slide features a photograph of Spock from Star Trek on the left, performing the Vulcan salute. To the right, the word 'Logos' is underlined and 'Logical Reasoning' is written below it. A large light blue circle is positioned to the right of the text, and a small green square is in the top right corner of the slide.



GUYS, WHEN A WOMAN IS MAD JUST TELL HER SHE'S OVERREACTING. SHE'LL REALIZE YOU'RE RIGHT AND CALM RIGHT DOWN.

The use of logic is often not effective in family law cases.

This slide features a comic strip on the left with a man's face and the text: 'GUYS, WHEN A WOMAN IS MAD JUST TELL HER SHE'S OVERREACTING. SHE'LL REALIZE YOU'RE RIGHT AND CALM RIGHT DOWN.' To the right, the text 'The use of logic is often not effective in family law cases.' is written. A large light blue circle is positioned to the right of the text, and a small green square is in the top right corner of the slide.



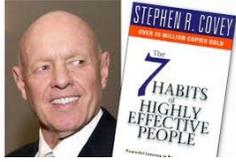
"I am the one thing in life I can control!"

Suggestions regarding how to conduct an RMC:

- > Review file for names of the parents and names/dates of birth of the children.
- > See how close they are sitting to each other before the RMC starts.
- > Introduce yourself as the judge. Call them by name (Mr. Smith, Mrs. Jones, etc.), and then transition to "Mom" and "Dad." Begin the process of re-framing their relationship as soon as possible.
- > Let them know that you expect that they will come to an agreement with your assistance only if necessary. The more they participate in the creation of the agreement the greater buy-in and future compliance.

Suggestions regarding how to conduct an RMC (continued)

- > Establish rapport (1-2 minutes is often enough).
- > Make them aware that if they can't agree then you will have to make a decision that they may not particularly like.
- > Establish the need to understand (and not necessarily agree) with each other [Stephen Covey, *Seven Habits of Highly Effective People*, Habit #5].
- > Nurture a safe environment where people will feel that they had an opportunity to share their feelings [Cesar Millan].



"Seek *first* to understand, *then* to be understood."

- Habit #5



Cesar Millan's 3 rules:

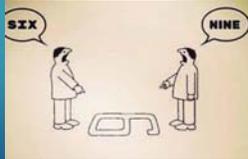
- (1) Exercise
- (2) Discipline
- (3) Positive Affirmation

Suggestions regarding how to conduct an RMC (continued)

- > Ask if they have made any agreements between themselves already (you may be surprised!).
- > Use the law to help shape the discussion (i.e.: A.R.S. §25-211, 319, 320, 403.02).
- > Use the undisputed facts to help shape the discussion (i.e.: the parties' respective work schedules, incomes, etc.).
- > BE PATIENT! Resolution may not be a linear function.

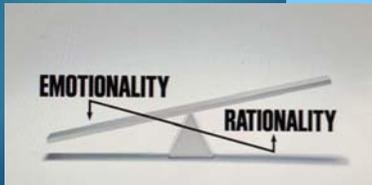
Suggestions regarding how to conduct an RMC (continued)

> It may be necessary to remind them that there may be different perspectives and that people are sometimes not necessarily "right" or "wrong."



Suggestions regarding how to conduct an RMC (continued)

> You may need to restore the equilibrium (emotionality vs. rationality).



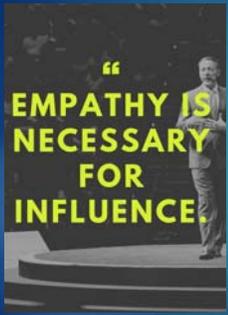
Suggestions regarding how to conduct an RMC (continued)

> Use Tactical Empathy

> Use affirming statements (i.e. "It is obvious that you are very passionate about your children," and "I can respect your feelings about _____"). Both are affirming and non-judgmental.

> Caucus with the parties separately if tensions become too high for productive dialogue.

> Remind them that if they can't agree, you will have to decide for them.



“EMPATHY IS NECESSARY FOR INFLUENCE.”

Use Tactical Empathy by:

- > Late-Night FM DJ voice
- > No denials or disagreements
- > Make sure they feel understood

(“Talk to me,” be patient, actively listen, show respect)

Two challenges in an RMC:

| | |
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| <p>Controlling/Aggressive</p> <ul style="list-style-type: none">▶ Lower their sense of control▶ Build rapport and de-escalate the situation▶ Allow them to retreat from prior unreasonable positions with dignity (i.e. show respect and don't humiliate them) | <p>Frightened/Vulnerable</p> <ul style="list-style-type: none">▶ Emotionally fragile, often uncertain and indecisive▶ Build rapport and empower them to come to realize that they can create an acceptable outcome |
|---|--|

IAALS Report (October 2015)
“Change the Culture, Change the System”

“Judges need to be engaged, accessible, and guided by service.”



James 1:19

“Be swift to hear,
slow to speak,
slow to wrath”





Coach Urban Meyer

$E + R = O$

Event + Response = Outcome



IF

If you can keep your head when all about you
Are losing theirs and blaming it on you:
If you can trust yourself when all men doubt you,
But make allowance for their doubting too;
If you can wait and not be tired by waiting,
Or, being lied about, don't deal in lies,
Or, being hated, don't give way to hating,
And yet don't look too good, nor talk too wise:

If you can dream-and not make dreams your master:
If you can think-and not make thoughts your aim:
If you can meet with triumph and disaster
And treat those two impostors just the same;
If you can bear to hear the truth you've spoken
Twisted by knaves to make a trap for fools,
Or watch the things you gave your life to broken,
And stoop and build 'em up with wornout tools:

If you can make one heap of all your winnings
And risk it on one turn of pitch-and-toss,
And lose, and start again at your beginnings
And never breathe a word about your loss;
If you can force your heart and nerve and sinew
To serve your turn long after they are gone,
And so hold on when there is nothing in you
Except the Will which says to them: "Hold on":

If you can talk with crowds and keep your virtue,
Or walk with kings-nor lose the common touch;
If neither foes nor loving friends can hurt you;
If all men count with you, but none too much;
If you can fill the unforgiving minute
With sixty seconds' worth of distance run-
Yours is the Earth and everything that's in it,
And-which is more-you'll be a Man, my son!

"IF," by Rudyard Kipling

"If you can keep your
head when all about you
are losing theirs..."

FAMILY COURT IMPROVEMENT COMMITTEE

| | | |
|--|--|--|
| Date of Meeting: January 13, 2020 | Type of Action Required: [] Formal Action/Request [X] Information Only [] Other | Subject: Online Dispute Resolution |
|--|--|--|

PRESENTER(S): Cathy Clarich, Court Operations Manager, AOC and Nicole, LaConte, Court Program Specialist, AOC

DISCUSSION: Ms. Clarich and Ms. LaConte will share the results of the Online Dispute Resolution pilot courts. They are seeking input regarding potential case types and policies to be considered for a statewide program roll out.

RECOMMENDED ACTION OR REQUEST (IF ANY): Information and Input

FAMILY COURT IMPROVEMENT COMMITTEE

| Date of Meeting: | Type of Action Required: | Subject: |
|-------------------------|---|-----------------|
| January 13, 2020 | <input checked="" type="checkbox"/> Formal Action/Request <input type="checkbox"/> Information Only <input type="checkbox"/> Other | Top Issues |

PRESENTER(S): Judge Paul McMurdie, Chair

DISCUSSION: At the November 22 FCIC meeting, each member was asked to identify two or three issues that should be considered. The attached compilation groups the noted concerns into topic areas

RECOMMENDED ACTION OR REQUEST (IF ANY): Motion to establish workgroups to address the various topic areas.

Compilation of Top Issues

The Family Court Improvement Committee's objective is to create an environment and processes for an organizational cultural change; moving from an adversarial process to a collaborative process that leaves parties emotionally intact and, those who have children, ready to co-parent.

Goals:

1. Affect a culture change
2. Redesign processes and procedures from the parties up rather than from the court down
3. Focus on innovation after improvement

Statutes and Rules Workgroup

(Judge McMurdie to Chair)

- Title 25
 - Clean-up and reorganize using consistent terminology
 - Add authority for "pick up" orders in all parenting custody enforcement actions
 - Mandate pre-decree mediation except in cases where domestic violence exists
 - Minimize required documentation of judicial decisions
 - Decrease interest rate on arrears
 - Review proposed legislation impacting Title 25
- Rules
 - Develop a separate set of rules for self-represented litigants to simplify rules, communication, and guidance without intimidation
 - Practical application
 - Allow informality of judicial-officer led mediation
 - Sealing versus Deeming Confidential*
- Rule 44 and Proof of Service*
 - Criminal release/probation terms versus family court orders* *possibly including prioritization of payment (child support versus victim restitution)*

Research and Innovation Workgroup

If recommendations regarding an innovation are to be made, the proposal should discuss tiered or phased approaches, community resource and collaborations, and possible funding sources.

- Explore/Study
 - Summary decree
 - Specialized pre-decree processes/court for negotiated settlement agreements
 - One court/one judge/one family in cases involving the Department of Child Safety
 - Intractable custody disputes
 - Trauma-informed processes and procedures
 - Integrating training and processes that establish, if needed, and enhance communication between parties who will be co-parenting
- Increase community resource collaboration

- Market conciliation court as a resource – make the services offered consistent from case to case and county to county

Forms/Instructions/Publications Workgroup

- Automated/guided interview with instructions written in consumer language
- Provide a list of required and optional forms for each process
- Analyze interplay between forms
- Develop *In loco parentis*, third-party and grandparent rights information for self-represented litigants
- Possible collaboration with AZCourtHelp.org

FCIC/CIDVC Collaborative Protective Order Workgroup

(as needed)

- Clarify rules to address outcome of hearing in which neither party appears.
- Better communication in cases with cross-jurisdiction orders of protection
- Provide attorney/attorney family/attorney staff protections when domestic violence exists in a case and address threats immediately

Training Workgroup

- Judicial
 - Rethinking family court litigation
 - Communicating with parties in a collaborative process
 - Striving for consistency in orders
- Court Staff
 - Court recognition of NDI (Non-Disclosure Indicator) in ATLAS
 - Legal information versus legal advice

Child Support Guidelines Review Subcommittee

- Increase likelihood of payment
 - Study the feasibility establishing parenting time at the same time as child support especially in IV-D cases
- Address the issue of 2+ legal parents in the guidelines
- Provide instruction in guidelines for when a step-parent provides the medical insurance for the children
- Address ability to pay with a parent who stands up, shows up, and works 2-3 jobs

Resources

- Court Advisor
- Drug testing and clauses for various forms of payment
- SME triage
- Liaison

*Agenda items submitted for the Jan. 13 meeting.



REDESIGNING DIVORCE

USER-DRIVEN DESIGN FOR A BETTER PROCESS

IAALS

INSTITUTE *for the* ADVANCEMENT
of the AMERICAN LEGAL SYSTEM



UNIVERSITY of
DENVER

Justice we can believe in

BOHEMIAN
FOUNDATION



COURT COMPASS

REDESIGNING DIVORCE

USER-DRIVEN DESIGN
FOR A BETTER PROCESS

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December 2019

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INSTITUTE *for the* ADVANCEMENT
of the AMERICAN LEGAL SYSTEM



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IAALS, the Institute for the Advancement of the American Legal System, is a national, independent research center at the University of Denver dedicated to facilitating continuous improvement and advancing excellence in the American legal system. We are a “think tank” that goes one step further—we are practical and solution-oriented. Our mission is to forge innovative and practical solutions to problems within the American legal system. By leveraging a unique blend of empirical and legal research, innovative solutions, broad-based collaboration, communications, and ongoing measurement in strategically selected, high-impact areas, IAALS is empowering others with the knowledge, models, and will to advance a more accessible, efficient, and accountable American legal system.

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 - Todd Nuccio, Iowa State Court Administrator;
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 - Jennifer Lechner, Executive Director of the North Carolina Equal Access to Justice Commission;
 - Colorado Judicial Branch;
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 - Bill DeLisio, Family Law Program Manager of the Colorado Judicial Branch.
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EXECUTIVE SUMMARY

Myriad reform efforts are underway in family courts around the country. A widespread recognition that the default adversarial process is not suitable for many families is sparking the development of non-adversarial, problem-solving approaches. Additionally, with nearly three in four family court litigants navigating the process without an attorney, state courts are exploring a variety of approaches designed to simplify the process and provide self-represented litigants with the information and resources they need to navigate the court system without an attorney.

In 2016, IAALS released the results of a first-of-its-kind national empirical research study, *Cases Without Counsel*, that explored the firsthand experience of self-represented litigants in family court. The narratives that emerged highlighted the invaluable perspective that litigants themselves have on the process and potential improvements to the process. IAALS' *Court Compass* project launched from this work, with the goal of moving from litigant input in identifying problems to user engagement on solutions.

The *Court Compass* project consisted of a series of interactive design sprint workshops, in a diverse set of locations across the country, that brought self-represented litigants and other legal system stakeholders together to develop potential solutions in the divorce and separation process. Through these workshops, we gained a deeper understanding of the problems and issues that self-represented litigants experience in the family court process as well as engaged this important user group in prototyping and testing solutions that address critical issues for court users.

The problems and challenges related to the current family court process that design sprint participants identified echo many of the narratives IAALS and others have gathered through direct engagement with self-represented litigants. Issues around accessibility were the most commonly discussed across our sprints, including cost concerns, difficulty finding information and resources, lack of available guidance about the legal process, and language barriers to obtaining information, including legal jargon. Court paperwork also featured prominently in self-represented litigant discussions around challenges in the current process. Finally, and not surprisingly, the emotional impact of self-representation, including the underlying emotional challenges accompanying divorce and separation cases, came through in litigant narratives.

When given an opportunity to brainstorm solutions around the problems identified, participants centered on several broad categories:

NAVIGATING THE LEGAL PROCESS

Because the process poses many obstacles for litigants, it is not surprising that the most common of the solutions focused on providing litigants with general guidance on the process and help with forms and documents, as well as offering possible alternatives to in-person court appearances.

HELP WITH PERSONAL ISSUES

Given the inherently emotional nature of divorce and separation cases, sprint participants offered thoughts on how courts can help alleviate some of the personal challenges associated with navigating the legal process, including more flexible hours and mental health services and related types of personal support.

LEGAL ASSISTANCE AND REPRESENTATION

In large part, sprint participants wanted legal help but could not access it for one reason or another (with affordability being the most commonly referenced). Participants suggested many low- or no-cost programs that would provide litigants with legal help.

STREAMLINING THE LEGAL PROCESS

Self-represented litigant participants acknowledged simpler cases require less court intervention and a more straightforward legal process.

COURT ENVIRONMENT

It was a common refrain among self-represented litigants that the courthouse is an intimidating place, and some of the brainstormed solutions centered on making it a more welcoming and accessible environment.

JUDICIAL AND COURT STAFF CONSIDERATIONS

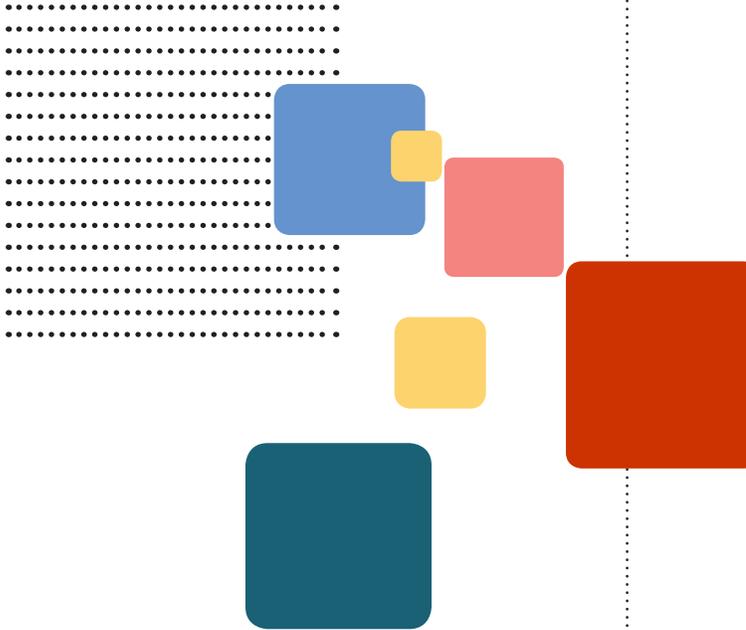
The need for more court funding, particularly to update court technologies, came up across the sprint groups, and participants also brainstormed around the more easily implementable improvements in how court staff and judges interact with self-represented litigants that could improve the user experience.

Across the sprints, workshop groups developed a total of 20 solutions to prototype, representing a wide array of ideas to improve the legal process and the litigant experience. Some were technology-based; others involved in-person services. Each brings insight and value to the discussion of improving the family court process.

Broadly, these prototypes bring new support to court and legal community efforts to triage cases and provide litigants and cases with tailored processes and services. The design sprint conversations echo those around the country that are focused on helping courts better match cases to services and resources. The *Court Compass* sprint prototypes also provide conceptual support for the growing number of technological solutions in development by courts and legal professional organizations to more easily diagnose legal problems and tailor information and resources to the need of the individual(s).

The *Court Compass* sprint prototypes also highlight the balance between providing users with technology solutions and maintaining a level of in-person support. While it is clear that litigants have expectations around engaging with digital tools, no discernable preference came through across sprints for technological solutions over in-person or non-tech process solutions. Additionally, the prototypes remind us of the importance of creating new physical spaces for court service delivery alongside the digital spaces that are the focus of many self-help and process simplification efforts.

Court users are at the heart of the family and civil justice systems, and it is imperative that we, as a court and legal community, engage this user group in developing process improvements. Design sprint workshops with users—self-represented litigant or otherwise—are an important and productive means through which to solicit user feedback on existing problems and potential solutions. The *Court Compass* project highlights the value of these perspectives and sets a model for continued user engagement in reform.



INTRODUCTION

“There needs to be a revolution, and it needs to be user-centered.”—Margaret Hagan¹

Family courts, like their civil and criminal counterparts, are facing substantial obstacles in delivering justice. The adversarial process, which is still the default method of processing divorce cases in most courts, can exacerbate tensions between spouses and negatively impact children.² Court processes are particularly cumbersome and complicated for litigants who represent themselves. These self-represented litigants constitute the majority of users in many state family courts; national figures show that in 72 percent of family cases at least one party is self-represented.³ This reality has created an increasing need for courts to support litigants through the process.

To a great degree, family courts are working to answer this call. Some of these improvement efforts have focused on providing information and resources to self-represented litigants. For instance, many courts have implemented self-help centers where litigants can obtain information to help them navigate the legal process. Others have created lawyer-for-a-day programs, through which litigants can speak with an attorney for a limited amount of time at low or no cost. Other efforts have focused on streamlining the divorce process for self-represented litigants, facilitating early resolution, or creating simplified trial procedures. Some groups, including IAALS, have developed programs to allow divorcing couples to complete the legal process in an out-of-court or nontraditional court setting.⁴

Most recently, in April 2019, the Conference of Chief Justices approved a set of guiding Principles for Family Justice Reform (Principles) that respond both to the need for a focus on non-adversarial processes for divorcing and separating families and to the reality that many family court users do not have legal help navigating the process.⁵ The Principles also acknowledge the need for family courts to solicit and internalize the input of litigants themselves (self-represented or otherwise). Historically, many court self-help and simplification efforts have been developed and implemented without the input of litigants themselves, and the growing movement among court stakeholders reflects a recognition that change is needed.

To address this gap in our collective understanding and to bring litigants into the conversation, IAALS has adopted a user-centered approach that focuses on the experience of self-represented litigants. In 2016, we released the results of a first-of-its-kind national empirical research study, *Cases Without Counsel*, that explored the firsthand experiences of self-represented litigants in family court.⁶ That work engaged this core

1 MARGARET HAGAN, *LAW BY DESIGN* (2017).

2 Paul R. Amato, *Research on Divorce: Continuing Trends and New Developments*, 72 J. OF MARRIAGE AND FAM. 650 (2010) [hereinafter *Research on Divorce*]; Paul R. Amato & Bruce Keith, *Parental Divorce and Well-Being: A Meta-Analysis*, 53 PSYCHOL. BULL. 43 (1991) [hereinafter *Parental Divorce and Well-Being*]; Jennifer E. Lansford, *Parental Divorce and Children's Adjustment*, 4 PERSP. ON PSYCHOL. SCI. 140 (2009) [hereinafter *Parental Divorce and Children's Adjustment*].

3 NAT'L CTR. FOR STATE CTS, FAMILY JUSTICE INITIATIVE: THE LANDSCAPE OF DOMESTIC RELATIONS CASES IN STATE COURTS 20 (2018), <https://iaals.du.edu/sites/default/files/documents/publications/fji-landscape-report.pdf>.

4 LOGAN CORNETT, INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS., *DIVORCING TOGETHER: REPORT ON AN INTERDISCIPLINARY OUT-OF-COURT APPROACH TO SEPARATION AND DIVORCE* (2019), [hereinafter *DIVORCING TOGETHER*].

5 NAT'L CTR. FOR STATE CTS., INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS. & NAT'L COUNCIL OF JUV. AND FAM. CT. JUDGES, FAMILY JUSTICE INITIATIVE: PRINCIPLES FOR FAMILY JUSTICE REFORM (2019), [hereinafter *PRINCIPLES*]. The resolution for the Family Justice Initiative can be found at <https://ccj.ncsc.org/~media/Microsites/Files/CCJ/Resolutions/02132019-Family-Justice-Initiative-Principals.ashx>.

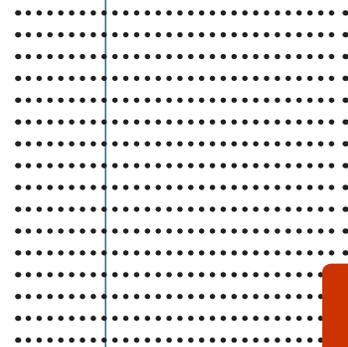
6 NATALIE KNOWLTON, LOGAN CORNETT, CORINA D. GERETY & JANET DROBINSKE, INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS., *CASES WITHOUT COUNSEL: RESEARCH ON EXPERIENCES OF SELF-REPRESENTATION IN U.S. FAMILY COURT* (2016), [hereinafter *CASES WITHOUT COUNSEL*].

user group in one-on-one interviews aimed at collecting narratives to more fully understand the challenges and opportunities they encountered in navigating the divorce process without an attorney. From that study, IAALS launched the *Court Compass* project with the goal of moving from litigant input in identifying problems to user engagement on solutions. The project consisted of a series of interactive workshops that convened self-represented litigants and other legal system stakeholders together to develop potential solutions in the divorce and separation process. The design sprint process employed in these *Court Compass* workshops was a user-focused process for prototyping and testing solutions that address critical issues for court users.⁷ Through these design sprint workshops, we aimed to develop a set of solutions—some conventional and some novel—that could be implemented to improve the litigant experience in navigating the divorce process.

Our design sprint workshops were full-day or half-day sessions and the process consisted of seven distinct phases:⁸

1. **Discover:** Explore what court users perceive to be challenges and opportunities with the current system.
2. **Identify the Problems:** Define the contours of the problems and those who are involved in the process at issue.
3. **Brainstorm:** Engage in structured, creative thinking about potential service, product, and process solutions.
4. **Build:** Develop low-fidelity concept prototypes around the highest-impact solutions.
5. **Test:** Solicit feedback through interactive, real-time testing of developed concept prototypes.
6. **Refine:** Revise the prototyped solutions based on feedback received during testing.
7. **Debrief:** Share feedback on the process and ideas that were not already covered.

DESIGN SPRINT:
a user-focused
process for
prototyping and
testing solutions
to address critical
issues for users

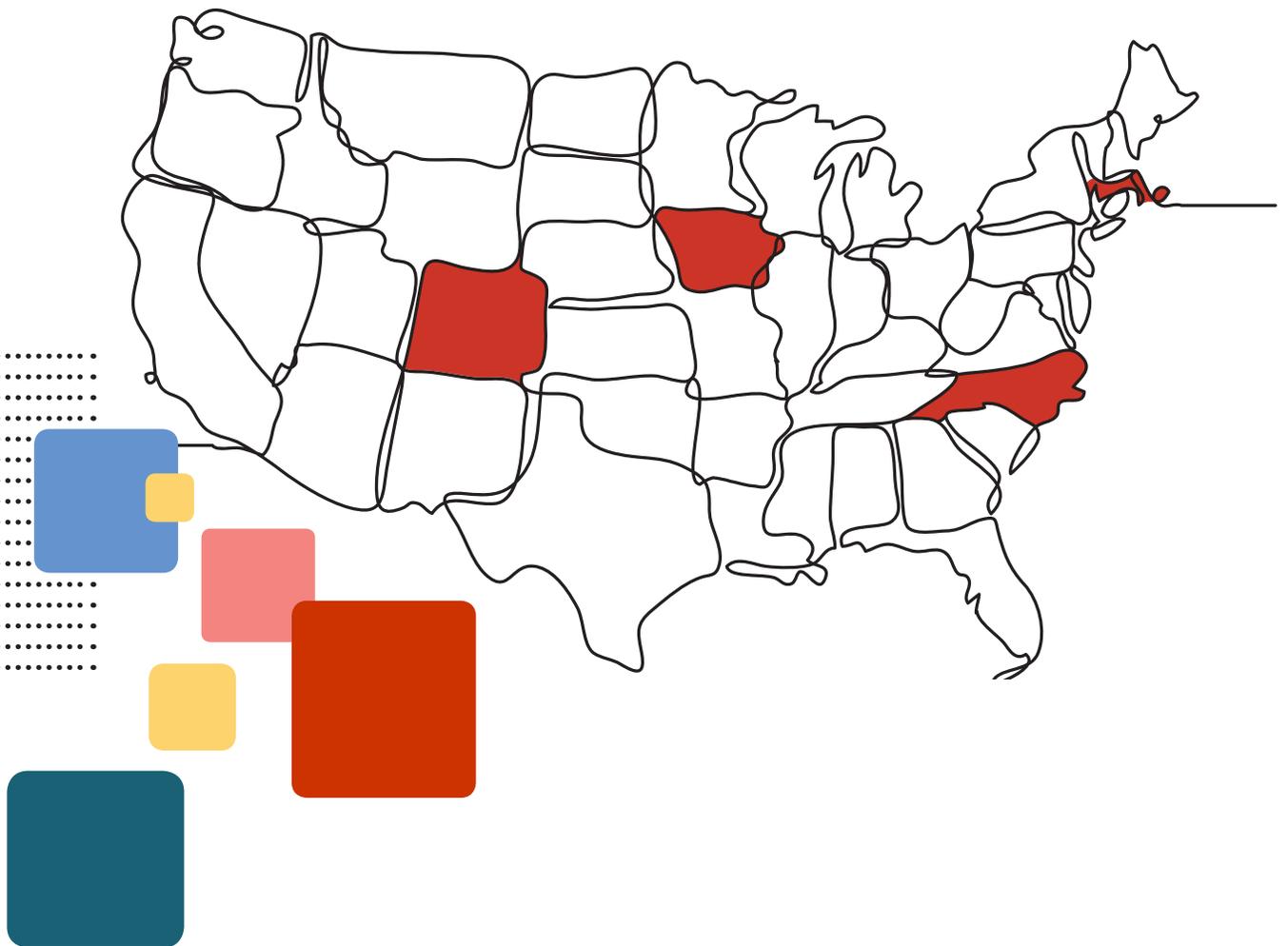


7 JAKE KNAPP, JOHN ZERATSKY & BRADEN KOWITZ, *SPRINT: HOW TO SOLVE BIG PROBLEMS AND TEST NEW IDEAS IN JUST FIVE DAYS* 9 (2016).

8 NATALIE ANNE KNOWLTON, MICHAEL HOULBERG, JANET DROBINSKE & LOGAN CORNETT, *LISTEN>LEARN>LEAD: A GUIDE TO IMPROVING COURT SERVICES THROUGH USER-CENTERED DESIGN* (2019) (a how-to guide on conducting design sprints in the legal space), <https://iaals.du.edu/publications/listen-learn-lead>.

IAALS partnered with a group of experts who specialize in user-centered design in the legal field to help shape and refine our approach for this project. Margaret Hagan, Director of the Legal Design Lab and a lecturer at Stanford Institute of Design at Stanford University, worked with us to develop our design sprint process. Dan Jackson, Executive Director of NuLawLab at Northeastern University School of Law, and Lois Lupica, Maine Law Foundation Professor of Law and an affiliated faculty member of the Harvard Law School Access to Justice Lab, assisted in developing and refining our workshop protocol. Jackson and Hagan co-facilitated the various design sprint workshops.

Between January and November 2018, we held five design sprint workshops in locations across the country, which included a total of 60 self-represented litigant participants and 43 court and legal professional stakeholder participants. This report details the findings and outcomes of these workshops—the problems identified, the solutions proposed, and the prototypes tested.



METHODS

Design Sprint Locations

We sought to hold our design sprints in a diverse set of locations across the country. Together, IAALS and project partners proactively identified potential locations and also heard from courts expressing interest in response to project announcements. Ultimately, we held design sprint workshops in four states, one in each of the four U.S. Census regions: Colorado, Iowa, North Carolina, and Massachusetts.⁹ We held one design sprint workshop in each selected state, except for Massachusetts, where we held two.¹⁰ In each location, the IAALS team worked with volunteers—including individuals within the courts and members of the local legal communities—to organize and conduct the design sprint workshop. The table below presents details for each location.

| | CENSUS REGION | DESIGN SPRINT LOCATION | COMMUNITY VOLUNTEERS |
|----------------|---------------|---|---|
| COLORADO | West | Denver: Courtyard by Marriot | <ul style="list-style-type: none"> • Colorado Judicial Branch • Law students at University of Colorado Law School |
| IOWA | Midwest | Des Moines: Iowa State Bar Association | <ul style="list-style-type: none"> • Iowa Judicial Branch • Iowa Accountability Program¹¹ • Iowa Law Firm Incubator¹² • Iowa Legal Aid • Local family law practitioner |
| NORTH CAROLINA | South | Raleigh: North Carolina Judicial Center | <ul style="list-style-type: none"> • North Carolina Judicial Branch • North Carolina Equal Access to Justice Commission • Law Students at University of North Carolina School of Law and Campbell University Norman Adrian Wiggins School of Law |
| MASSACHUSETTS | Northeast | Boston: Double Tree by Hilton Andover: Northeastern University School of Law | <ul style="list-style-type: none"> • Law students in the NuLawLab at Northeastern University School of Law |

9 Colorado in the West, Iowa in the Midwest, North Carolina in the South, and Massachusetts in the Northeast.

10 The initial sprint in Andover, Massachusetts was intended to pilot test our design sprint workshop protocol.

11 The Iowa Accountability Program builds and enhances relationships between the African American community and the legal community to help guarantee equal access to justice for all.

12 The Iowa Law Firm Incubator works with new lawyers who are creating their own community-based small law firms by mentoring them on how best to increase access to legal services.

Participant Recruitment

The design sprint workshops included two types of participants—those who had represented themselves in a divorce case and those who work closely with litigants in the divorce process.¹³ This diversity in stakeholder perspectives allowed us to capture ideas and feedback both from those who had personal experience navigating the process without an attorney and those who help people navigate it. The project team undertook different recruitment approaches for each of these groups.

SELF-REPRESENTED LITIGANT PARTICIPANT RECRUITMENT

Given the challenges associated with identifying and recruiting self-represented litigants for participation,¹⁴ our recruitment process varied across the design sprint workshops. In each instance, we sought to identify litigants in divorce cases that either had recently closed or were currently open, but where a substantial portion of the process was complete (such that a litigant would be able to provide meaningful feedback about the legal process). The table below outlines the self-represented litigant outreach process for each sprint.

| | | |
|----------------|---------|---|
| COLORADO | | <ul style="list-style-type: none"> Obtained a list of cases from the court, including litigant contact information. Recruitment letters sent via postal mail. |
| IOWA | | <ul style="list-style-type: none"> Iowa courts conducted email outreach to litigants. |
| NORTH CAROLINA | | <ul style="list-style-type: none"> Obtained a list of cases from the court, including litigant contact information. Recruitment letters sent via postal mail. |
| MASSACHUSETTS | ANDOVER | <ul style="list-style-type: none"> Obtained a list of cases from the court, including litigant contact information. Recruitment letters sent via postal mail. In-person recruitment at the court self-help center. Legal aid conducted outreach to current and previous clients. |
| | BOSTON | <ul style="list-style-type: none"> Obtained a list of cases from the court, including litigant contact information. Recruitment letters sent via postal mail. |

As instructed in the initial outreach materials, litigants who were interested in participating in a design sprint completed an online registration form to confirm that they met the inclusion criteria—1) that they represented themselves for at least part of their case, 2) that their case was filed in the relevant state, and 3) that their case was either recently completed or that a substantial portion of the process was complete, if still ongoing. In instances where we received more eligible registrants than seats available at the design sprint workshop, we engaged in a selection process to identify the final participant group. In general, we selected participants on a first-come, first-served basis. However, diversity—both in terms of demographic characteristics and experience with the process—was a strong consideration that guided participant selection to help ensure well-rounded results.

COURT AND LEGAL PROFESSIONAL PARTICIPANT RECRUITMENT

To facilitate court and legal professional participant recruitment, our court and community volunteers identified individuals who they determined would be interested in participating in a workshop. We then coordinated with our court and community volunteers to invite those individuals to participate.

¹³ There was one exception. The Boston, MA sprint was a much smaller event and included only self-represented litigants.

¹⁴ For example, in some courts, it is difficult to identify self-represented litigants from court case management records.

Participants

Across all five design sprint workshops, 103 stakeholders participated, including 60 self-represented litigants and 43 legal professionals. The table below presents a breakdown of participants for each design sprint workshop.

| | | SELF-REPRESENTED LITIGANTS | LEGAL PROFESSIONALS | | | | | TOTAL |
|----------------|---------|----------------------------|---------------------|-------------------|-----------|-----------|---------------------|------------|
| | | | COURT STAFF | JUDICIAL OFFICERS | ATTORNEYS | LEGAL AID | OTHER ¹⁵ | |
| COLORADO | | 16 | 3 | 4 | 2 | 0 | 1 | 26 |
| IOWA | | 15 | 4 | 2 | 2 | 1 | 2 | 26 |
| NORTH CAROLINA | | 16 | 3 | 2 | 0 | 2 | 2 | 25 |
| MASSACHUSETTS | ANDOVER | 3 | 5 | 1 | 4 | 2 | 1 | 16 |
| | BOSTON | 10 | 0 | 0 | 0 | 0 | 0 | 10 |
| TOTAL | | 60 | 15 | 9 | 8 | 5 | 6 | 103 |

During each design sprint workshop, participants were assigned to small groups consisting of some self-represented litigants and some legal professional participants—except in Boston, where the only participants were self-represented litigants.

Design Sprint Process

Broadly speaking, our design sprint process allows participants to first identify what is and is not working well with the current legal process for divorce, then to brainstorm possible solutions to those problems, and, finally, to create and test a prototype for one of those solutions. There are a few hallmarks of the design sprint process that make it a unique venue for fostering creative ideas. One is the *no bad ideas* mentality that participants are encouraged to embrace—during the design sprint, no problem or solution is too small or too silly to mention. Another is the opportunity to create low-fidelity prototypes—that is, low-cost, easily and quickly created mock-ups—of solutions and test them with other participants; thus, participants can test inexpensive versions of their ideas to evaluate their feasibility as real-world solutions. For instance, a group developing a website could use construction paper to design each page of the website, including appropriate content markers and buttons, to allow other participants to interact with the proposed flow of the website.

While each of our design sprints followed these basic principles, there was some variation in the process for each. The figure below outlines the activities that were included under each design sprint phase (Appendix A details the protocol used in each workshop).¹⁶

One hallmark of the design sprint process is the *no bad ideas* mentality that participants are encouraged to embrace—during the design sprint, no problem or solution is too small or too silly to mention.

15 Domestic violence legal advocate, judicial specialist, community service provider, court management specialist, and two technologists.

16 See Appendix at http://iaals.du.edu/sites/default/files/documents/publications/redesigning_divorce_appendix.pdf

DESIGN SPRINT WORKSHOP PHASES

DISCOVER

Create a matrix that describes current positives, current negatives, future positives, and future negatives.



IDENTIFY THE PROBLEMS

Map out the legal process; identify emotional highs and lows, time and money issues, and points of confusion or frustration.



Create a persona around which to design solutions, be specific about who the person is, including problems, needs, wants, values, and goals.

Brainstorm products, services, policies, and wildcard solutions to the identified problems.

Place brainstormed solutions on a matrix with importance on one axis and feasibility on the other.

BRAINSTORM

BUILD

Identify one solution and detail the components or features the solution must have, those it must not have, and those that would be nice to have.

Storyboard how the identified solution should work.

Create a low-fidelity prototype of the solution using readily available, low-cost materials.

TEST

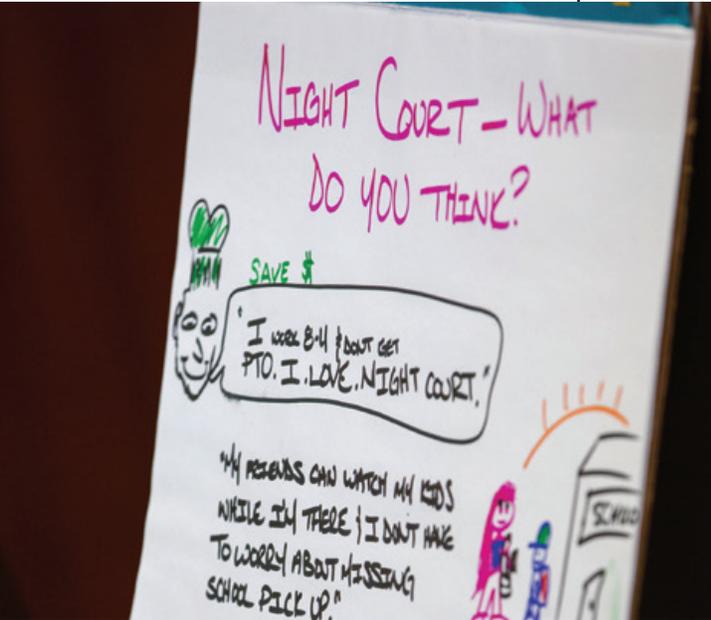
Test the prototype with other groups. Gather feedback about the most likely fail points.

REFINE

Improve the prototype design based upon feedback gathered during the testing phase.

DEBRIEF

In a plenary discussion, identify user requirements, highest priority ideas, and final insights.



Data Analysis

There was a designated notetaker for each group within each of the design sprints. These notes constitute the data analyzed for purposes of this report. We began the qualitative analysis process by creating a set of codes to use in categorizing the data. This coding scheme included both substantive codes (e.g., feeling heard, complexity of process) and process description codes (e.g., final debrief, prototype). The project team then reviewed the notes for each group and assigned codes as appropriate.¹⁷ The qualitative data analysis process is necessarily iterative; thus, we completed multiple coding sweeps of the data, refining the codes as we went to facilitate greater levels of specificity within the analysis.¹⁸

FINDINGS

Discover and Identify the Problems

During the Discover phase and the Identify the Problems phase, participants identified a broad array of problems and challenges related to the current family court process. Our self-represented litigant participants were encouraged to lead these discussions. We categorized their problems and challenges into four groups: accessibility, court forms and documents, emotions, and other issues.

ACCESSIBILITY

By a wide margin, issues around accessibility were the most commonly discussed. Such issues included, for purpose of this report, cost, information and resources, lack of guidance about the legal process, and language barriers.

Cost Issues. Unsurprisingly, issues around process-related costs were among the most frequently discussed. Many participants expressed concern and frustration about the cost of hiring legal representation; often, the hiring of an attorney is cost-prohibitive and this can result in a considerable disadvantage for the self-represented party. Participants related that lawyers can be important to a litigant's success in a case because lawyers have procedural and substantive knowledge required to navigate the process—knowledge which can impact case outcomes, such as receiving maintenance (e.g., spousal support) and reaching equitable

DISCOVER:

explore what court users perceive to be challenges and opportunities with the current system

IDENTIFY THE PROBLEMS:

define the contours of the problems and those who are involved in the process at issue

¹⁷ The qualitative analysis software used for this project was QSR NVivo 10.

¹⁸ Consistency in coding is an important consideration in qualitative analysis, especially when multiple people are coding the data. To ensure such consistency, the team met on a weekly basis to review the coded data, discuss new avenues for exploring the data, and address coding-related questions.

child custody arrangements. Participants also discussed other cost-related issues, including costs associated with court and filing fees and those incidental to appearing in court, such as transportation, missing work, and childcare.

Information and Resources. Another frequently discussed issue was accessibility of information and resources. Some groups noted that the information found online—often on the court’s own website—can be incomplete, inconsistent, or misleading, resulting in litigants making mistakes and delaying the process. Others discussed the fact that information is sometimes difficult to find and is not always available in one place, which creates confusion. In terms of access to resources, several groups reported that legal aid and other resources designed to provide low- or no-cost legal representation are often difficult to locate or not available due to demand.

Lack of Guidance about the Legal Process. Many participants noted the lack of guidance—the fact that there is nowhere litigants can go to get a complete, step-by-step layout of the legal process. Participants reported that self-represented litigants often do not know what they need to do to initiate the process, nor do they know what is required of them at each step throughout the process. The complexity of the process combined with the lack of resources for guidance create a great deal of uncertainty, overwhelm the litigants, and result in cost and delay.

Language Barriers. Participants discussed two issues related to language and accessibility. First was the frequent use of legal jargon in forms, court documents, and other case materials. Participants related that the use of such jargon creates unnecessary barriers for self-represented litigants. The second language-related issue revolved around the lack of resources available for litigants who do not speak English. Participant groups noted the lack of translators, requirements that forms be completed in English, and that information available online and elsewhere is often only available in English.

COURT FORMS AND DOCUMENTS

Another frequently cited source of difficulty for self-represented litigants navigating the divorce process was court paperwork. The first hurdle litigants must clear is identifying and locating the correct forms for their case. Self-represented litigants are then faced with complexity of the forms: they are often long and time-consuming to complete, full of legal jargon, ask for more information than is needed for the case, and are unclear as to what information is required. Further, many forms ask for the same information as other forms, thus creating redundancy and confusion. Participants noted that when self-represented litigants make mistakes in completing their paperwork, which they often do, the result is cost and delay for the litigant.

EMOTIONS

Although we focused on the process, there is no doubt that, for litigants, the process and the associated emotions are inextricable from one another. Indeed, participants often discussed the emotional aspects of divorce—and the ways in which the legal process contributes to the emotional difficulties. More specifically, participants noted the stress, fear, and intimidation associated with going through the process; a couple of participants described the process as traumatic.

OTHER ISSUES

There were a few additional issues that, while not among the most frequently discussed, are noteworthy.

Treatment. One such issue is that litigants care how they are treated in the court process. Considerate treatment by court staff and judges can make a considerable difference in how litigants view their experience.¹⁹

Time. Another issue is the length of the process; many participants noted that the process drags on too long. Additionally, several participants viewed waiting periods as unnecessary and confusing. Interestingly, although there was some variation in waiting periods imposed in each state, even participants in places where the waiting period was the shortest—Colorado and Iowa—were vocal about shortening or removing them altogether.²⁰

Power Imbalances. Finally, several groups discussed issues that can arise when there is a power imbalance in the divorcing couple. For instance, the court may need to pay special attention to cases where domestic violence is a concern or where one party is represented and the other is not.

Brainstorm Solutions

During the Brainstorm phase, participants conceived of a great many potential solutions to the identified problems. We have grouped these solutions into six broad categories: navigating the legal process, help with personal issues, legal assistance and representation, changes to the legal process, court environment, and judicial and court staff strategies.

NAVIGATING THE LEGAL PROCESS

About half of the solutions our workshop participants brainstormed focused on ways courts could help litigants—particularly those who are self-represented—navigate the legal process. The prevalence of such solutions is unsurprising: the process itself poses many obstacles for litigants, and much of the current dialogue among legal stakeholders working on access issues centers on identifying ways to guide litigants through the process.²¹

19 CASES WITHOUT COUNSEL, *supra* note 6; Kevin Burke & Steve Leben, *Procedural Fairness: A Key Ingredient in Public Satisfaction*, 44 CT. REV. 4-24.

20 Colorado: 90 days; Iowa: 90 days; Massachusetts: if uncontested, 120 days after the judge approves the separation agreement; if contested, 90 days after the judge approves the separation agreement (so long as six months have passed from the date the Complaint was filed); North Carolina: one year.

21 See, e.g., J. David Greiner, Dalie Jimenez & Lois R. Lupica, *Self-Help, Reimagined*, 92 IND. L.J. 1119 (2017), <https://www.repository.law.indiana.edu/cgi/viewcontent.cgi?article=11255&context=ilj>.

BRAINSTORM:
engage in structured,
creative thinking
about potential
service, product, and
process solutions

General Guidance. Many of the solutions in this category related to general assistance for litigants. Some were relatively simple, such as process checklists and instructional videos. Others would be much more involved in terms of technology and implementation—online portals or apps that would guide litigants through the process and provide a platform for various functions, including completing and filing forms and documents, building and mediating agreements with the other party, and scheduling court appearances. A related suggestion that arose in almost every workshop was sending text or email notifications to litigants about case events and court appearances. Another set of solutions suggested a more hands-on approach to guidance: these included workshops or engagement with others who have experienced the process, courthouse concierges, and helplines or online chats to answer litigant questions.

Forms and Documents. Workshop participants also consistently noted litigant needs regarding forms. Often, these solutions centered around interactive or smart forms that would assist litigants in completing the forms on their own. Participants also frequently suggested facilitating broader access to forms, creating simplified forms, and making forms available in languages other than English.

Alternatives to the Courtroom. Several groups suggested that courts accommodate alternatives to in-person court appearances. Specifically, these participants thought courts should allow telephonic and video conferencing. Some workshop groups proposed that the divorce process be taken out of the courthouse altogether. Indeed, there is evidence that out-of-court models can effectively meet legal needs while producing positive outcomes for the litigants.²² Some suggestions for court alternatives were along traditional lines, such as virtual courts or online dispute resolution resources. Some groups, embracing the *no bad ideas* mantra of this portion of the workshop, offered more inventive solutions: among these were neighborhood divorce shops, divorce resorts where couples could divorce in a relaxing environment, and drive-through divorces.

HELP WITH PERSONAL ISSUES

Divorce cases, and legal cases in general, can create substantial personal issues for the parties.²³ Our participants acknowledged this reality and thought that family court litigants deserve more than just legal support as they navigate the process.

Alleviating Personal Challenges. Among the most frequently cited solutions were those related to court-provided assistance to alleviate some of the personal challenges associated with navigating the legal process. A relatively common solution participants offered was to implement more flexible court hours. That is, participants thought that courts should be open on nights and weekends to better accommodate litigant schedules and reduce the financial burdens associated with taking time off work to come to court. Additionally, several groups across multiple workshop locations suggested that courts offer childcare in the courthouse. Another solution that arose often was to provide or fund transportation to the courthouse. Access to affordable housing came up often, as did the need for access to education and job training resources.

22 DIVORCING TOGETHER, *supra* note 4.

23 CASES WITHOUT COUNSEL, *supra* note 6, at 45; *Research on Divorce*, *supra* note 2; *Parental Divorce and Well-Being*, *supra* note 2; *Parental Divorce and Children's Adjustment* note 2.

Mental Health and Personal Support. Another area where participants recognized litigant needs are not currently being met was in the realm of mental health and other types of personal support. Most prominently, participants called for access to counseling—individual, family, co-parenting, and domestic violence counseling were all discussed. Participants also frequently mentioned solutions related to providing moral support for litigants. Examples include programs in which a person who has gone through the process mentors a current litigant and encouraging litigants to bring friends and family to court appearances. Finally, some participant groups offered solutions for helping litigants work with the other party, such as creating a code of civility between the parties and, for cases in which the parties would be best served by not interacting (such as where there are domestic violence concerns), arranging the courthouse so that litigants never have to be in the same room with the other party.

LEGAL ASSISTANCE AND REPRESENTATION

Our workshop participants recognized that, for many litigants, legal representation or other kinds of legal assistance is desirable or even necessary, but not always accessible. Many workshop groups suggested low- or no-cost legal representation as a solution, though participants did not elaborate on how this could be accomplished. Participants did, however, offer alternative approaches to traditional legal representation, including:

- Allowing law students to represent litigants for internship credits;
- Allowing court clerks to provide advice on forms and answer other questions; and
- Providing family law navigators who are trained in law and permitted to give legal advice.

More broadly, some workshop groups proposed solutions to make lawyers more easily accessible. For instance, some participants suggested that lawyers should make themselves available to clients in public places such as supermarkets or even at bars. Another group suggested that the courthouse should provide a list of local lawyers. Yet another recommended an Uber-like app to help litigants find lawyers.

STREAMLINING THE LEGAL PROCESS

While our workshop participants generally did not provide a great deal of specificity with respect to revising or streamlining legal processes, they clearly acknowledged the need for such action. The solutions proposed in this area related primarily to two ideas. First, participants suggested that the process could be streamlined such that the process matches the needs of the case—an approach commonly known among legal system stakeholders as triage. In other words, simpler cases require less court intervention and a more straightforward legal process, thus freeing up the courts to devote more time and resources to more complex cases. There was one area in which participants called for a specific solution for streamlining the legal process: several groups across multiple workshop locations suggested removing mandatory waiting periods. A second, but less frequently noted, suggestion was to standardize the process across jurisdictions.

COURT ENVIRONMENT

Our workshop participants proposed a variety of solutions for making the court environment more welcoming. Some focused on providing amenities in the courthouse. Among these were relatively mundane suggestions such as providing food and coffee. Others were less conventional—such as fitness facilities, yoga classes, chair massages, and therapy animals. Similarly, some solutions related to creating a less oppressive and intimidating atmosphere. These included creating comfortable spaces (e.g., areas with couches), playing music, and having the judge sit at a table with the parties and lawyers during court appearances.

JUDICIAL AND COURT STAFF CONSIDERATIONS

Some of our workshop participants raised solutions focused on court staff and judges, including allocating more funding for court operations. Several groups noted that courts needed improved technologies, ranging from better case management systems to updated computers and printers. With respect to interactions between litigants and court staff and judges, another set of solutions centered on clarifying or improving the court's role with litigants. Specifically, participants discussed making the line between legal advice and information more explicit and ensuring court staff are engaged, friendly, and empathetic when interacting with litigants. Finally, workshop participants suggested that judges and court staff would benefit from various types of training to increase cultural awareness and other ways of empathizing with litigants, as well as familiarity and comfort with technology.

Build, Test, and Refine a Prototype

Across all design sprints, workshop groups devised a total of 20 solutions to prototype during the Build, Test, and Refine phases. The full set of prototypes represents a wide array of ideas to improve the legal process and the litigant experience. There were technology-based and in-person ideas, expensive- and inexpensive-to-implement ideas, practical and off-the-wall ideas—each of which brought insight and value to the discussion. Below is a set of prototypes we have chosen to highlight for this report (a complete list of prototypes can be found in Appendix B).²⁴

BUILD:
develop low-fidelity
concept prototypes
around the highest-
impact solutions

TEST:
solicit feedback
through interactive,
real-time testing of
developed concept
prototypes

REFINE:
share feedback on
the process and
ideas that were not
already covered

²⁴ See Appendix, *supra* note 16.

PROTOTYPE 1: FAMILY LAW RESOURCE AGENCY

| PROTOTYPE DESCRIPTION | In-person assistance with various aspects of the divorce process—legal, financial, and counseling—in a location outside the court. |
|----------------------------|---|
| PROTOTYPE MUST HAVE/BE | <ul style="list-style-type: none"> • Must include an attorney for people that want them, appointed by the court. • Must be staffed with lawyers, financial experts, and counselors. • Must have a hotline available for procedural issues. • Must include public domestic relations attorneys who are a free or low-cost alternative to a private attorney and, while not required, are an option that people feel confident in choosing. • Must charge on a sliding scale capped at less than the cost of a private attorney. • Must partner with the court, informing people about the resource agency. |
| PROTOTYPE MUST NOT HAVE/BE | <ul style="list-style-type: none"> • Must not have a financial need requirement. • Must not be mandatory. |
| FEEDBACK DURING TESTING | <ul style="list-style-type: none"> • Funding sources uncertain. • Concerns that an overload of cases could force the agency to start turning people away. |

PROTOTYPE 2: COURT CONCIERGE

| PROTOTYPE DESCRIPTION | In-person legal advice and assistance for going through the process. |
|----------------------------|--|
| PROTOTYPE MUST HAVE/BE | <ul style="list-style-type: none"> • Must prevent injustice and improper property divisions. • Must clearly explain options and legal rights. • Must review forms. • Must address both parties. • Must ensure all forms and components of the process are completed correctly in the appropriate order. • Must allow fee waivers for indigent individuals. |
| PROTOTYPE MUST NOT HAVE/BE | <ul style="list-style-type: none"> • Must not use legal jargon. • Must not be a member of the clerk’s office (due to neutrality concerns). • Must not be mandatory. |
| FEEDBACK DURING TESTING | <ul style="list-style-type: none"> • Should eliminate repetitiveness in forms. • Preference is that individuals can access attorneys for quick advice. • Funding sources uncertain. • Both information and advice would be important to provide. |

PROTOTYPE 3: INDIVIDUALIZED DIVORCE PLAN AND EVALUATION

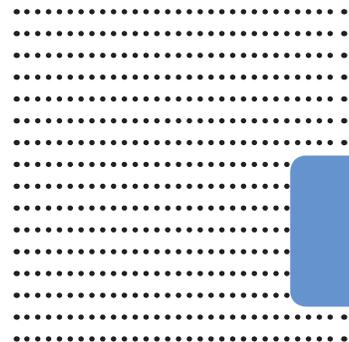
| | |
|----------------------------|--|
| PROTOTYPE DESCRIPTION | A tech-based process to efficiently identify appropriate processes and resources based on the complexity of the case. |
| PROTOTYPE MUST HAVE/BE | <ul style="list-style-type: none"> • Must be tailored to case complexity (program will be able to determine which questions are/are not relevant to different cases). • Must be accessible online or at courthouse. • Must be accessible in a variety of languages. • Must include contact information for a real person to ask questions or discuss concerns. • Must be uniform across the state/nation; standardized practice. • Must offer resources to take care of additional concerns (e.g., name change). • Must allow amendments. |
| PROTOTYPE MUST NOT HAVE/BE | <ul style="list-style-type: none"> • Must not use legal jargon. • Must not be confusing. • Must not be expensive. • Must not be time-consuming. |
| FEEDBACK DURING TESTING | <ul style="list-style-type: none"> • Concern regarding where the resource would be available (e.g., at Clerk’s office). • Concern regarding who would review the system’s proposed pathways. • Funding sources uncertain. |

PROTOTYPE 4: THE DIVORCE VAN

| | |
|----------------------------|--|
| PROTOTYPE DESCRIPTION | Legal services van that travels to different areas, with a website that lists where it will be each day. People utilize it between filing and presenting to the judge. This would be once a case number is obtained (with petition and agreement). Instead of people going to the courthouse for appointments, a van would come to their neighborhood. |
| PROTOTYPE MUST HAVE/BE | <ul style="list-style-type: none"> • Must have scheduling approved by the court. • Must involve experts to review agreements. • Must remind litigants about scheduled appointments. |
| PROTOTYPE MUST NOT HAVE/BE | <ul style="list-style-type: none"> • Must not use legal jargon. |
| FEEDBACK DURING TESTING | <ul style="list-style-type: none"> • Potential for long wait times. • Concern about potential for fraud and ability to ensure the litigants are who they say they are. |

PROTOTYPE 5: DIVORCE MOBILE APP

| | |
|----------------------------|--|
| PROTOTYPE DESCRIPTION | A mobile app for helping litigants work through multiple aspects of the legal process. |
| PROTOTYPE MUST HAVE/BE | <ul style="list-style-type: none"> • Must tailor advice and resources based on a profile. • Must provide a descriptive overview of the process. • Must include a document repository. • Must include a resource page. • Must make the process accessible and present information in lay terms. |
| PROTOTYPE MUST NOT HAVE/BE | <ul style="list-style-type: none"> • Must not have so many entities involved in development that the result is a failure to have a cohesive vision. |
| FEEDBACK DURING TESTING | <ul style="list-style-type: none"> • Difficulty providing customized and appropriate resources. • Concerns about obtaining agreement from courts, bar associations, and various stakeholders to give self-represented litigants this degree of unsupervised control over their cases (e.g., filling out their own forms online). |



DISCUSSION

Our *Court Compass* design sprint workshops yielded an abundance of creative ideas for improving litigant experiences in the family court process. Interestingly, we find common themes across these ideas, many of which are reflected in existing research and efforts underway across the country—and around the world. These existing efforts demonstrate engagement from the legal system and profession around the core issues identified; however, we still have much work to do to make the system responsive to litigants’ needs.

TAILORING INFORMATION, SERVICES, AND PROCESSES TO LITIGANT NEEDS

Issues around a lack of information and resources, and a need for more guidance about the process, dominated the litigant narratives in our *Cases Without Counsel* project,²⁵ and we find many of these themes echoed in the *Court Compass* prototypes. Most of the prototypes centered on the delivery of information and assistance in one way or another. An interesting nuance that emerged from these information-delivery prototypes is that workshop participants frequently indicated a need for more than just information; people need direction on finding information that is relevant to their specific circumstances and legal needs. Nearly half of all the prototypes were developed with features that envision *individualized* help, *personal* service and referrals, and *tailored* guidance. The term and concept of a *conciierge* appeared in numerous prototypes, across sprint locations.

This is not surprising. After all, it is the tailored advice about how to handle a particular legal matter that makes attorney representation invaluable. Nevertheless, these prototypes suggest an important self-represented litigant perspective on a growing trend in state courts: case triage. Triage—the matching of parties and cases to appropriate resources, services, and processes—is a central component of the national recommendations approved by the Conference of Chief Justices and Conference of State Court Administrators for family and civil justice reform.²⁶ The most recent of the two sets of recommendations, the Family Justice Initiative Principles for Family Justice Reform, calls on courts to “establish a flexible pathway approach to triage domestic relations cases that matches parties and cases to resources and services.”²⁷ The fact that our *Court Compass* participants commonly focused on this function underscores the importance of effective court management of cases and parties.

25 CASES WITHOUT COUNSEL, *supra* note 6.

26 NAT’L CTR. FOR STATE CTS. & INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS., CALL TO ACTION: ACHIEVING CIVIL JUSTICE FOR ALL, RECOMMENDATIONS TO THE CONFERENCE OF CHIEF JUSTICES BY THE CIVIL JUSTICE IMPROVEMENTS COMMITTEE (2016), <https://www.ncsc.org/~media/Microsites/Files/Civil-Justice/NCSC-CJI-Report-Web.ashx>.

27 PRINCIPLES, *supra* note 5, at 9.

CREATING DIGITAL SPACES AND ONLINE TOOLS

Court systems are far from operating at the cutting edge of technology, and even seemingly simple tech tools and practices have not seen widespread use in state courts.²⁸ Nevertheless, litigants have expectations around engaging with digital tools from their experiences using other services and engaging with technology in daily life. These expectations come through strongly in the numerous *Court Compass* prototypes that leveraged technology, and these prototypes reflect some of the actual tools being developed and implemented by courts and others.

Of the prototypes with a digital component, many centered on the collection of information and resources online. Some prototypes included other functionalities, like scheduling, document repositories, event notifications, individualized profiles, and connections to court e-filing systems. A number of these tech-centered prototypes also involved a TurboTax[®]-like functionality to guide litigants through a particular form or through the divorce process more broadly. The phrase “TurboTax[®] for divorce” was heard across multiple design sprint workshop groups. These suggestions again express a desire for a proactive—in this case, automatic—court triaging that produces tailored resources and individualized action plans for litigants.

Recent work from Rebecca Sandefur, a leading academic researcher in the legal field, on the landscape of legal technologies for non-lawyers provides additional insight into the importance to litigants of having technology tools that empower users to do more than simply access information.²⁹ This study, which entailed a survey of the legal technologies currently available to litigants, demonstrated that a vast majority of these tools provide limited services, such as information about the law or attorney referrals.³⁰ Sandefur’s research and the *Court Compass* participants who developed these TurboTax[®]-like prototypes also provide support—conceptually, at least—for the various efforts underway around the country to develop one-stop online portals through which users can identify legal problems and be routed to assistance (legal and otherwise) available in their area.³¹ These efforts endeavor to supplement the court process-based triage programs that are being implemented in state courts around the country.

Although technology-based solutions were frequently prototyped in the design sprint workshops, there was no discernable preference for technological solutions over in-person or non-tech process solutions. Indeed, nearly half of the ideas prototyped did not incorporate a technological component at all, and many of the tech-enabled ideas still required the ability to directly connect with a live person.

28 See, e.g., JOHN GREACEN, INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS., EIGHTEEN WAYS COURTS SHOULD USE TECHNOLOGY TO BETTER SERVE THEIR CUSTOMERS 5 (2018), https://iaals.du.edu/sites/default/files/documents/publications/eighteen_ways_courts_should_use_technology.pdf.

29 REBECCA L. SANDEFUR, LEGAL TECH FOR NON-LAWYERS: REPORT OF THE SURVEY OF US LEGAL TECHNOLOGIES (2019), http://www.americanbarfoundation.org/uploads/cms/documents/report_us_digital_legal_tech_for_nonlawyers.pdf.

30 *Id.* at 14.

31 For example, Microsoft developed, in partnership with the Legal Services Corporation, Pro Bono Net, and Pew Charitable Trusts, the Legal Navigator Portal that is being pilot tested in Alaska and Hawaii. <https://simplifyinglegalhelp.org/>. Other states are working to develop their own solutions. See, e.g., <https://floridajusticetechnologycenter.org/testing-statewide-triage-the-results-of-user-research/>.

EXPANDING PHYSICAL SPACES FOR COURT SERVICE DELIVERY

An important and often problematic aspect of navigating the process without an attorney is getting to the courthouse during daytime operating hours. The impact of this disruption can extend across many facets of litigants' personal lives: childcare, time off work, and transportation costs are among the most frequently cited. Avoiding the need for people to physically go to court is of course a key feature of those prototypes that would digitally deliver information and services. Apart from the prototypes rooted in technology, however, several of the prototyped ideas endeavored to create new *physical* space options for service delivery outside of the courthouse.

The divorce van concept proposed in the first Massachusetts workshop offered a forum that could travel to areas where the user needs are greatest. One sprint group jokingly discussed the possibility of a divorce airline, which takes this mobile courthouse idea to a far more extreme level. While they may seem far-fetched, these ideas may not be too far off the mark, given some of the private providers operating in the divorce space. For instance, DivorceHotel, a company launched in the Netherlands and now operating in other countries, brings couples in for a weekend of mediation and non-legal expert advice with the goal of resolving disputes before they check out.³²

Further, the notion of increasing the court's reach by creating physical partnerships in the community is an increasingly popular approach. For example, in Bend, Oregon, the Deschutes Public Library hosts a Lawyer in the Library program one day a week, providing self-represented litigants a free 30-minute consultation; the program is a partnership with the Deschutes County Access to Justice Committee.³³ As another example, the Alaska State Court System, as part of the state's Justice for All action plan, mapped the justice ecosystem across the state to identify physical spaces in the community, and the providers operating therein, to inform the successful implementation of future justice interventions.³⁴ Finally, IAALS' out-of-court divorce model shared a similar premise, providing divorcing and separating families the opportunity to engage in a comprehensive set of legal services—such that they never had to go to the courthouse—along with mental health services for the whole family.³⁵ The model as implemented in Denver, Colorado, was a formal partnership with the local courts. While the Denver Center is no longer in operation, similar models—some based directly upon the IAALS model—are thriving.³⁶

32 DIVORCEHOTEL: A POSITIVE NEW START, <https://www.divorcehotel.com/concept-and-divorcehotel-procedures/> (last visited 11/12/2019).

33 DESCHUTES PUBLIC LIBRARY, <https://www.deschuteslibrary.org/services/lawyerinthelibrary> (last visited 11/12/2019).

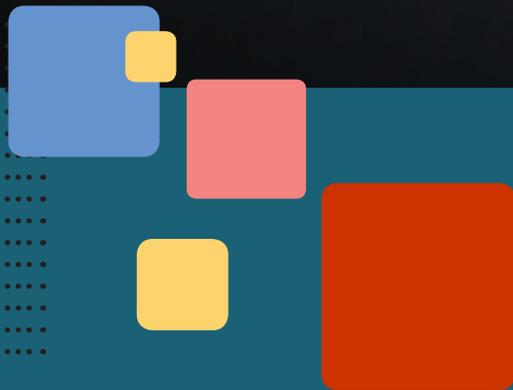
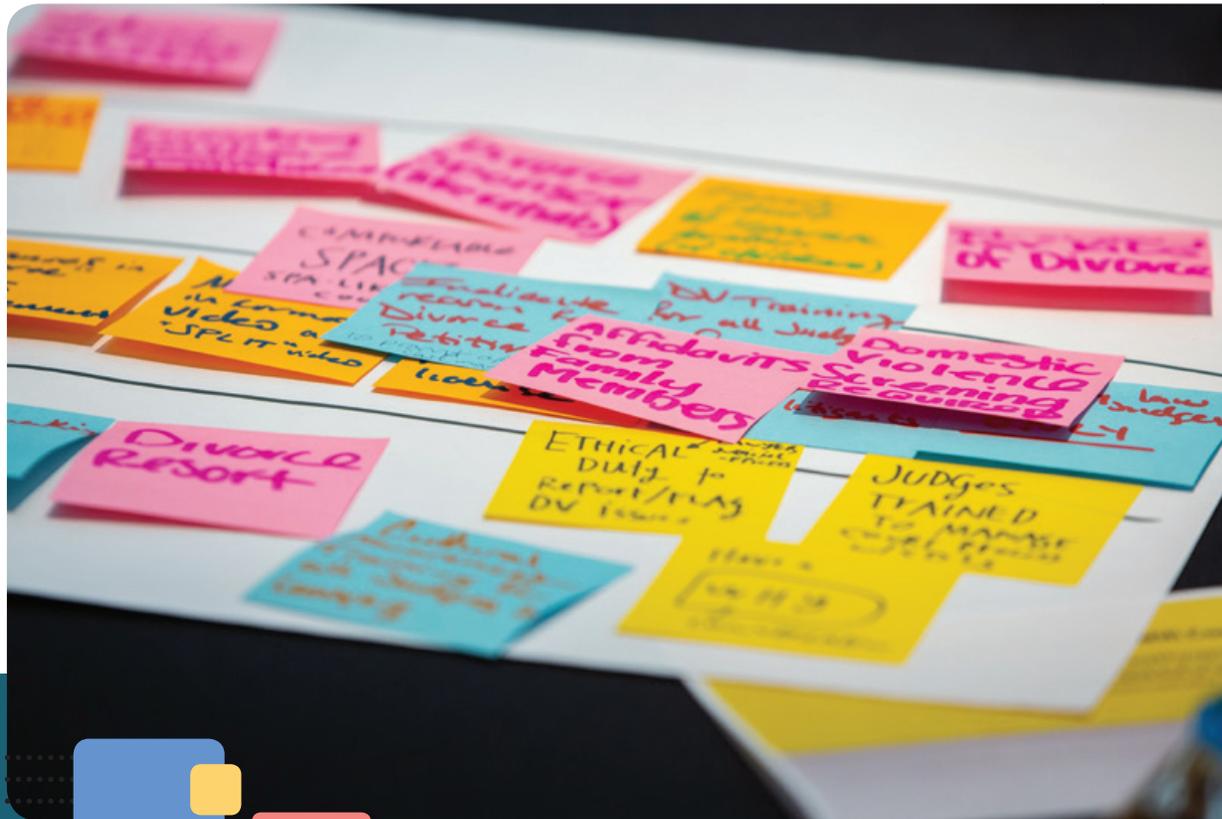
34 STACEY MARZ, MARA KIMMEL & MIGUEL WILLIS, ALASKA'S JUSTICE ECOSYSTEM: BUILDING A PARTNERSHIP OF PROVIDERS (2017), <https://public.courts.alaska.gov/web/jfa/docs/plan.pdf>.

35 DIVORCING TOGETHER, *supra* note 4.

36 For example, the Family Resolutions Specialty Court (FRSC) in Hampshire County, Massachusetts is a problem-solving court at the Hampshire Probate and Family court. Based on the IAALS model, the FRSC provides an interdisciplinary approach to child-centered problem-solving throughout the divorce process. ht

CONCLUSION

A focus on user-centered design is critical as the legal community moves forward in developing solutions to the myriad obstacles we face. Of course, legal experts provide valuable insights into the issues and can offer innovative solutions. But users of the system can offer perspectives that legal experts often do not possess—and if we seek to improve the system for the litigants, we must continue to engage them in the dialogue around developing real and viable solutions.





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APPENDIX A: DESIGN SPRINT WORKSHOP AGENDAS

| | ANDOVER, MASSACHUSETTS | BOSTON, MASSACHUSETTS | DENVER, COLORADO | DES MOINES, IOWA | RALEIGH, NORTH CAROLINA |
|--|---|---|---|---|---|
| <i>Discover/Identify the Problems</i> | <ul style="list-style-type: none"> Matrix: Current Positives, Current Negatives, Future Positives, Future Negatives. Map out process for litigant, court, and professional; identify emotional highs and lows; identify money and time issues; identify points of confusion or frustration. | <ul style="list-style-type: none"> Matrix: Current Positives, Current Negatives, Future Positives, Future Negatives. | <ul style="list-style-type: none"> Matrix: Current Positives, Current Negatives, Future Positives, Future Negatives. | <ul style="list-style-type: none"> Matrix: Current Positives, Current Negatives, Future Positives, Future Negatives. Map out process for litigant, court, and professional; identify emotional highs and lows; identify money and time issues; identify points of confusion or frustration. | <ul style="list-style-type: none"> Matrix: Current Positives, Current Negatives, Future Positives, Future Negatives. |
| <i>Brainstorm</i> | <ul style="list-style-type: none"> Persona: Identify three stakeholders (for each list concerns and needs, underlying values, power/strengths); identify one litigant persona to carry through; create design brief for this person (“how might we...?” questions). Brainstorm solutions around the problems and “how might we” questions: products, services, policies, wildcard; place on matrix. | <ul style="list-style-type: none"> Brainstorm solutions: products, services, policies, wildcard; place on matrix. | <ul style="list-style-type: none"> Brainstorm and rank solutions to the identified problems; feedback on solutions from previous sprints; identify one solution to prototype and test. Detail the chosen solution: target user, must dos, must not dos, nice to have. | <ul style="list-style-type: none"> Persona: Identify three stakeholders (for each list concerns and needs, underlying values, power/strengths); identify one litigant persona to carry through; create design brief for this person (“how might we...?” questions). Brainstorm solutions around the problems and “how might we” questions: products, services, policies, wildcard; place on matrix. | <ul style="list-style-type: none"> Rank solutions proposed in previous sprints; select one of these for prototyping. Detail the chosen solution: target user, must dos, must not dos, nice to have. |

| | ANDOVER, MASSACHUSETTS | BOSTON, MASSACHUSETTS | DENVER, COLORADO | DES MOINES, IOWA | RALEIGH, NORTH CAROLINA |
|-------------------------------------|---|--|--|--|--|
| <i>Build + Test + Refine</i> | <ul style="list-style-type: none"> • Create low-fi prototype; test with other groups; get feedback from test groups re: most likely fail points; address and revise based upon feedback. • In final debrief, identify user requirements, highest priority ideas, describe how a new divorce tech platform should be, final insights/patterns/takeaways. | <ul style="list-style-type: none"> • Pick a solution and prototype. | <ul style="list-style-type: none"> • Storyboard prototype; Create low-fi prototype; test with other groups; get feedback from test groups re: most likely fail points; address and revise based upon feedback. • In final debrief, develop final proposal for solution; identify top three takeaways re: what needs to change in the divorce system. | <ul style="list-style-type: none"> • Create low-fi prototype; test with other groups; get feedback from test groups re: most likely fail points; address and revise based upon feedback. • In final debrief, develop final proposal for solution; identify top three takeaways re: what needs to change in the divorce system. | <ul style="list-style-type: none"> • Storyboard prototype; Create low-fi prototype; test with other groups; get feedback from test groups re: most likely fail points; address and revise based upon feedback. • In final debrief, develop final proposal for solution; identify top three takeaways re: what needs to change in the divorce system. |

APPENDIX B: ALL PROTOTYPED SOLUTIONS

| GROUP | PROTOTYPE IDEA | MUST DO | MUST NOT DO | TESTING FEEDBACK |
|--------------------------------|---|--|---|---|
| <p>Colorado Group 1</p> | <p>Mobile App:</p> <ul style="list-style-type: none"> • Profiles for tailored advice and resources. • A descriptive overview of the process. • Document repository. • Resource page. • Additional features: <ul style="list-style-type: none"> ○ Expand from divorce (could expand to custody disputes and other family court functions in later versions). ○ Could e-file completed forms directly from website. ○ Questions designed to customize process (i.e., opt-out of parenting classes, select judge) in later version. | <ul style="list-style-type: none"> • Must not to surpass a common reading level (i.e., fifth-grade). • Must make language accessible. | <ul style="list-style-type: none"> • Must not involve too many parties (different governmental and nonprofit resources) that fail to have a cohesive vision. | <ul style="list-style-type: none"> • Difficulty providing customized and appropriate resources. • Getting courts/bar associations/various stakeholders to agree to give self-represented litigants this degree of unsupervised control over their cases (i.e., filling out their own forms online). |
| <p>Colorado Group 2</p> | <p>The Colorado Family Law Resource Agency:</p> <ul style="list-style-type: none"> • Agency staffed with lawyers, financial experts, and counselors. • Public domestic relations attorneys (PDRAs) who are a free/low-cost alternative to a private attorney appointed by the court. • Hotline available for procedural issues. | <ul style="list-style-type: none"> • Must have a sliding scale for cost. The high end of the sliding scale must be lower than the cost of a private attorney. • Must involve the court as a partner. • Court must inform people about the resource. | <ul style="list-style-type: none"> • Must not include a financial need requirement. • Must not make this a mandatory program. | <ul style="list-style-type: none"> • The idea is similar to the Center for Out-of-court Divorce. • Uncertain about funding source. • An overload of cases would force the agency to start turning people away. |

| GROUP | PROTOTYPE IDEA | MUST DO | MUST NOT DO | TESTING FEEDBACK |
|-------------------------|--|--|---|--|
| <i>Colorado Group 3</i> | <p>Night Court:</p> <ul style="list-style-type: none"> • An after-hours court for those who cannot make it during regular hours due to work, child care, etc. | <ul style="list-style-type: none"> • Must involve as much staff as needed to provide the same services available during the day. • Must include night mediators. | <ul style="list-style-type: none"> • Must not charge an extra fee for night court. | <ul style="list-style-type: none"> • Might cost more money to run. • Concerns about the effect of night court on staffing. |
| <i>Colorado Group 4</i> | Notes for CO Group 4 row intentionally left blank. | | | |
| <i>Colorado Group 5</i> | <p>One Family, One Judge:</p> <ul style="list-style-type: none"> • Every family is assigned one judge to take care all of the elements of their case. | <ul style="list-style-type: none"> • Must start small with pilot trials. | N/A | <ul style="list-style-type: none"> • It is crucial to make sure all systems align so that filing and process would be the same. |
| <i>Colorado Group 6</i> | <p>Online Divorce Portal:</p> <ul style="list-style-type: none"> • An online portal where all divorce items and information can be accessed including forms, FAQ's, and scheduling. | <ul style="list-style-type: none"> • Must be integrated with state court website. • Must be able to save and close, and then continue later. • Everything must be in one place (status updates, links for more feedback, etc.). | <ul style="list-style-type: none"> • Must not make the portal too busy or confusing. | <ul style="list-style-type: none"> • Might be difficult to handle both parties filing from the portal. |

| GROUP | PROTOTYPE IDEA | MUST DO | MUST NOT DO | TESTING FEEDBACK |
|-------------------------------|--|---|---|---|
| <i>North Carolina Group 1</i> | <p>Individualized Divorce Plan and Evaluation:</p> <ul style="list-style-type: none"> • A triage system to provide litigants with a variety of options to make the information accessible to individuals. | <ul style="list-style-type: none"> • Must be able to determine which questions are/are not relevant to different cases regardless of the complexity of the case. • Must be accessible online or at courthouse. • Must be available in a variety of languages. • Must make available contact information for a real person to ask questions or discuss concerns. • Must make the system uniform across the state/nation. • Must offer resources to take care of additional concerns (i.e., name change). | <ul style="list-style-type: none"> • Must not be confusing. • Must not be expensive. • Must not include a year of separation. • Must not be permanent without room for amendment. • Must not use legal jargon. | <ul style="list-style-type: none"> • Unclear on where the information would be available (i.e., at Clerk's office). • Need to determine who is responsible for reviewing. • Uncertain about funding source. |
| <i>North Carolina Group 2</i> | <p>Court Concierge/Guide</p> <ul style="list-style-type: none"> • A guide who provides legal advice and assistance throughout the divorce process. | <ul style="list-style-type: none"> • Must prevent injustice and improper property divisions. • Must tell everyone their options. • Must explain legal rights. • Must combine form assistance and Court Concierge instead of mediated divorce. • Must provide form review. • Both parties must be able to address the Concierge. • Must include a fee waiver for indigent individuals. | <ul style="list-style-type: none"> • Must not use legal jargon. • Must not conduct business in Clerk's office. • Must not make the program mandatory. | <ul style="list-style-type: none"> • Should eliminate repetitiveness in forms. • Preference is that individual can access attorney for quick advice. • Not sure who receives funding. • It would cost money to do this. • Need to determine how to strike a balance between guidance and advice. |

| GROUP | PROTOTYPE IDEA | MUST DO | MUST NOT DO | TESTING FEEDBACK |
|-------------------------------|---|---|---|--|
| <i>North Carolina Group 3</i> | <p>Tailored Online Resource Guide</p> <ul style="list-style-type: none"> • An individualized resource guide integrated into a Divorce App. | <ul style="list-style-type: none"> • Must address entire divorce including child custody, spousal support, property division, etc. • Must have flow chart management. • Must be in multiple languages. • Must link individuals to case management system. • Must have section for managing disputes. | <ul style="list-style-type: none"> • Must not charge extreme fees. • Must not be ad supported. • Must not collect data from participants. • Must not sell data from participants. | <ul style="list-style-type: none"> • Concerns about other party being compliant. • Domestic violence situations. • Concerned about details of questions. • Would be important to continue after the divorce (name change, real estate, etc.). • App may be untrustworthy. |
| <i>North Carolina Group 4</i> | <p>Law Student Legal Review Assistance, Court Concierge, and Smart Forms (Used together)</p> | <ul style="list-style-type: none"> • Must use third-year law students who receive school credit. • Must be affordable for all. • Must include a simple way to set up appointments and meet the students. • Must collect cash. | <ul style="list-style-type: none"> • Must not make the program expensive. | <ul style="list-style-type: none"> • Unclear on who will collect the service fees and when the fees would be collected. • Need to decide who will supervise the law students. • Different age groups might be better served through different modes of messaging. |
| <i>North Carolina Group 5</i> | <p>Divorce Valet: A Tailored Online Resource Guide</p> | <ul style="list-style-type: none"> • Must include phone access, translations, smart forms, and a fill-in-the-blank guided questionnaire. • Must allow the client to enter information about children, alimony, etc. in order to receive specific information regarding those issues. | <ul style="list-style-type: none"> • Must not extend the service to decisions around custody, etc. | <ul style="list-style-type: none"> • Need to figure out how people would know where to go to get these forms. • Provide an online forum for questions. • Case management issue—in the form of video conference, this may plug up the court system and back it up. |

| GROUP | PROTOTYPE IDEA | MUST DO | MUST NOT DO | TESTING FEEDBACK |
|-------------------------------|---|--|--|--|
| North Carolina Group 6 | <p>TurboTax® for Divorce:</p> <ul style="list-style-type: none"> • Includes a complete library of resources, guide, and an in-person workshop for understanding the divorce process. | <ul style="list-style-type: none"> • Must use simplified language. • Must reduce complications and tension between parties. • Must reduce high cost legal services. • Must be completely transparent between spouses. • Must include a human component (whether an online chat, phone call, or in-person workshop). | <ul style="list-style-type: none"> • Must not be complicated. • Must not use legal jargon. | <ul style="list-style-type: none"> • Need to determine the best format for the workshop (e.g., online, in person). • Need to create an advertising strategy. • This may not work well for contentious divorces. • Need to decide which forms will be included. • Could benefit from a review before submitting. • Not sure how this would work for the subpoenaed party. |
| Iowa Group 1 | <p>Divorce App:</p> <ul style="list-style-type: none"> • A standardized, state-wide process. • The app will fill out forms using provided data to minimize the amount of work for the user. | N/A | N/A | N/A |
| Iowa Group 2 | <p>Smart Forms:</p> <ul style="list-style-type: none"> • Auto-populated form • Similar to TurboTax® | N/A | N/A | <ul style="list-style-type: none"> • Positive feedback for its simplicity and self-explanatory set-up. |
| Iowa Group 3 | <p>Children in the Middle¹ Improvement:</p> <ul style="list-style-type: none"> • In-person two-hour long course. • Mediation. • Online CITM. | N/A | N/A | <ul style="list-style-type: none"> • Execution of prototype needed more work. • Might be difficult to make sure all litigants are taking the online course. |

¹ Children in the Middle is a two-hour co-parenting class. <http://www.iowachildren.com/>.

| GROUP | PROTOTYPE IDEA | MUST DO | MUST NOT DO | TESTING FEEDBACK |
|--|--|---|-------------|---|
| <i>Iowa Group 4</i> | Divorce Prime: <ul style="list-style-type: none"> • Interactive website to order a divorce decree. | N/A | N/A | <ul style="list-style-type: none"> • Need to make sure both the other party also receives their decree in seven days. • Balancing both simplicity and comprehensiveness. |
| <i>Iowa Group 5</i> | “DissolutionSolution.com”: <ul style="list-style-type: none"> • Divorce Packet, Divorce Alexa, and TurboTax®. • Assists litigants to participate in the divorce process. | N/A | N/A | <ul style="list-style-type: none"> • Must allocate resources to address typical website obstacles and limitations in order to create an accessible and non-stressful experience. |
| <i>Andover, Massachusetts Group 1</i> | Triage that includes: <ul style="list-style-type: none"> • Portal that is online or at a kiosk. • Helps narrow down what case management specialist the litigant needs. | <ul style="list-style-type: none"> • Must make the service available in many languages. • Must make the process user-friendly. • Must make the portal accessible anywhere. | N/A | <ul style="list-style-type: none"> • Engaged, happy, and knowledgeable employees. • Line employees don't get same training as management. • Public needs to understand what the role of the line employee (manage expectations). |

| GROUP | PROTOTYPE IDEA | MUST DO | MUST NOT DO | TESTING FEEDBACK |
|---|---|---|--|---|
| <p><i>Andover, Massachusetts Group 2</i></p> | <p>The Divorce Van:</p> <ul style="list-style-type: none"> • Mobile triage. • Legal services that travels to different areas with a website as to where it will be each day. • Not for filing but for prepping to see judge. | <ul style="list-style-type: none"> • Must ensure all forms are complete, compliant, and accurate, and the final agreement must be sustainable. | <ul style="list-style-type: none"> • Must not use legal jargon. | <ul style="list-style-type: none"> • Need to come up with a way to determine that the individuals are who they claim to be. • Need to make sure that requiring an ID still allows this to be accessible to everyone. • Need to determine if this actually saves time. • The "van factor" is very trendy and appealing, but it may be too gimmicky, and for the <i>cost</i> of the van, it's not actually that helpful. • If the people have already filed, the mobility of the van coming to you isn't as important. • Changed it to having these kiosk locations at local libraries (instead of in a mobile vehicle) to make it more accessible. |

| GROUP | PROTOTYPE IDEA | MUST DO | MUST NOT DO | TESTING FEEDBACK |
|---|--|---|--|---|
| <i>Andover, Massachusetts Group 3</i> | <p>Court Concierge:</p> <ul style="list-style-type: none"> • Offers personal service regarding the divorce process. • Located at entry of court. Coordinates information. • Provides referrals to other services • Provides comprehensive oral and visual roadmap of divorce process. • Non-profit with court oversight. • Recruit from Lawyer for the Day Program, DCF workers, social workers. • Sponsored by private law firms and grants. | <ul style="list-style-type: none"> • Must have engaged, knowledgeable employees. • Must use court interpreters. • Must allow users to select judges. • Must give public education seminars. • Must use plain language forms. | N/A | <ul style="list-style-type: none"> • Will need a privacy disclaimer. • Initial client interview involves overwhelming information. Try using more visual aids to disseminate information. • Concierge can work with existing self-help center. • Creation of intake form. • Problems could arise if non-lawyers giving legal advice. |
| <i>Boston, Massachusetts Whole Group</i> | <p>Individualized Divorce Plan:</p> <ul style="list-style-type: none"> • Assessment, what services are needed, unbiased, computer technology included in this. • Legal review assistance. • Program can be run by both parties or just one. • Directs people to what resources they need. • Court provides a kiosk or printing services to produce documents offline. | N/A | <ul style="list-style-type: none"> • Must not make the plan product-driven rather than client-driven. | <ul style="list-style-type: none"> • Some privacy concerns on the use of technology with personal information. |